

NORTH DAKOTA ADMINISTRATIVE CODE

VOLUME 1

Supplements 209 through 217

November 1996
December 1996
January 1997
February 1997
March 1997
April 1997
May 1997
June 1997
July 1997

**Prepared by the Legislative Council staff
for the
Administrative Rules Committee**



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TITLE 4
Management and Budget, Office of

NOVEMBER 1996

CHAPTER 4-07-01

4-07-01-01. History, functions, organization of the central personnel division.

1. History of the central personnel division.

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

agencies were to strictly follow the policies, but nonmerit system agencies were advised that the policies formed a "base" for the development of the agencies own policies and procedures.

- d. In July of 1981 then Governor Allen Olson issued executive order number 1981-10. That executive order portrayed the North Dakota personnel policies manual as providing the assurance that classified employees would be treated fairly and uniformly if the policies were followed. The executive order identified the state personnel board as the agency which would hold public meetings to receive comments and approve revisions to the policies. Governor Olson also ordered that agencies headed by a gubernatorial appointee adhere to and follow the policies, including the statewide appeal mechanism.
- e. However, by late 1986 that manner of personnel policy implementation and its "legality" and effect on various agencies had been challenged before the North Dakota supreme court. By 1990 in order for the division to carry out its statutory purpose of establishing a unified system of personnel administration for the classified service of the state, it was apparent that certain policies had to be adopted as rules in accordance with North Dakota Century Code section 28-32-02.

2. **Functions of the central personnel division.** The division establishes, maintains, and revises, classification and compensation plans. It assigns position classifications and pay grades, ~~hears various appeals according to rules of and as directed by the board,~~ and establishes and maintains required records for all employees in the classified service of the state. The division certifies appeals on employee grievances relating to demotion, suspension without pay, reduction-in-force, forced relocation, reprisal action, discrimination, merit system qualification, and dismissal. It also certifies appeals from applicants for positions in the classified service who allege discrimination. It assists appointing authorities and agencies with selection procedures, and grievance procedures, and training programs. The division coordinates and conducts training programs. It ensures salaries are paid consistent with the state's classification system, compensation plan, and salary administration policy, and consults with state agencies regarding salary administration. ~~The division provides coordination services to the merit system agencies, and it~~ It establishes and administers a cooperative education or internship program open to college students. The division provides information and technical, consultative advice to all state agencies and institutions, as appropriate, tools and methodology, and other services to promote the development of a unified system of

personnel administration. The division also serves as secretariat to the state personnel board.

3. **Organization of the central personnel division.**

a. The central personnel division is a division of the office of management and budget. The division is separate from the state personnel board, although the division and board work closely together on classification and pay grade issues. The division and the board each adopts its own rules ~~and--the--board--reviews--them----~~~~The--board--may disapprove-a-rule-or-policy-adopted-by-the-division.~~

b. The central personnel division has a director and a staff. The director is appointed by and serves at the pleasure of the director of the office of management and budget ~~from among persons certified by the state personnel board--The director--may--hold--no--other--public--office--or--employment--The director--may--be--removed--for--cause--and--may--appeal removal--to--the--state--personnel--board--for--a--hearing.~~ The director is responsible for the performance of the division as it exercises its duties and functions. The director is assisted by a staff of professional, administrative, and clerical employees. The staff are assigned to one of the following areas: administration, classification and compensation, employment services, and training and development.

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

General Authority: NDCC 54-44.3-12

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

4-07-01-02. Organization and functions subject to chapter 28-32.

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

1. Subsection 1 of North Dakota Century Code section 54-44.3-12 provides the authority to establish general policies, rules, and regulations which are binding on the agencies affected ~~once they are approved by--the--state--personnel--board.~~ The rules referred to in this regard must ensure fairness, enhance greater uniformity in personnel management matters, and include rules on establishing and maintaining the classification and compensation plans.

2. Subsection 7 of North Dakota Century Code section 54-44.3-12 provides the authority to develop procedures that must be

followed by all state agencies and institutions regarding salary administration for all employees in the classified service.

3. North Dakota Century Code section 54-42-03 provides the authority for the North Dakota merit system council, of which the division is a part, to adopt general policies, rules, and regulations which are binding on the agencies affected. Those agencies are commonly known as the merit system agencies. The rules referred to in this regard cover many aspects of personnel administration for those grant-aided agencies which receive federal funds.

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

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

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

4-07-01-03. Methods the public may use to obtain information.

The public may obtain information, furnish information, or make requests to the central personnel division concerning any of its functions or rules by writing to:

Central Personnel Division
Capitol Building 14th Floor
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0120

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

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

General Authority: NDCC 54-44.3-12

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

CHAPTER 4-07-02

4-07-02-02. Scope of chapter. This chapter applies to all agencies, departments, institutions, and boards and commissions which employ individuals in positions classified employees by the central personnel division, except those agencies headed by an elected official, and except those institutions in the university system. Elected officials and institutions in the university system may, at their option, agree to the application of chapter 4-07-02 to their specific agency.

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

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

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

4-07-02-14. Performance increase. An appointing authority may grant an increase for performance if all of the following requirements are met:

1. A proper performance appraisal process is used by the agency pursuant to chapter 4-07-10.
2. The increase does not exceed five percent in any twelve-month period for an employee.
3. Consideration is given to internal salary equity of other agency employees.

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

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

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

CHAPTER 4-07-03

4-07-03-01. Scope of chapter. This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ classified employees, ~~except those institutions in the university system.~~ ~~Additionally, this chapter applies to these agencies of local government that employ~~ individuals whose in positions are classified by the central personnel division.

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

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

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

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

1. A new position has been authorized.
2. ~~New responsibilities are assigned to a new or existing position.~~

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

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

General Authority: NDCC 54-44.3-12

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

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

History: Effective November 1, 1996.

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

Law Implemented: NDCC 54-44.3-12

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

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

General Authority: NDCC 54-44.3-12

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

4-07-03-09. A request for a classification review must be submitted for all positions affected by a reassignment. ~~When--a reclassification request is due to a reassignment of responsibilities, a request for a classification review must be submitted for all--positions~~

affected- Superseded by subsection 2 of section 4-07-03-05 effective November 1, 1996.

History: Effective-September-1,-1992-
General Authority: NDCC-54-44.3-12
Law Implemented: NDCC-54-44.3-12(1)

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

History: Effective November 1, 1996.
General Authority: NDCC 54-44.3-12(1)
Law Implemented: NDCC 54-44.3-12

4-07-03-10. Central personnel division shall notify the appointing authority and employee. Within sixty calendar days of receiving a request to review a position, the central personnel division shall notify the agency appointing authority and the employee in writing of the division's decision and the right to appeal request reconsideration.

History: Effective September 1, 1992; amended effective November 1, 1996.
General Authority: NDCC 54-44.3-12
Law Implemented: NDCC 54-44.3-12(1)

4-07-03-10.1. Effective date of classification assignment. The effective date of a classification assignment is the date specified by the appointing authority.

History: Effective November 1, 1996.
General Authority: NDCC 54-44.3-12(1)
Law Implemented: NDCC 54-44.3-12(1)

4-07-03-10.2. Employee in a reclassified position shall meet minimum qualifications. When reclassification of a position is requested, the appointing authority shall ensure that the position incumbent meets the minimum qualifications for the position's new classification. If the employee does not meet the minimum qualifications, the appointing authority shall do one of the following:

1. Assist the employee in attaining the necessary education, training, or experience to meet the qualifications. The employee must meet the qualifications within one year from the effective date of the reclassification.

2. Reassign the employee to a position for which the employee qualifies.
3. Restructure the duties and responsibilities of the reclassified position to return it to a classification for which the employee qualifies.
4. Request review of the class.
5. Take other action to ensure compliance with the minimum qualifications.

History: Effective November 1, 1996.

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

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

~~4-07-03-11. Classification--appeal--to--the-director~~ Request for reconsideration of classification decision. An appointing authority or an employee may appeal request reconsideration of a classification assigned to a class or position by submitting a written notice to the ~~director~~, central personnel division, within fifteen working days from the date ~~on~~ the ~~written~~ initial classification decision issued was mailed by the central personnel division. The ~~appeal-notice~~ request for reconsideration must state the specific issue being-appealed and ~~it-must~~ contain-the reasons for the review request and the desired outcome. The ~~director~~ central personnel division shall review the information contained in the appeal request and provide a decision in writing to the parties within sixty calendar days from the date ~~on~~ the ~~appeal--notice~~ request for reconsideration was received by the division.

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

General Authority: NDCC 54-44.3-12

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

CHAPTER 4-07-04

~~4-07-04-01. Scope of chapter.~~ This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ ~~classified-employees,-except-these-institutions~~ in-the-university-system.--Additionally,-this-chapter-applies--to--these agencies ~~--of-local-government-that-employ~~ individuals whose in positions are classified by the central personnel division.

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

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12

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

History: Effective November 1, 1996.

General Authority: NDCC 54-44.3-12

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

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

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

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

General Authority: NDCC 54-44.3-12

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

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

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

- 4- 5. Any available analysis of the current use of the salary range assigned to the existing pay grade.

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

General Authority: NDCC 54-44.3-12

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

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

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

General Authority: NDCC 54-44.3-12

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

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

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

General Authority: NDCC 54-44.3-12

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

4-07-04-09. Central personnel division shall notify the affected appointing authority and the employee. Within sixty calendar days of receiving a request to review a pay grade, the central personnel division shall notify the affected agency appointing authority and the employee in writing of the division's decision and the right to appeal. The appointing authority shall communicate pay grade assignments to the employees.

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

General Authority: NDCC 54-44.3-12

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

4-07-04-09.1. Effective date of pay grade assignment. The effective date of a pay grade assignment is the date specified by the appointing authority.

History: Effective November 1, 1996.
General Authority: NDCC 54-44.3-12
Law Implemented: NDCC 54-44.3-12(1)

4-07-04-09.2. Request for reconsideration of pay grade assignment. An appointing authority or an employee may request reconsideration of a pay grade assigned to a class by submitting a written request to the central personnel division within fifteen working days from the date the initial pay grade decision was mailed by the central personnel division. The request for reconsideration must state the specific issue, reason for the request, and desired outcome. The central personnel division shall review the information contained in the request, solicit other information and input as appropriate, and provide a written decision to the parties within sixty calendar days from the date of the request for reconsideration.

History: Effective November 1, 1996.
General Authority: NDCC 54-44.3-12
Law Implemented: NDCC 54-44.3-12(1)

4-07-04-10. Pay grade appeal to the director. An appointing authority or an employee may appeal a pay grade assigned to a class or a position by submitting a written notice to the director, central personnel division, within fifteen working days from the date on the written pay grade decision issued by the central personnel division. The appeal notice must state the specific issue being appealed and it must contain information to substantiate a further review. The director shall review the information contained in the appeal and provide a decision in writing to the parties within sixty calendar days from the date on the appeal notice. Superseded by section 4-07-04-09.2 effective November 1, 1996.

History: Effective May 1, 1994.
General Authority: NDCC 54-44.3-12
Law Implemented: NDCC 54-44.3-12(1)

CHAPTER 4-07-05

4-07-05-01. Scope of chapter. This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ classified employees, except those institutions in the university system. Additionally, this chapter applies to those

~~agencies--of-local-government-that-employ~~ individuals whose in positions are classified by the central personnel division.

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

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

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

4-07-05-01.1. Definitions. The terms used throughout this chapter have the same meaning as those in North Dakota Century Code chapters 54-42 and 54-44.3, except ~~"underfill"--means--to--fill--a~~ classified position by employing an individual in a lower level class than originally announced.

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

9. "Vacancy announcement" means an announcement that a particular position is vacant and that the appointing authority intends to recruit to fill it.

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

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

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

4-07-05-02. Promotion within an agency. An appointing authority may promote an a regular or probationary employee ~~from within an agency to fill any a vacant classified position that the employee qualifies for in the respective agency. When promoting an employee from within the agency, the appointing authority may restrict the announcement of the position vacancy to the employees of that agency only.~~

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

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

Law Implemented: NDCC 54-42-03(4), 54-44.3-12(1)

4-07-05-02.1. Reinstatement. An appointing authority may reinstatement a former employee to fill a vacant position. The employee being reinstated must be assigned to a position at the same regular, permanent, probationary, or temporary status as at the time employment was terminated. The reinstatement must be effective within three years from the date of the employee's separation.

History: Effective November 1, 1996.

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

Law Implemented: NDCC 54-42-03(4), 54-44.3-12(1)

4-07-05-02.2. Transfer. An appointing authority may transfer a regular or probationary employee from a classified position to another classified position.

History: Effective November 1, 1996.

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

Law Implemented: NDCC 54-42-03(4), 54-44.3-12(1)

4-07-05-03. Minimum qualifications. An Except as provided in section 4-07-05-06, and appointing authority may not employ, promote, reinstate, or reassign transfer a person in into or to a position in the classified service unless provided that person possesses qualifications that at least meet the minimum qualifications for that class as they are stated in the class specifications and successfully completes any examination requirement specified by the appointing authority.

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

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

4-07-05-04. Notifying central personnel. An appointing authority shall notify the central personnel division of each vacant classified, nontemporary position that the appointing authority intends to fill by employing a person who is not currently an employee of the agency. However, an appointing authority who is employed by an agency that is a party to a contract with job service North Dakota for employment recruiting and referral services need not provide notification through external recruitment. The notification must be submitted prior to beginning the recruiting effort and may be in the form of a completed vacancy announcement, letter, or memo and transmitted electronically or by mail. Notification must be submitted to the division prior to beginning the recruiting effort. An appointing authority who lists vacancies with job service North Dakota need not provide notification to the central personnel division.

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

General Authority: NDCC 54-42-03, 54-44.3-12
Law Implemented: NDCC 54-42-03(3), 54-44.3-12(1)

4-07-05-05. Recruiting and selection External recruiting. When an appointing authority proceeds to fill a vacant classified, nontemporary position by through external recruiting an individual who is not a current employee of the agency, the appointing authority shall ensure that the public has the opportunity to know of and apply for the position. Additionally, the appointing authority shall select the applicant for appointment on the basis of the applicant's job-related qualifications for the position.

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

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

4-07-05-05.1. Internal recruiting. When an appointing authority proceeds to fill a vacant classified, nontemporary position by recruiting an individual who is a current employee of the appointing authority, the appointing authority shall ensure that all employees occupying classified positions of the appointing authority have the opportunity to know of and apply for the position. An appointing authority may specify a work unit or work units within the agency from which applicants may be considered.

History: Effective November 1, 1996.
General Authority: NDCC 54-44.3-12
Law Implemented: NDCC 54-44.3-12(1)

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

1. A temporary employee must have been selected on an open and competitive basis at the time of employment to the current temporary position with the agency.
2. An intern must have completed a documented internship with the agency within a two-year period immediately prior to the employment date.

History: Effective November 1, 1996.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12

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

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

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

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12

4-07-05-07. Veterans' preference documentation required. To receive veterans' preference, an applicant must submit the following documentation:

1. An applicant claiming veterans' preference shall provide a copy of report of separation DD-214.
2. An applicant claiming disabled veterans' preference shall provide a copy of report of separation DD-214 and a letter less than one year old from the veterans' administration indicating the veteran's disability status.
3. An applicant claiming veterans' preference as an eligible spouse of a deceased veteran shall provide a copy of the marriage certificate, the veteran's report of separation DD-214, and the veteran's death certificate.

4. An applicant claiming disabled veterans' preference as an eligible spouse of a disabled veteran shall provide a copy of the marriage certificate, the veteran's report of separation DD-214, and a letter less than one year old from the veterans' administration indicating the veteran's disability status.

History: Effective November 1, 1996.

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

Law Implemented: NDCC 54-42-03, 54-44.3-23

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

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

History: Effective November 1, 1996.

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

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

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

1. A vacancy announcement may not contain minimum qualifications that are less than the established minimum qualifications on the class specification, but they may contain more specific requirements.
2. When advertising for required education on a vacancy announcement, an appointing authority may:
 - a. Narrow the range of appropriate degrees.

- b. Specify the additional training or experience needed for working in an upper level of a class series.
3. An appointing authority shall define the type and length of experience that substitutes for a college degree, if a substitution statement is used in the minimum qualifications of the class specification.
4. An appointing authority shall define the terms "related field" or "related experience" if used in the minimum qualifications.
5. An appointing authority wishing to consider applicants for underfill in the initial vacancy announcement shall indicate such and state the required minimum qualifications for the underfill.

History: Effective November 1, 1996.

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

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

CHAPTER 4-07-06

4-07-06-01. Scope of chapter. This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ ~~classified employees, except those institutions in the university system. Additionally, this chapter applies to these agencies of local government that employ~~ individuals whose in positions are classified by the central personnel division.

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

General Authority: NDCC 54-44.3-12

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

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

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

General Authority: NDCC 54-44.3-12

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

4-07-06-05. Separation during the probationary period. An employee may be separated at will from the employee's position for any lawful reason at any time employment during the probationary period. The employee may not grieve or appeal a lawful separation. The appointing authority shall notify the employee of the separation in writing.

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

General Authority: NDCC 54-44.3-12

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

4-07-06-06. Evaluation and notice Notice of completion. At the conclusion of an employee's initial probationary period, the The appointing authority shall evaluate the employee's performance in writing. The appointing authority shall also notify the employee in writing at the completion of the probationary period that the employee has satisfactorily completed the probationary period. A copy of the evaluation and notice must be retained in the employee's official personnel file, that the probationary period has been extended, or that employment is terminated. Lack of notice within fifteen working days of completion of the probationary period means that the employee has successfully completed the probationary period.

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

General Authority: NDCC 54-44.3-12

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

4-07-06-07. Extending a probationary period. An appointing authority may extend an initial period of probation only if there is a documented work-related reason for doing so. The appointing authority shall notify the employee in writing of the decision to extend, the reason for the extension, and the length of the extension. A probation period extension beyond the initial probationary period imposed by the agency under section 4-07-06-03 may not exceed six months. The notification must be accomplished within fifteen working days of completion of the probationary period. A copy of this notice must be retained in the employee's official personnel file.

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

General Authority: NDCC 54-44.3-12

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

4-07-06-08. Promotion during initial probationary period. An employee may be promoted during the employee's initial probationary period. The employee shall gain the right to appeal to the state personnel board following the successful completion of the probationary period imposed at the time of hire. Any additional period used to

determine whether the employee can meet the requirements of the position to which the employee has been promoted may not be used to affect the employee's rights to appeal to the central personnel division. Repealed effective November 1, 1996.

History: Effective September 1, 1992; amended effective August 1, 1995.
General Authority: NDCC-54-44-3-12
Law Implemented: NDCC-54-44-3-12(1)

4-07-06-09. Promotion following the initial probationary period. An employee may be promoted following the employee's initial probationary period. When an employee is so promoted, a subsequent period of probation may be imposed. The purpose of the subsequent period of probation is to determine whether the employee can meet the performance requirements of the new position. If an employee does not complete the subsequent period of probation successfully, the employee may be reassigned, returned to the employee's former position, if available, or dismissed. However in such instances, the employee has the right to appeal to the central personnel division. Repealed effective November 1, 1996.

History: Effective September 1, 1992; amended effective August 1, 1995.
General Authority: NDCC-54-44-3-12
Law Implemented: NDCC-54-44-3-12(1)

CHAPTER 4-07-07

4-07-07-01. Scope of chapter. This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ classified employees, except those institutions in the university system. Additionally, this chapter applies to those agencies of local government that employ individuals whose in positions are classified by the central personnel division.

History: Effective September 1, 1992; amended effective November 1, 1996.
General Authority: NDCC 54-44.3-12
Law Implemented: NDCC 54-44.3-12(1)

4-07-07-03. The standard workweek. The standard workweek, starting time, quitting time, and core times applicable to an agency's employees must be made known to those employees is a fixed and regularly recurring period of seven consecutive twenty-four-hour periods. A workweek may begin on any day of the week and at any hour and minute of the day. Due to the nature of the work, an agency may assign employees to work different workweeks or different workdays to

carry out the mission of the agency. Employees must be made aware of their assigned workweek. An agency may establish different workweeks in accordance with requirements of the Fair Labor Standards Act of 1938 [Pub. L. 75-718; 52 Stat. 1060; 29 U.S.C. 201 et seq.]. In the absence of an established standard workweek, the period of 12:01 a.m. Sunday through 12:00 p.m. the following Saturday must be utilized.

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

General Authority: NDCC 54-44.3-12

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

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

History: Effective November 1, 1996.

General Authority: NDCC 54-44.3-12

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

Chapter 4-07-08

4-07-08-01. Scope of chapter. This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ ~~classified employees; except these institutions in the university system. Additionally, this chapter applies to these agencies of local government that employ~~ individuals whose in positions are classified by the central personnel division.

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

General Authority: NDCC 54-44.3-12

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

CHAPTER 4-07-09

4-07-09-01. Scope of chapter. ~~This chapter applies to all state agencies, departments, institutions, and boards and commissions that~~

employ-classified-employees,-except-these-institutions-in-the-university system.--Additionally,-this-chapter-applies-to-these-agencies--of--local government-that-employ-individuals-whose-positions-are-classified-by-the central-personnel-division. Repealed effective November 1, 1996.

History: Effective-September-1,-1992-

General Authority: NDCC-54-44.3-12

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

4-07-09-02. Definitions. The-terms-used-throughout-this-chapter have-the-same-meaning-as-in-North-Dakota-Century-Code--chapter--54-44.3, except--"transfer"--means--an-approved-nontemporary-change-in-employment for-an-employee-from-a-position-with-one-agency-to-another-position-with a-different-agency-that-does-not-result-in-a-break-in-service. Repealed effective November 1, 1996.

History: Effective-September-1,-1992-

General Authority: NDCC-54-44.3-12

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

4-07-09-03. Assumption of accrued annual leave and sick leave hours. An-appointing-authority-who-elects-to-employ--an--individual--by means--of--a-transfer-shall-provide-for-the-assumption-of-accrued-annual leave-and-sick-leave-hours-as-follows:

1.--An--appointing--authority--in--a--state--agency--employing--an individual--from--another--state--agency--shall--accept--all--sick leave--hours,--but--may--accept--all--or--only--a--part--of--the employee's-annual-leave-hours.

2.--An--appointing--authority--in--an--agency--subject--to--the--merit system--who--employs--an--individual--from--an--agency--subject--to--the merit--system--shall--accept--all--sick--leave--hours,--but--may--accept all--or--only--a--part--of--the--employee's--annual--leave--hours. Superseded by sections 4-07-12-13 and 4-07-13-12 effective November 1, 1996.

History: Effective-September-1,-1992-

General Authority: NDCC-54-44.3-12

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

Chapter 4-07-10

4-07-10-01. Scope of chapter. This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ classified employees,-except-these-institutions

~~in the university system. -- Additionally, this chapter applies to these agencies of local government that employ individuals whose in positions are classified by the central personnel division.~~

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

General Authority: NDCC 54-44.3-12

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

4-07-10-02. Requirement for performance management program. Each agency, department, and institution shall adopt and use a program to provide for the development and management of the performance of each classified employee in a classified position.

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

General Authority: NDCC 54-44.3-12

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

4-07-10-03. Requirement to communicate expected performance expected. Each classified employee in a classified position must be informed of the responsibilities assigned to the employee's position and of the level of performance needed to successfully perform the work.

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

General Authority: NDCC 54-44.3-12

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

4-07-10-04. Criteria for performance management programs. Each agency, department, and institution shall use the criteria in one or the other of the following performance management program types:

1. ~~Standard-program~~ Individual-based performance.
 - a. Performance reviews are conducted at least annually.
 - b. Performance reviews are based on individual job-related requirements.
 - c. A standard form or approach is used.
 - d. Performance standards, or goals and objectives are used.
 - e. The review includes a review of past performance.
 - f. The review includes a discussion of how performance may be improved or how an employee's skills may be developed.
2. ~~Alternative-program~~ Team-based performance.

- a. Performance reviews are conducted as--needed at least annually.
- b. Performance reviews are based on overall team performance and how the employee functions as part of a team.
- c. The emphasis of the program is on improving the quality of a service or product, constantly improving systems and processes, and on preventing problems and eliminating them.
- d. The program provides guidance for the education, training, and self-improvement of the employee.

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

General Authority: NDCC 54-44.3-12

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

Chapter 4-07-11

4-07-11-01. Scope of chapter. This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions ~~which employ classified employees, except these institutions in the university system. Additionally, this chapter applies to these agencies of local government~~ that employ individuals whose in positions are classified by the central personnel division.

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

General Authority: NDCC 54-44.3-12

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

4-07-11-02. Definitions. The terms throughout this chapter have the same meaning as in North Dakota Century Code chapter 54-44.3, except "reduction-in-force" means the loss of employment by an employee as a result of a reduction in appropriations funding, lack of work, curtailment of work, or reorganization.

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

General Authority: NDCC 54-44.3-12

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

4-07-11-03. Reduction-in-force. An appointing authority, after giving written notice to a classified employee, may cause an employee to lose their employment due to a reduction-in-force. Prior to initiating a reduction-in-force, an appointing authority shall carefully conduct a

written analysis of the affected employees in the agency to determine those employees who will be subject to the reduction-in-force. The appointing authority shall use all of the following four factors in the required analysis:

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

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

General Authority: NDCC 54-44.3-12

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

CHAPTER 4-07-12

4-07-12-01. Scope of chapter. This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ ~~classified employees, except these institutions in the university system. Additionally, this chapter applies to these agencies of local government that employ~~ individuals whose in positions are classified by the central personnel division.

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

General Authority: NDCC 54-44.3-12

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

4-07-12-02. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapters 54-06, 54-44.3, and 54-52-01, except ~~"annual leave" means an approved absence~~

~~from work with pay, provided to a permanent employee, for vacation or other purposes including the adoption of a child;~~

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

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

General Authority: NDCC 54-44.3-12

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

4-07-12-03. Annual leave accrual. Annual Employees eligible for annual leave begins begin to accrue ~~for each new permanent employee~~ leave from the first day of the employee's probationary period hire.

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

General Authority: NDCC 54-44.3-12

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

4-07-12-10. Pay during employment. An employee may not be paid for unused annual leave while the employee remains in the service of the agency, except when the employee either takes a long-term leave of absence, goes on educational leave, or moves ~~from permanent~~ to temporary employment. When an employee is transferring from one agency to another, the employee must be paid for the difference in hours between what the employee has accumulated and the number of hours the gaining agency will accept. When an employee is leaving the service of the agency, the employee must be paid for all accrued hours of annual leave.

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

General Authority: NDCC 54-44.3-12

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

4-07-12-11. Credit for temporary service. A temporary employee who becomes ~~permanent~~ regular must be given credit for the employee's length of service as a temporary employee for the purpose of determining the annual leave accrual rate. An agency may not grant annual leave hours to a temporary employee.

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

General Authority: NDCC 54-44.3-12

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

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

History: Effective November 1, 1996.

General Authority: NDCC 54-44.3-12

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

CHAPTER 4-07-13

4-07-13-01. Scope of chapter. This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ ~~classified employees, except those institutions in the university system.~~ ~~Additionally, this chapter applies to these agencies of local government that employ~~ individuals whose in positions are classified by the central personnel division.

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

General Authority: NDCC 54-44.3-12

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

4-07-13-02. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapters 54-06, 54-44.3, and 54-52.4, except:

1. "Eligible family member" means the employee's spouse, parent (natural, adoptive, foster, and stepparent), child (natural, adoptive, foster, and stepchild), or any other family member who is financially or legally dependent upon the employee or who resides with the employee for the purpose of the employee providing care to the family member.
2. "Sick leave" means an approved absence from work, with pay, ~~provided to a permanent employee for use when the employee requires diagnosis or treatment of a medically related condition, or when the employee is ill or injured and is unable to work, or for use under certain circumstances when there is an illness or medical need in the employee's family~~ in accordance with section 4-07-13-07.

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

General Authority: NDCC 54-44.3-12

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

4-07-13-03. Sick leave accrual. Sick Employees eligible for sick leave begins begin to accrue for each new permanent employee leave from the first day of the probationary period hire.

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

General Authority: NDCC 54-44.3-12

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

4-07-13-09. Sick leave and pregnancy. ~~A pregnant employee, who is temporarily medically disabled from performing the employee's assigned work, must be considered eligible for sick leave. Pregnancy must be treated in the same manner as any other medical disability with respect to sick leave benefits.~~ Repealed effective November 1, 1996.

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

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

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

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

History: Effective November 1, 1996.

General Authority: NDCC 54-44.3-12

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

CHAPTER 4-07-14

4-07-14-01. Scope of chapter. This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ ~~classified employees, except those institutions in the university system.~~ Additionally, this chapter applies to these agencies of local government that employ individuals whose in positions are classified by the central personnel division.

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

General Authority: NDCC 54-44.3-12

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

CHAPTER 4-07-15

4-07-15-01. Scope of chapter. This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ classified employees, except these institutions in the university system. Additionally, this chapter applies to these agencies of local government that employ individuals whose in positions are classified by the central personnel division.

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

General Authority: NDCC 54-44.3-12

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

CHAPTER 4-07-16

4-07-16-01. Scope of chapter. This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ classified employees, except these institutions in the university system. Additionally, this chapter applies to these agencies of local government that employ individuals whose in positions are classified by the central personnel division.

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

General Authority: NDCC 54-44.3-12

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

CHAPTER 4-07-17

4-07-17-01. Scope of chapter. This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ classified employees, except these institutions in the university system. Additionally, this chapter applies to these agencies of local government that employ individuals whose in positions are classified by the central personnel division.

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

General Authority: NDCC 54-44.3-12

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

CHAPTER 4-07-18

4-07-18-01. Scope of chapter. This chapter applies to all state agencies, departments, institutions, and board boards and commissions that employ ~~classified--employees;--except--these--institutions-in-the~~ university-system individuals in positions classified by the central personnel division.

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

General Authority: NDCC 54-44.3-12

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

CHAPTER 4-07-19

4-07-19-01. Scope of chapter. This chapter applies to all state and local government agencies, departments, institutions, and board and commissions that employ ~~classified-employees;--except--these--institutions~~ in-the-university-system;--Additionally;--this--chapter--applies--to--these agencies ~~of-local-government-that-employ~~ individuals whose in positions are classified by the central personnel division.

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

General Authority: NDCC 54-44.3-12

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

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

1. "Cause" means conduct related to the a regular employee's job duties, job performance, or working relationships that is detrimental to the discipline and efficiency of the service in which the employee is or was engaged.
2. "~~Progressive--discipline;--includes--the--disciplinary--actions~~ imposed to correct an employee's behavior, beginning with the ~~least--severe--appropriate--action--and--progressing--to--the--more~~ severe, ~~for--repeated--instances--of--poor--job--performance;--or--for~~ repeated violations of the same or similar rules or standards. "Demotion" means an involuntary reduction in the base salary of a regular employee resulting from reassignment for cause to a position in a lower class.

3. "Dismissal" means an involuntary termination of a regular employee's employment.
4. "Progressive discipline" means the disciplinary actions imposed to correct a regular employee's behavior, beginning with a less severe appropriate action and progressing to a more severe appropriate action, for repeated instances of poor job performance or for repeated violations of the same or similar rules or standards.
5. "Regular employee" means a person who has completed the probationary period and who is or was in a position classified by the central personnel division at the time of the disciplinary action.
6. "Suspension without pay" means an enforced unpaid leave of absence.
7. "Working days" means Monday through Friday exclusive of holidays.

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

General Authority: NDCC 54-44.3-12

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

4-07-19-03. Discipline only for cause. An A regular employee may be disciplined only for cause.

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

General Authority: NDCC 54-44.3-12

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

4-07-19-04. Use of progressive discipline. Progressive discipline must be used to correct an a regular employee's job performance problems or for a violation of rules or standards, except:

1. ~~When~~ when an infraction or a violation of a serious nature is committed ~~such as, but not limited to,~~ including insubordination, theft, falsification of pay records, assaulting a supervisor or coworker, patient or client, and for which the imposition of less severe disciplinary action would be inappropriate.

2. ~~When an employee is in the initial probationary period.~~

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

General Authority: NDCC 54-44.3-12

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

4-07-19-04.1. Suspension without pay. A suspension without pay may not exceed thirty calendar days. If the suspended employee is exempt from the overtime provisions of the Fair Labor Standards Act of 1938 [Pub. L. 75-718; 52 Stat. 1060; 29 U.S.C. 201 et seq.], the appointing authority may not suspend the employee without pay for a period less than one workweek as defined in section 4-07-07-03.

History: Effective November 1, 1996.
General Authority: NDCC 54-44.3-12(1)
Law Implemented: NDCC 54-44.3-12.2

4-07-19-05. Required-actions Appointing authority shall provide a written preaction notice. An appointing authority shall take--certain required--actions provide a written preaction notice when the suspension without pay, demotion, or dismissal of a nonprobationary--classified regular employee is being considered. In-such-situations-an-appointing authority-shall-provide The preaction notice must include the following:

1. A written--notice--of--the--intent--to--take--the--action--and--the reasons--for--the--action: statement that the appointing authority intends to take disciplinary action which may result in demotion, suspension without pay, or dismissal of the employee.
2. An opportunity-for-the-employee-to-respond-to-the-allegations in-writing: explanation of the alleged charges against the employee.
3. A written--notice--of--the--final--action--taken,--after--the employee's-opportunity-to-respond.--The-notice-must-include--a statement--describing--the-employee's-right-to-appeal,--if-any. provision for the employee to respond in writing within a specified timeframe.
4. A statement regarding the employee's status until a final decision is made.
5. A statement that a written notice of the final action taken will be provided to the employee.

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

History: Effective May 1, 1994; amended effective November 1, 1996.
General Authority: NDCC 54-44.3-12
Law Implemented: NDCC 54-44.3-12(1)

4-07-19-06. Appointing authority shall provide a written final action notice. Once a final decision has been made, the appointing authority shall provide a written notice to the employee of the final

action to be taken. The final action notice must contain either of the following:

1. If the final action is less than demotion, suspension without pay, or dismissal, a statement must be made explaining the reasons for reducing the intended disciplinary actions. Any stipulations that may apply to continued employment must also be stated.
2. If the final action taken demotes, suspends, or dismisses the employee, a detailed explanation of the basis for the action must be provided. This notice must also inform the employee of the right to appeal the decision in accordance with the provisions of section 4-07-20.1-03.

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

History: Effective November 1, 1996.

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

Law Implemented: NDCC 54-44.3-12.2

CHAPTER 4-07-20

4-07-20-01. Scope of chapter. This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ classified employees, except these institutions in the university system. Additionally, this chapter applies to these agencies of local government that employ individuals whose in positions are classified by the central personnel division.

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

General Authority: NDCC 54-44.3-12

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

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

1. ~~The use of a standard grievance form.~~ A provision that allows an employee to grieve an employer action of demotion, dismissal, suspension without pay, forced relocation, reduction-in-force, reprisal, or discrimination in employment. The provision must require the employee to begin the agency grievance procedure within fifteen working days from the date of notice of the employer action, except in the case of

reprisal. The provision must also require that in the case of reprisal the employee shall begin the agency grievance procedure within fifteen working days from the date of the reprisal action.

2. Specific steps to be followed in processing the grievance, and limitations on the amount of time the parties have to respond, and any procedures for extending time limitations.
3. A requirement that the parties must respond to the issues raised in the grievance.
4. A method of counting time that is in working days.
5. Provisions that allow an employee a reasonable amount of time to process a grievance without loss of pay during regular working hours.
6. A provision allowing a waiver of the agency grievance procedure by mutual agreement of the employee and appointing authority. The provision must require the agreement to be signed by both parties within fifteen working days of the employer action.
7. An option that if the appointing authority misses an established deadline in the grievance procedure, the grievance may be advanced to the next step.
8. The use of a standard grievance form.

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

General Authority: NDCC 54-44.3-12

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

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

History: Effective November 1, 1996.

General Authority: NDCC 54-44.3-12

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

STAFF COMMENT: Chapter 4-07-20.1 and 4-07-20.2 contain all new material but are not underscored so as to improve readability.

**CHAPTER 4-07-20.1
APPEALS OF EMPLOYER ACTIONS**

Section	
4-07-20.1-01	Scope of Chapter
4-07-20.1-02	Definitions
4-07-20.1-03	A Regular Employee May File a Grievance Regarding an Employer Action
4-07-20.1-04	Commencement of Agency Grievance Procedure - Time Limitations
4-07-20.1-05	Waiver of Agency Grievance Procedure
4-07-20.1-06	A Regular Employee May Appeal to the Central Personnel Division
4-07-20.1-07	Limitations for Reduction-in-Force Appeal
4-07-20.1-08	Procedure for Appeal to the Central Personnel Division

4-07-20.1-01. Scope of chapter. This chapter applies to regular employees.

History: Effective November 1, 1996.

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

Law Implemented: NDCC 54-44.3-12.2

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

1. "Employer action" means an action taken by an appointing authority that affects a regular employee through a demotion, dismissal, suspension without pay, forced relocation, reduction-in-force, or reprisal.
2. "Forced relocation" means the involuntary transfer or reassignment of a regular employee from one work location in the state to another work location in the state that requires the employee to move to a different place of residence.
3. "Reduction-in-force" means the loss of employment by a regular employee as a result of a reduction in funding, lack of work, curtailment of work, or reorganization.
4. "Regular employee" means a person who has completed the probationary period and who is or was in a position classified by the central personnel division at the time the employer action occurred.
5. "Reprisal" means an unfavorable employment-related action taken against a regular employee by an appointing authority for appealing to the central personnel division or the state

personnel board; for exercising the employee's rights under the Public Employees Relations Act of 1985, North Dakota Century Code chapter 34-11.1; for testifying before a legislative committee; or for requesting timely assistance under the employee assistance program.

6. "Waiver" means a written agreement between a regular employee and the appointing authority not to proceed with the agency grievance procedure and to permit an appeal to be made directly to the central personnel division.
7. "Working days" means Monday through Friday exclusive of holidays.

History: Effective November 1, 1996.
General Authority: NDCC 54-44.3-12(1)
Law Implemented: NDCC 54-44.3-12.2

4-07-20.1-03. A regular employee may file a grievance regarding an employer action. A regular employee may, in accordance with the respective agency's grievance procedure, file a grievance regarding demotion, dismissal, suspension without pay, forced relocation, reduction-in-force, or reprisal. A grievance must be processed through the agency grievance procedure prior to submitting an appeal to the central personnel division, unless a waiver is agreed upon as provided for in section 4-07-20.1-05.

History: Effective November 1, 1996.
General Authority: NDCC 54-44.3-12(1)
Law Implemented: NDCC 54-44.3-12.2

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

History: Effective November 1, 1996.
General Authority: NDCC 54-44.3-12(1)
Law Implemented: NDCC 54-44.3-12.2

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

History: Effective November 1, 1996.
General Authority: NDCC 54-44.3-12(1)
Law Implemented: NDCC 54-44.3-12.2

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

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

History: Effective November 1, 1996.
General Authority: NDCC 54-44.3-12(1)
Law Implemented: NDCC 54-44.3-12.2

4-07-20.1-07. Limitations for reduction-in-force appeal. A reduction-in-force appeal may be made only on the basis that the factors required by section 4-07-11-03 were not followed or that the reduction-in-force was conducted in a discriminatory manner that would violate the state's policy against discrimination as stated in North Dakota Century Code section 14-02.4-01.

History: Effective November 1, 1996.
General Authority: NDCC 54-44.3-12(1)
Law Implemented: NDCC 54-44.3-12.2

4-07-20.1-08. Procedure for appeal to the central personnel division.

1. The employee shall file the properly completed prescribed appeal form with the director, central personnel division. The appeal form must be delivered, mailed, or transmitted by facsimile and must be received in the central personnel division office by five p.m. within fifteen working days of service of the notice of results of the agency grievance procedure or within fifteen working days from the date of the waiver. The date of service of the notice shall be considered to be the date the notice was mailed or actual notice. The agency shall prepare a certificate of mailing or a certificate of admission of delivery in person to show proof of the date of mailing or actual delivery.
2. The director, central personnel division, shall within two working days submit a written request to the director, office

of administrative hearings, to conduct a hearing on behalf of the division and shall forward a copy of the appeal form to the appointing authority.

3. The administrative law judge shall initially consider whether the appeal was filed within required time limitations. If the administrative law judge determines the time limitations have not been met, the administrative law judge shall prepare findings of fact and conclusions of law, if appropriate; issue a final decision dismissing the appeal; and provide a copy of them to the parties.
4. The administrative law judge shall consider whether the central personnel division has jurisdiction over the subject matter of the appeal and whether all rules and regulations were followed in the grievance process. If the administrative law judge is unable to establish whether the central personnel division has jurisdiction over the subject matter of the appeal or whether the appropriate rules were followed, a hearing may be conducted to ascertain the facts related to those issues.
5. If the administrative law judge determines that the division does not have jurisdiction in the matter of the appeal, the administrative law judge shall prepare findings of fact and conclusions of law, if appropriate; issue a final decision dismissing the appeal; and provide a copy of them to the parties.
6. If it is determined that the division has jurisdiction over the appeal, the administrative law judge shall schedule a hearing. The administrative law judge shall conduct the hearing and related proceedings, receive evidence related to the issues, prepare findings of fact and conclusions of law, and issue a final decision.
7. The administrative law judge shall notify the employee and the appointing authority of the final decision by sending each of them a copy of the findings of fact, conclusions of law, and final decision. Notification shall be accomplished in the same manner as for notification of final orders required by North Dakota Century Code section 28-32-13. The parties shall implement the final decision within any time periods specified by the administrative law judge.
8. The administrative law judge shall return the completed appeal file to the central personnel division.
9. Any party to the appeal may review the recordings of the hearing by making a request to the central personnel division.

History: Effective November 1, 1996.

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

Law Implemented: NDCC 54-44.3-12.2

**CHAPTER 4-07-20.2
APPEALS OF DISCRIMINATION**

Section

4-07-20.2-01	Scope of Chapter
4-07-20.2-02	Definitions
4-07-20.2-03	Statutory Definitions
4-07-20.2-04	Applicants or Regular Employees May Appeal Discrimination in Employment
4-07-20.2-05	A Regular Employee Shall File an Agency Grievance Prior to Appeal to Central Personnel Division
4-07-20.2-06	Waiver of Agency Grievance Procedure
4-07-20.2-07	Procedure for Appeal to the Central Personnel Division

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

History: Effective November 1, 1996.

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

Law Implemented: NDCC 54-44.3-12.2

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

1. "Applicant" means a person who has applied for a position classified by the central personnel division and who has complied with the application procedures required by the employing agency.
2. "Regular employee" means a person who has completed the probationary period and who is or was in a position classified by the central personnel division at the time the alleged action occurred.

3. "Working days" means Monday through Friday exclusive of holidays.

History: Effective November 1, 1996.
General Authority: NDCC 54-44.3-12(1)
Law Implemented: NDCC 54-44.3-12.2

4-07-20.2-03. Statutory definitions. Unless otherwise defined, or made inappropriate by context, all words used in this chapter have meanings given to them under North Dakota Century Code chapter 14-02.4.

History: Effective November 1, 1996.
General Authority: NDCC 54-44.3-12(1)
Law Implemented: NDCC 54-44.3-12.2

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

History: Effective November 1, 1996.
General Authority: NDCC 54-44.3-12(1)
Law Implemented: NDCC 54-44.3-12.2

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

History: Effective November 1, 1996.
General Authority: NDCC 54-44.3-12(1)
Law Implemented: NDCC 54-44.3-12.2

4-07-20.2-06. Waiver of agency grievance procedure. A waiver of the agency grievance procedure is allowed by mutual agreement of the employee and appointing authority. The waiver must be signed by both

parties within fifteen working days of the alleged discriminatory action. Upon obtaining the waiver, the employee may appeal directly to the central personnel division in accordance with section 4-07-20.2-07.

History: Effective November 1, 1996.

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

Law Implemented: NDCC 54-44.3-12.2

4-07-20.2-07. Procedure for appeal to the central personnel division.

1. The employee shall file the properly completed prescribed appeal form with the director, central personnel division. The appeal form must be delivered, mailed, or transmitted by facsimile and must be received in the central personnel division office by five p.m. within fifteen working days of service of the notice of results of the agency grievance procedure or within fifteen working days from the date of the waiver. The date of service of the notice shall be considered to be the date the notice was mailed or actual notice. The agency shall prepare a certificate of mailing or a certificate of admission of delivery in person to show proof of the date of mailing or actual delivery. An applicant shall file the appeal form by delivery, mail, or transmittal by facsimile, and the form must be received in the central personnel division office by five p.m. within fifteen working days of the alleged discriminatory action.
2. The director, central personnel division, shall within two working days submit a written request to the director, office of administrative hearings, to conduct a hearing on behalf of the division and shall forward a copy of the appeal form to the affected appointing authority.
3. The administrative law judge shall initially consider whether the appeal was filed within required time limitations. If the administrative law judge determines the time limitations have not been met, the administrative law judge shall prepare findings of fact and conclusions of law, if appropriate; issue a final decision dismissing the appeal; and provide a copy of them to the parties.
4. The administrative law judge shall consider whether the central personnel division has jurisdiction over the subject matter of the appeal and whether all rules and regulations were followed in the grievance process. If the administrative law judge is unable to establish whether the central personnel division has jurisdiction over the subject matter of the appeal or whether the appropriate rules were followed, a hearing may be conducted to ascertain the facts related to those issues.

5. If the administrative law judge determines that the division does not have jurisdiction in the matter of the appeal, the administrative law judge shall prepare findings of fact and conclusions of law, if appropriate; issue a final decision dismissing the appeal; and provide a copy of them to the parties.
6. If it is determined that the division has jurisdiction over the appeal, the administrative law judge shall schedule a hearing. The administrative law judge shall conduct the hearing and related proceedings, receive evidence related to the issues, prepare findings of fact and conclusions of law, and issue a final decision.
7. The administrative law judge shall notify the employee or the applicant and the affected appointing authority of the final decision by sending each of them the findings of fact, conclusions of law, and final decision. Notification shall be accomplished in the same manner as for notification of final orders required by North Dakota Century Code section 28-32-13. The parties shall implement the final decision within any time periods specified by the administrative law judge.
8. The administrative law judge shall return the completed appeal file to the central personnel division.
9. Any party to the appeal may review the recordings of the hearing by making a request to the central personnel division.

History: Effective November 1, 1996.

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

Law Implemented: NDCC 54-44.3-12.2

CHAPTER 4-07-21

4-07-21-01. Scope of chapter. This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ ~~classified employees, except those institutions in the university system. Additionally, this chapter applies to these agencies of local government that employ~~ individuals whose in positions are classified by the central personnel division.

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

General Authority: NDCC 54-44.3-12

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

4-07-21-02. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 54-44.3, except "alternative dispute resolution" means a method of resolving disputes, outside the grievance process, that involves a neutral person to assist in identifying issues, developing options, and arriving at a ~~settlement-that-is-agreeable-to-the-participants-through-the-use-of--one-or-more-appropriate-techniques~~ resolution.

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

General Authority: NDCC 54-44.3-12

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

4-07-21-03. Alternative dispute resolution. Alternative dispute resolution may be used to ~~settle~~ resolve disputes that occur within an agency. ~~Both--the--agency--appointing--authority--and--the--individual employee~~ All parties involved in the dispute must agree to the use of alternative dispute resolution prior to using the method. ~~If--either--the--appointing--authority--or--the--employee--do--not--agree--to--use--alternative dispute-resolution,--then--the--method--may--not--be--used.~~

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

General Authority: NDCC 54-44.3-12

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

4-07-21-04. Grievance time limits suspended. During the time period when the agency appointing authority and the employee involved in a dispute are utilizing alternative dispute resolution, the time limits of the internal agency grievance procedure must be suspended. If a ~~settlement~~ resolution is not agreed to by the participants at the conclusion of the resolution process, then the time limits of the agency grievance procedure must be activated. The alternative dispute resolution process facilitator shall determine the date of conclusion of the resolution process and notify the parties.

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

General Authority: NDCC 54-44.3-12

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

CHAPTER 4-07-22

4-07-22-01. Scope of chapter. ~~This--chapter--applies--to--all applicants--who--apply--for--positions--in--agencies--covered--by--the--North Dakota--merit--system--and--to--all--agencies,--departments,--institutions,~~

boards, commissions, and political subdivisions required to comply with standards for a merit system of personnel administration. Repealed effective November 1, 1996.

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

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

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

4-07-22-02. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapters 54-42 and 54-44.3, except:

1. "Closing date" means a date after which applications will no longer be accepted for a specific vacancy.
2. "Underfill" means to fill a classified position by employing an individual in a lower level class than originally announced.
3. "Vacancy announcement" means an announcement that a particular position is vacant and that the appointing authority intends to recruit to fill it. Superseded by section 4-07-05-01.1 effective November 1, 1996.

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

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

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

4-07-22-03. Requirements. Each vacancy announcement must include the following information:

1. Class title.
2. Position number.
3. Salary range.
4. Closing date.
5. Location of position.
6. Application procedures.
7. Summary of work.
8. Minimum qualifications and special requirements.
9. Type of recruitment.
 - a. Internal unit posting.

b. Internal agency posting.

c. External. Superseded by section 4-07-05-08 effective November 1, 1996.

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

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

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

4-07-22-04. Minimum qualifications.

1. If an appointing authority wishes to consider underfilling, the appointing authority shall include the following information in the minimum qualifications statements:

a. The intent to underfill.

b. The class title of the underfill.

c. The minimum qualifications of the underfill class.

2. Once a position has been advertised, an appointing authority may not change the minimum qualifications or the closing date without readvertising the position. Repealed effective November 1, 1996.

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

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

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

4-07-22-06. Vacancy announcements.

1. A vacancy announcement may not contain minimum qualifications that are less than the established minimum qualifications on the class specification, but they may contain more specific requirements.

2. When advertising for required education on a vacancy announcement, an appointing authority may:

a. Narrow the range of appropriate degrees.

b. Specify the additional training or experience needed for working in an upper level of a class series.

3. An appointing authority may not use the terms "the equivalent of" or "equivalent to" in the minimum qualifications on a vacancy announcement.

4. An appointing authority shall define the type and length of experience that substitutes for a college degree, if a

substitution--statement--is-used-in-the-minimum-qualifications
of-the-class-specification.

5.--An-appointing-authority-shall-define-the-terms-"related-field"
or-"related-experience"-if-used-in-the-minimum-qualifications.
Superseded by section 4-07-05-09 effective November 1, 1996.

History: Effective-September-1,-1992;-amended-effective-July-1,-1995-
General Authority: NDCC-54-42-03,-54-44.3-12
Law Implemented: NDCC-54-42-03,-54-44.3-12

4-07-22-07. Closing date. An--applicant--meets-the-applicable
closing-date-on-a-vacancy-announcement-if:

1.--The--application--received--is--postmarked--on--or--before-the
closing-date.

2.--The--application-is-delivered-or-electronically-transmitted-to
the-appropriate-agency-on-or-by-five-p.m.--on--the--advertised
closing-date. Repealed effective November 1, 1996.

History: Effective-September-1,-1992-
General Authority: NDCC-54-42-03,-54-44.3-12
Law Implemented: NDCC-54-42-03,-54-44.3-12

CHAPTER 4-07-23

4-07-23-01. Scope of chapter. This--chapter--applies--to--all
applicants-who-apply-for-positions-in--agencies--covered--by--the--North
Dakota--merit--system--and--to--all-agencies,-departments,-institutions,
boards,-commissions,-and-political-subdivisions-required-to-comply--with
standards--for--a--merit--system--of-personnel-administration. Repealed
effective November 1, 1996.

History: Effective-September-1,-1992;-amended-effective-July-1,-1995-
General Authority: NDCC-54-42-03,-54-44.3
Law Implemented: NDCC-54-42-03,-54-44.3-23

4-07-23-02. Documentation required. The-documentation-required
to-be-submitted-at-the-time-of--making--application--to--substantiate--a
claim-for-veterans'-preference-is-as-follows:

1.--An--applicant--claiming--veterans'-preference-shall-provide-a
copy-of-report-of-separation-DD-214.

2. ~~An applicant claiming disabled veterans' preference shall provide a copy of report of separation DD-214 and a letter less than one year old from the veterans' administration indicating the veteran's disability status.~~
3. ~~An applicant claiming veterans' preference as an eligible spouse of a deceased veteran shall provide a copy of the marriage certificate, the veteran's report of separation DD-214, and the veteran's death certificate.~~
4. ~~An applicant claiming disabled veterans' preference as an eligible spouse of a disabled veteran shall provide a copy of the marriage certificate, the veteran's report of separation DD-214, and a letter less than one year old from the veterans' administration indicating the veteran's disability status.~~
5. ~~Documents relating to veterans' preference must be postmarked on or before the closing date on the vacancy announcement.~~
Superseded by sections 4-07-05-07 and 4-07-05-08 effective November 1, 1996.

History: Effective September 1, 1992; amended effective July 1, 1995.
General Authority: NDCC 54-42-03, 54-44.3
Law Implemented: NDCC 54-42-03, 54-44.3-23

4-07-23-04. Expiration of documentation. Disabled veterans' preference documentation expires one year from the date of the disability letter from the veterans' administration. Repealed effective November 1, 1996.

History: Effective September 1, 1992; amended effective July 1, 1995.
General Authority: NDCC 54-42-03, 54-44.3
Law Implemented: NDCC 54-42-03, 54-44.3-23

CHAPTER 4-07-24

4-07-24-01.1. Definitions. The terms used throughout this chapter have the same meaning as those in North Dakota Century Code chapters 54-42 and 54-44.3, except "regular employee" means a person who has completed the probationary period and who is or was in a position classified by the central personnel division at the time the personnel action occurs.

History: Effective November 1, 1996.
General Authority: NDCC 54-42-03, 54-44.3-12
Law Implemented: NDCC 54-42-03, 54-44.3-12

4-07-24-08. Merit system application appeals to the central personnel division.

1. If an applicant is a ~~nonprobationary--employee--in--the~~ classified-service regular employee and does not agree with the response of the agency appointing authority, the applicant may further appeal the disqualification to the central personnel division. A letter of appeal must be addressed to the Director, Central Personnel Division, 600 East Boulevard Avenue, Bismarck, ND 58505-0120, and must be postmarked no later than fifteen working days from the date of the agency appointing authority's response to the appeal. The letter of appeal must specify the basis upon which the applicant relies to assert that the applicant meets the minimum qualifications for the position.
2. Upon receipt of the appeal letter, the director, central personnel division, shall certify the appeal, and submit a written request to the director, office of administrative hearings, ~~to designate an administrative law judge~~ to conduct the hearing in accordance with this section.
3. If the applicant and the appointing authority agree in writing, an appeal taken under this section may be disposed of informally as provided in this subsection. The administrative law judge shall notify the applicant and the appointing authority to provide documentation upon which each relies to assert its position on the appeal. Each party may also provide a memorandum of support for its position and may request oral argument before the administrative law judge at the time it submits its memorandum. If either party requests oral argument before the administrative law judge, the administrative law judge shall notify the parties of the time, date, and location of the oral argument. After oral argument, if any, the administrative law judge shall issue findings of fact, conclusions of law, and a final order and provide them to the parties and the central personnel division. If the applicant and the appointing authority do not agree to informal disposition of the appeal, the administrative law judge shall conduct a hearing in accordance with this section. After the hearing, the administrative law judge shall issue findings of fact, conclusions of law, and a final order and provide them to the parties and the central personnel division.

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

General Authority: NDCC 28-32-05.1, 54-42-03, 54-44.3-12

Law Implemented: NDCC 28-32-05.1, 54-42-03, 54-44.3-12

CHAPTER 4-07-28

4-07-28-02. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapters 54-42 and 54-44.3 except:

1. "Emergency status" means a category of employment that applies to an individual employed as a result of unusual or unexpected conditions without regard to the normal open, competitive selection process and the duration of the employment does not exceed ninety working days.
2. "Internal applicant" means an employee who has permanent regular, probationary, or temporary merit system employment status within an agency; or; a previous employee who is eligible for reinstatement to an agency; or an individual who has completed a documented internship with the agency within the past two years.
3. "Merit system exempt status" means a category of employment that applies to an individual employed in a nonclassified position without regard to the normal open, competitive selection process such as with seasonal or time-limited programs and for appointed officials.
4. ~~"Permanent status" means a category of employment that applies to an individual employed in a classified position, who was selected for a position on an open, competitive basis and who has successfully completed the six-month probationary period.~~
5. "Probationary status" means a category of employment that applies to an individual employed in a classified position, who was selected for a position on an open, competitive basis and who has not yet completed the initial six-month probationary period.
5. "Regular status" means a category of employment that applies to an individual employed in a classified position, who was selected for a position on an open, competitive basis and who has successfully completed the six-month probationary period.
6. "Temporary status" means a category of employment that applies to an individual who was selected for a position on an open, competitive basis and is employed in a position that is specified as time-limited in duration.

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

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

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

4-07-28-03. Merit system employment status - Exceptions. Each employee of a merit system agency shall have be assigned employment status under--the-merit-system,-except-individuals-in-the-categories-of merit-system-exempt-or-emergency-status to one of the categories defined in section 4-07-28-02.

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

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

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

4-07-28-04. Extention of merit system coverage. If merit system coverage is extended to a program or agency, examination requirements, if applicable, are waived and each employee must be granted merit system employment status as follows:

1. An employee who meets the minimum qualifications for the class and who has successfully completed a probationary period must be granted permanent regular status.
2. An employee who meets the minimum qualifications for the class but who has not completed a probationary period must be granted probationary status. The employee may obtain permanent regular status upon successful completion of the probationary period.
3. An employee who does not meet the minimum qualifications for the class must be considered as not-having-status in a merit system exempt status until the employee meets the minimum qualifications. The employee may obtain permanent regular status when the employee meets the minimum qualifications.

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

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

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

CHAPTER 4-07-30

4-07-30-01. Scope of chapter. This--chapter--applies--to--all applicants-who-apply-for-positions-in--agencies--covered--by--the--North Dakota--merit--system--and--to--all-agencies,-departments,-institutions, boards,-commissions,-and-political-subdivisions-required-to-comply--with standards--for--a--merit--system--of-personnel-administration. Repealed effective November 1, 1996.

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

General Authority: NDCC-54-42-03,-54-44.3-12
Law Implemented: NDCC-54-42-03,-54-44.3-12

4-07-30-02. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapters 54-42 and 54-44.3, --except-- "promotion" means a personnel action that results in the advancement of an employee to a position in a different class which has a higher pay grade than the employee's previous position. Superseded by subsection 1 of section 4-07-05-01.1 effective November 1, 1996.

History: Effective-September-1,-1992-
General Authority: NDCC-54-42-03,-54-44.3-12
Law Implemented: NDCC 54-42-03,-54-44.3-12

4-07-30-03. Requirements. An employee who has permanent, probationary, or temporary merit system employment status, is eligible for consideration by an appointing authority for a promotion within the agency, if each of the following requirements are met:

1. The employee meets the minimum qualifications announced for the position.
2. The employee successfully completes an examination requirement specified by the employing agency, if applicable. Superseded by section 4-07-05-03 effective November 1, 1996.

History: Effective-September-1,-1992;-amended-effective-July-1,-1995-
General Authority: NDCC-54-42-03,-54-44.3-12
Law Implemented: NDCC-54-42-03,-54-44.3-12

CHAPTER 4-07-31

4-07-31-01. Scope of chapter. This chapter applies to all applicants who apply for positions in agencies covered by the North Dakota merit system and to all agencies, departments, institutions, boards, commissions, and political subdivisions required to comply with standards for a merit system of personnel administration. Repealed effective November 1, 1996.

History: Effective-September-1,-1992;-amended-effective-July-1,-1995-
General Authority: NDCC-54-42-03,-54-44.3-12
Law Implemented: NDCC-54-42-03,-54-44.3-12

4-07-31-02. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapters 54-42 and 54-44.3, except "transfer" means a personnel action that results in the reassignment of an employee from one position to a different position that has the same or lower pay grade than the employee's previous position and that does not result in a break in service. Superseded by subsection 3 of section 4-07-05-01.1 effective November 1, 1996.

History: Effective September 1, 1992.
General Authority: NDCC-54-42-03, 54-44.3-12
Law Implemented: NDCC-54-42-03, 54-44.3-12

4-07-31-03. Requirements. An employee who has permanent, probationary, or temporary merit system employment status, is eligible for consideration by an appointing authority for a transfer within the agency, if each of the following requirements are met:

1. The employee meets the minimum qualifications announced for the position.
2. The employee successfully completes an examination requirement specified by the employing agency, if applicable. Superseded by section 4-07-05-03 effective November 1, 1996.

History: Effective September 1, 1992; amended effective July 1, 1995.
General Authority: NDCC-54-42-03, 54-44.3-12
Law Implemented: NDCC-54-42-03, 54-44.3-12

CHAPTER 4-07-32

MERIT SYSTEM RECLASSIFICATIONS

[Superseded by section 4-07-03-10.2 effective November 1, 1996]

CHAPTER 4-07-33

4-07-33-01. Scope of chapter. This chapter applies to all applicants who apply for positions in agencies covered by the North Dakota merit system and to all agencies, departments, institutions, boards, commissions, and political subdivisions required to comply with standards for a merit system of personnel administration. Repealed effective November 1, 1996.

History: Effective September 1, 1992; amended effective July 1, 1995.
General Authority: NDCC-54-42-03, 54-44.3-12

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

~~4-07-33-02. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapters 54-42 and 54-44.3, except "reinstatement" means a personnel action that involves the reemployment of a previous employee who resigned or was separated while in good standing in a position within three years from the date of the employee's prior separation. Superseded by subsection 2 of section 4-07-05-01.1 effective November 1, 1996.~~

History: Effective September 1, 1992.

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

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

~~4-07-33-03. Requirements. A former employee who previously had permanent, probationary, or temporary status is eligible for consideration by an appointing authority for reinstatement within the agency, if each of the following requirements are met:~~

~~1. The employee meets the minimum qualifications announced for the position.~~

~~2. The employee successfully completes an examination requirement specified by the employing agency, if applicable. Superseded by section 4-07-05-02.1 effective November 1, 1996.~~

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

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

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

~~4-07-33-04. Employment status upon reinstatement. A previous employee who is reinstated shall serve a probationary period. Repealed effective November 1, 1996.~~

History: Effective September 1, 1992.

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

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

CHAPTER 4-07-34

~~4-07-34-01. Scope of chapter. This chapter applies to all applicants who apply for positions in agencies covered by the North Dakota merit system and to all agencies, departments, institutions, boards, commissions, and political subdivisions required to comply with standards for a merit system of personnel administration.~~

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

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

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

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

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

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

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

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

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

TITLE 30
Game and Fish Department

JANUARY 1997

CHAPTER 30-04-03

30-04-03-01. License required - Licensing requirements. A license is required for any person to act as a hunting or fishing guide or outfitter. Any person who violates this section is guilty of a noncriminal offense and shall pay a two hundred fifty dollar fee. Any resident who applies to become licensed as a guide or outfitter or who applies to renew a previously issued guide or outfitter's license shall provide the following information to the director:

1. Proof that the applicant is covered by general liability insurance against loss or expense due to accident or injury from guiding or outfitting services, at a minimum of one hundred thousand/three hundred thousand dollars aggregate per incident;
2. For any license effective after December 31, 1998, proof that the applicant is currently certified in adult cardiopulmonary resuscitation or its equivalent;
3. For any license effective after December 31, 1998, proof that the applicant is currently certified in standard first aid or its equivalent; and
4. Any other relevant information the director requires relating to fitness or ability of applicant to act as a hunting or fishing guide or outfitter.

History: Amended effective April 1, 1986; September 1, 1989; January 1, 1997.

General Authority: NDCC 20.1-02-05

Law Implemented: NDCC 20.1-02-05

30-04-03-02. Fee and residence. Upon application as provided by the game and fish commissioner and payment of the appropriate fee, any person having maintained a residence in North Dakota and having resided in North Dakota for the six-month period immediately preceding the date of the application may be licensed to act as a guide or outfitter and charge fees for such service in North Dakota. Repealed effective January 1, 1997.

History: Amended effective December 1, 1982.

General Authority: NDCC-20.1-01-02, 20.1-01-05

Law Implemented: NDCC-20.1-03-12

30-04-03-05. License inspection. The license shall be subject to inspection at any time by the commissioner director or any of the commissioner's director's authorized personnel or by any law enforcement officer.

History: Amended effective January 1, 1997.

General Authority: NDCC 20.1-02-05

Law Implemented: NDCC 20.1-02-05

30-04-03-07. Advance charge list. Any licensed guide or outfitter, prior to consummation of contract for service, shall furnish to each client a printed form listing in detail all acts of service and any other accommodations which the guide or outfitter will provide for the fee received, and such form shall specify the charge per day for such service or accommodations. Repealed effective January 1, 1997.

General Authority: NDCC-20.1-02-05

Law Implemented: NDCC-20.1-02-05

30-04-03-08. Receipt required. Any licensed guide or outfitter, upon payment received for service, shall immediately thereon issue to the payee a receipt showing the amount received and shall indicate thereon "for guide service" and the period for which the service was rendered, and the receipt shall bear the guide's or outfitter's signature, complete permanent address and the number of the guide's or outfitter's license. Repealed effective January 1, 1997.

History: Amended effective April 1, 1986.

General Authority: NDCC-20.1-02-05

Law Implemented: NDCC-20.1-02-05

30-04-03-08.1. Contract for services. Any licensed guide or outfitter shall furnish each client a written contract, signed by both

the guide or outfitter and the client, listing all acts of service and any other accommodations which the guide or outfitter will provide for the fee received and the time period of the contract. The contract must contain the guide's or outfitter's license number, as well as business name, address, and telephone number. Once payment has been made by the client, the guide or outfitter shall indicate payment was received either by so noting on the contract or by issuing a separate receipt.

History: Effective January 1, 1997.

General Authority: NDCC 20.1-02-05

Law Implemented: NDCC 20.1-02-05

~~30-04-03-09. Records. On forms provided by the commissioner, the~~
The licensee shall keep a current record of all transactions as a guide or outfitter, and the records shall be kept by the guide or outfitter for at least three years and shall be subject to inspection at any time on demand of the commissioner director, the commissioner's director's authorized personnel, or any law enforcement officer. The record shall be filed with the commissioner at the commissioner's office in Bismarck on or before January fifteenth of the year following the license period.

History: Amended effective January 1, 1997.

General Authority: NDCC 20.1-02-05

Law Implemented: NDCC 20.1-02-05

~~30-04-03-10. License revocation. The license of any licensed guide or outfitter who is convicted of violating any game or fish law of North Dakota or any federal law pertaining to hunting, fishing, or trapping in North Dakota, and the license of any licensed guide or outfitter who shall fail to comply with the provisions of sections 30-04-03-01 through 30-04-03-09, shall be subject to revocation or refusal to renew, after due hearing pursuant to North Dakota Century Code chapter 28-32, in addition to any other penalties prescribed by law or rule for the a violation, when the licensed guide or outfitter:~~

1. Is convicted of violating any game or fish law of the state of North Dakota;
2. Is convicted of violating any federal law pertaining to hunting, fishing, or trapping;
3. Fails to comply with this chapter; or
4. While carrying out the business of guiding or outfitting, engages in conduct detrimental to the image and professional integrity of the guiding and outfitting industry.

History: Amended effective January 1, 1997.

General Authority: NDCC 20.1-02-05

Law Implemented: NDCC 20.1-02-05

~~30-04-03-11. Violations forbidden. Licensed guides or outfitters shall not violate, or aid, or abet their clients in the violation of any game or fish law of North Dakota, or any federal law pertaining to hunting, fishing, or trapping in North Dakota. Repealed effective January 1, 1997.~~

General Authority: NDCC-20-1-02-05

Law Implemented: NDCC-20-1-02-05

TITLE 33
State Department of Health

DECEMBER 1996

STAFF COMMENT: Chapter 33-06-16 contains all new material but is not underscored so as to improve readability.

**CHAPTER 33-06-16
NEONATAL TESTING**

Section
33-06-16-01 Research and Testing Materials

33-06-16-01. Research and testing materials. Information and testing materials generated by the neonatal metabolic screening program under North Dakota Century Code chapter 25-17 are strictly confidential information subject to North Dakota Century Code section 23-01-15.

1. Access to information or testing materials may be obtained only as follows:
 - a. Information may be released for statistical purposes in a manner such that no individual person can be identified.
 - b. Information may be released to the individual tested, that person's parent or guardian, or that person's physician or dietitian.
 - c. Information and testing materials 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:
 - (1) 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.

- (2) The research project must be reviewed and approved pursuant to policies and procedures pertaining to research utilizing human subjects by the institutional review board or equivalent panel of the institution or entity where the research is being done or which is sponsoring the research.
- (3) Identifying information may not appear in any report, summation, thesis, or other document arising out of the research project.
- (4) 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. The state health officer may require the research to be approved by the university of North Dakota institutional review board.
- (5) All documents or testing materials 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, or electronic or electromagnetic recording or imaging, must be returned to the department on or before a date that the state health officer shall set.
- (6) 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.
- (7) 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.
- (8) The researcher shall consent in writing to the use and reproduction of the document by the department.
- (9) The researcher shall agree in writing to pay all costs of the state health officer or the department incurred in providing access to testing materials or other information, including copy or search services.

d. Release may be made as otherwise provided by statute.

2. Retention and destruction of information and testing materials.
 - a. Information and testing materials provided to the university of North Dakota school of medicine may be retained indefinitely or destroyed according to this subsection.
 - b. Information and testing materials may be destroyed by any available means that preserves individual confidentiality and, for the testing materials, complies with any applicable standards for destruction of human blood samples.
 - c. Information and testing materials may be destroyed based upon the following schedule:
 - (1) Information and testing materials created less than ten years before the present date may be destroyed only with the state health officer's prior written approval.
 - (2) After ten years, information and testing materials may be destroyed without prior approval.
3. Definitions. 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 that, 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 December 1, 1996.

General Authority: NDCC 23-01-03(3), 23-01-03.1, 23-01-04, 23-01-15, 25-17-02

Law Implemented: NDCC 23-01-03.1, 25-17-01(3), 25-17-03,

STAFF COMMENT: Article 33-37 contains all new material but is not underscored so as to improve readability.

ARTICLE 33-37

EPINEPHRINE ADMINISTRATION

Chapter
33-37-01 Epinephrine Administration

CHAPTER 33-37-01 EPINEPHRINE ADMINISTRATION

Section
33-37-01-01 Persons Eligible to Administer Epinephrine
33-37-01-02 Training Requirements
33-37-01-03 Administration Devices

33-37-01-01. Persons eligible to administer epinephrine. A person whose employment creates a reasonable expectation to care for the health and safety of others may administer epinephrine to persons suffering from an anaphylactic reaction. A person who is deemed to have a reasonable expectation to care for the health and safety of others includes a teacher, camp counselor, day care operator, and security person. Prehospital emergency medical services personnel must meet the requirements specified in chapter 33-36-01.

History: Effective December 1, 1996.
General Authority: NDCC 23-01-05.2
Law Implemented: NDCC 23-01-05.2

33-37-01-02. Training requirements. A person authorized to administer epinephrine under this chapter shall complete training by a physician licensed by the North Dakota state board of medical examiners or the physician's designee. The physician shall determine the training content, criteria for satisfactory completion, and frequency. The physician shall maintain a record of the training which identifies the individuals trained, the training content, and the date of the training. The physician shall make training records available to the state department of health upon request.

History: Effective December 1, 1996.
General Authority: NDCC 23-01-05.2
Law Implemented: NDCC 23-01-05.2

33-37-01-03. Administration devices. A person authorized to administer epinephrine shall utilize a single use disposable device that automatically injects a premeasured dose. The device may be obtained by a trained person from a pharmacy upon the request of a licensed physician. The device must be stored and maintained where trained staff are present.

History: Effective December 1, 1996.

General Authority: NDCC 23-01-05.2

Law Implemented: NDCC 23-01-05.2

MARCH 1997

CHAPTER 33-18-02

STAFF COMMENT: Chapter 33-18-02 contains all new material but is not underscored so as to improve readability.

**CHAPTER 33-18-02
GROUND WATER MONITORING WELL CONSTRUCTION REQUIREMENTS**

Section	
33-18-02-01	Purpose
33-18-02-02	Applicability
33-18-02-03	Exclusions
33-18-02-04	Definitions
33-18-02-05	Borehole and Well Locations
33-18-02-06	Drilling Methods
33-18-02-07	Borehole and Monitoring Well Documentation
33-18-02-08	Monitoring Well Construction Materials
33-18-02-09	Monitoring Well Development
33-18-02-10	Borehole and Monitoring Well Abandonment

33-18-02-01. Purpose. The purpose of this chapter is to establish minimum acceptable standards for the design, installation, construction, decommissioning, and documentation of boreholes and ground water monitoring wells.

History: Effective March 1, 1997.
General Authority: NDCC 43-35-19.2

Law Implemented: NDCC 43-35-19.2

33-18-02-02. Applicability. The installation, construction, and decommissioning of boreholes and ground water monitoring wells must be supervised onsite by a certified and licensed contractor.

History: Effective March 1, 1997.

General Authority: NDCC 43-35-19.2

Law Implemented: NDCC 43-35-18.2, 43-35-19.2

33-18-02-03. Exclusions.

1. Injection wells for the oil and gas industry;
2. Boreholes, piezometers, and monitoring wells for dams;
3. Monitoring well or borehole construction used for mineral exploration addressed under existing federal or state law;
4. Boreholes advanced above an aquifer for the purpose of determining the local stratigraphy; and
5. Special cases, with prior approval of the department.

History: Effective March 1, 1997.

General Authority: NDCC 43-35-19.2

Law Implemented: NDCC 43-35-19.2

33-18-02-04. Definitions. The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 43-45, except that:

1. "Annular-space: annulus" means the space between a casing and a riser or between the riser and the borehole.
2. "Aquifer" means a water-bearing formation that transmits water in sufficient quantities to supply a well for a beneficial use.
3. "Borehole" means an open or cased subsurface hole created by drilling.
4. "Casing" means the pipe installed to maintain the integrity of the borehole. The term casing is used in this chapter only in reference to protective casing; the definition is included to distinguish the term from riser.
5. "Department" means the state department of health.

6. "Monitoring well" means any cased excavation or opening into the ground made by digging, boring, drilling, driving, jetting, or other methods for the purpose of determining the physical, chemical, biological, or radiological properties of groundwater.
7. "Riser" means the pipe extending from the well screen to or above the ground surface.
8. "Shall" or "must" means mandatory compliance with all aspects of the specific provision of this chapter within which the word appears.
9. "Should" means the specific provision in which the word appears is not mandatory but is a recommended desirable procedure or method. Deviation from the provision is subject to site specific consideration by the certified contractor installing the borehole or monitoring well.

History: Effective March 1, 1997.
General Authority: NDCC 43-35-19.2
Law Implemented: NDCC 43-35-19.2

33-18-02-05. Borehole and well locations.

1. Prior to the initiation of assessment activities in response to a contaminant release or when prior departmental approval is required, under existing state statute boreholes and monitoring wells must be installed at practicable locations based on plans and specifications approved by the department.
2. The rise of a monitoring well must terminate at least one foot [0.304 meter] above the ground surface, except:
 - a. Monitoring wells should not be located in drainage ditches, floodplains, or floodway. Where this is impractical, the monitoring well should terminate at least two feet [0.609 meter] above the one hundred year flood elevation for the well site. Those risers that do not must be constructed to preclude flood impact to the monitoring well.
 - b. A riser for a well constructed in a high traffic area or other limiting site conditions should be mounted flush to grade or below grade with a protective casing to minimize damage, provided that construction must include a watertight seal to preclude surface water from entering the protective casing or riser and that the well is clearly marked as a monitoring well.

History: Effective March 1, 1997.
General Authority: NDCC 43-35-19.2

Law Implemented: NDCC 43-35-19.2

33-18-02-06. Drilling methods.

1. This subsection applies to areas not likely having subsurface contamination.
 - a. Whenever feasible, drilling methods should not introduce water or fluids into the borehole and should optimize cuttings control at ground surface. The selected drilling method must reflect the purpose or objective of the borehole or monitoring well.
 - b. During drilling of boreholes, adequate care must be taken to prevent commingling of water from separate aquifers.
 - c. The nominal diameter of a borehole must provide a minimum annular space of 1.9 inches [48 millimeters].
2. This subsection applies to areas having potential subsurface contamination. In addition to the requirements of subsection 1, drilling methods in areas of potential subsurface contamination must follow the procedures in this subsection.
 - a. During drilling of boreholes, precautions must be taken to prevent cross-contamination of boreholes.
 - (1) Augers, center plug, and soil sampling equipment must be decontaminated following procedures appropriate for the contaminants of concern, which do not result in the cross-contamination of boreholes or monitoring wells and which do not conflict with the monitoring objective.
 - (2) The drilling sequence of boreholes must consider the objective of the site assessment, including factors such as the suspected location of the contaminant, contaminant characteristics, and local site geology.
 - b. All potentially contaminated cuttings, as well as development and purge water, must be handled in an environmentally safe manner. When suspected contamination includes hazardous substances as defined and regulated under North Dakota Administrative Code chapter 33-24-02, proper management methods for cuttings and water of each borehole must meet the requirements of North Dakota Century Code chapter 23-20.3 and North Dakota Administrative Code article 33-24.

History: Effective March 1, 1997.

General Authority: NDCC 43-35-19.2

Law Implemented: NDCC 43-35-19.2

33-18-02-07. Borehole and monitoring well documentation.

1. A written log must be kept which records the depth below ground surface of the boundaries of all strata encountered when drilling a borehole. Each stratum encountered must be described using generally accepted geologic terminology.
2. The certified monitoring well contractor must provide a monitoring well completion report to the board of water well contractors on forms available from or acceptable to the board within thirty days after the well has been installed. A completed report must include project and location, date of drilling, logger's name and title, well number or borehole number, drilling method and fluids used, borehole diameter, total depth, decontamination procedures, and a lithologic description as provided by subsection 1. Additional information, the availability of which is dependent upon the drilling method used, should also be provided and includes moisture content, fractures, and depth at which water was first encountered. A completed report must also include certified monitoring well contractor's name and license number; riser material; screen material and screen slot size, length, placement; filter pack materials; riser and screen cleaning and installation procedures; sealing materials, placement and installation procedures; well development procedures; and any installation conditions which affected well construction.
3. When completion reports are required by the department as a matter of fulfillment of its regulatory functions, the reports must include the information required by subsections 1 and 2; a detailed drawing of each well, including dimensions, as part of the well driller's report; and a map drawn to a specified scale showing the locations of all monitoring wells with an accuracy of three feet [0.914 meter]. The map must include manmade structure boundaries, any pertinent property boundaries, a north arrow, the location coordinates and elevation of all permanent benchmarks, the horizontal position of each monitoring well and its survey coordinates, the vertical elevation of the top riser referenced to the nearest benchmark to an accuracy of 0.01 feet [0.003 meter], and the respective identification number for each well.

History: Effective March 1, 1997.

General Authority: NDCC 43-35-19.2

Law Implemented: NDCC 43-35-19.2

33-18-02-08. Monitoring well construction materials.

1. Riser.

a. Specifications. The riser for a monitoring well must retain structural integrity for the duration of the monitoring period under actual subsurface conditions.

(1) The riser and couplings must be constructed of materials that neither absorb nor leach chemical constituents that could bias representative ground water samples. The riser and couplings must be compatible, resisting corrosion, with anticipated contaminants. Depending upon the intended use of the well, the riser should have a vented cap, except wells constructed in a potential flooding condition or flush-mounted wells must not have a vented cap.

(2) The riser must be capable of withstanding installation and development stresses without damage.

b. Assembly and installation.

(1) The interior and exterior surfaces of the riser and couplings must be thoroughly cleaned in a manner that does not conflict with the monitoring objective prior to assembly and installation.

(2) The individual sections of the riser must be joined in a manner that neither absorbs nor leaches chemical constituents that could bias representative ground water samples.

(3) The riser must be centered, as practicable, in the borehole.

2. Screen. A ground water monitoring well must be constructed with a screen.

a. Specifications.

(1) A screen and bottom plug must be constructed of material that is nonreactive with constituents in soil and ground water at the monitoring location.

(2) The screen must be capable of withstanding installation and well development stresses without damage.

(3) The screen must be new, machine slotted or continuous wrapped wire-wound. The screen slots must not be hand-cut or wrapped with filter fabric, unless approved prior to installation by the department.

- (4) The screen slot size must retain and prevent at least fifty percent of the grain size of the collapsed formation or ninety percent of the filter pack from entering the screen.
- (5) The screen placement and length must allow entry of ground water from a predetermined zone appropriate for the collection of representative ground water samples and future fluctuations of the water table.

b. Assembly and installation.

- (1) The screen and bottom plug must be thoroughly cleaned, in a manner which does not conflict with the monitoring objective, prior to assembly and prior to insertion into the borehole.
- (2) The screen must be permanently joined to the well riser in a manner that neither absorbs nor leaches chemical constituents that could bias representative ground water samples.
- (3) The screen must be centered, as practicable, in the borehole.

3. Filter packs.

- a. Specifications. When filter packs are used, they must be compatible with the purpose or objective of the monitoring well and have a specific gravity of two and one-half or greater. The filter pack grain size must minimize formation materials from entering the screen. Collapsed formation may be used as filter pack material if it limits passage of at least fifty percent of the formation to the screen.
- b. Installation. The filter pack should extend upward from the bottom of the screen at least two feet [0.609 meter] above the top of the screen. Where shallow water tables occur, the required height of filter pack above the top of the screen may be reduced a maximum of one foot [0.304 meter] to allow space for the annulus sealant. In special cases where the potential for a cross-connection or commingling of different water-bearing zones is documented by the monitoring well contractor requiring less than a one-foot [0.304-meter] filter pack above the screen intake, a reduction in the filter pack to less than one foot [0.304 meter] above the top of the screen to meet site specific conditions is allowed.

4. Filter pack seal. A ground water monitoring well must be installed with a filter pack seal.

- a. Specifications. The filter pack seal should extend at least two feet [0.609 meter] upward from the top of the filter pack. Where shallow water tables occur, the filter pack seal may be reduced a maximum of one foot [0.304 meter] to allow for annular space sealant. Sodium bentonite chips of size three-eighths-inch [0.95-centimeter] diameter or smaller should be placed in a manner which avoids bridging of the chips. Sodium bentonite chips or pellets must be used for seals placed below the water table, except in circumstances where the sodium bentonite may bias representative ground water samples.
 - b. Installation. Sodium bentonite pellets, chips, or granules used as filter pack seal above a water table must be hydrated after placement.
5. Annulus seal. A ground water monitoring well must be installed with an annulus seal.
- a. Specifications.
 - (1) The annulus seal should extend from the top of the filter pack seal upward to the ground surface seal, and it should be at least two feet [0.609 meter] in length.
 - (2) Grout material:
 - (a) Should have an equal or lower permeability than the least permeable geologic formation penetrated by the borehole.
 - (b) Should be compatible with formation material, well casing and riser and not capable of contaminating ground water.
 - (c) Should be in a form which can be positively and accurately placed to fill all voids.
 - (d) Should be self-leveling in the annulus and uniform in setup.
 - (e) Should, when setup, assist the structural stability of the riser.
 - (f) Should be capable of bonding to the riser and borehole wall to provide a watertight seal.
 - (3) Acceptable grouts above the water table include neat cement, bentonite chips, high solids bentonite grout, or a cement and bentonite clay mixture not exceeding

five pounds [2.27 kilograms] of bentonite clay per ninety-four-pound [42.6-kilograms] sack of cement.

(4) Bentonite chips or pellets may be used as a seal material in the annulus of shallow monitoring wells provided it is hydrated after each bag is poured into the annulus.

b. Installation. The annulus seal must be placed in a manner so as to ensure the proper placement and distribution of the sealant material.

6. Ground surface seal and protective casing.

a. A protective casing and locking cap is required when the monitoring well is located in an area where the well needs physical protection or is likely to be tampered with.

(1) The protective casing should consist of a metal or polyvinyl chloride assembly at least two inches [5.08 centimeters] larger in diameter than the riser and have a locking cap.

(2) The protective casing should extend from the bottom of the ground surface seal, and it should extend above the top of the riser at least one inch [2.54 centimeters] but not more than four inches [10.15 centimeters].

(3) The locking cap should be secured and locked at all times when the monitoring well is not in use.

b. The ground surface seal should consist of concrete or neat cement. If a protective casing is used, the surface seal should be placed around the protective casing and may not be placed between the protective casing and the riser. The ground surface seal should be sloped to promote drainage away from the riser or protective casing.

c. Dry bentonite pellets or chips should be placed in the annular space between the protective casing and the riser up to the level corresponding with the top of the ground surface seal.

d. A weep hole or vent should be used in the protective casing, provided it is placed at least six inches [15.2 centimeters] above the surface of the ground surface seal, but in no case should it be above a vent hole in the riser.

History: Effective March 1, 1997.
General Authority: NDCC 43-35-19.2
Law Implemented: NDCC 43-35-19.2

33-18-02-09. Monitoring well development. All monitoring wells must be developed as follows:

1. The waiting period for monitoring well development after completion of well installation shall allow setup of sealants.
2. The monitoring well must be developed utilizing procedures that are compatible with the monitoring objective and that do not adversely impact well integrity. Development of the monitoring well must include at least three cycles or last for approximately one hour until the water is free of sediments or stabilizes, whichever occurs first. Stabilization occurs when successive measurements of indicator parameters, such as instrument readings for turbidity or specific conductivity, taken from separate well volumes, are within ten percent.

History: Effective March 1, 1997.

General Authority: NDCC 43-35-19.2

Law Implemented: NDCC 43-35-19.2

33-18-02-10. Borehole and monitoring well abandonment.

1. The department may require by written notification an owner of the site of a borehole or monitoring well to decommission the borehole or monitoring well when necessary to:
 - a. Eliminate physical hazards on the surface;
 - b. Prevent contamination of ground water;
 - c. Prevent intermingling of desirable and undesirable waters;
or
 - d. Eliminate unintended use.
2. Any monitoring well which is constructed and installed after March 1, 1997, and which does not meet the requirements of this chapter must be decommissioned within thirty days after written notification by the department.
3. A borehole must be decommissioned within three working days of discontinuance of use according to subsection 5.
4. A monitoring well must be decommissioned in accordance with the requirements of subsection 5 within one year of discontinuance of use unless it may be reasonably anticipated that the well will be reused in the future. If the well is anticipated to be used in the future, the owner of the well is responsible to periodically inspect and maintain the well to ensure that the well remains in compliance with the standards established in this chapter.

5. Decommissioned and plugged boreholes and monitoring wells must have equal or less permeability than the local environment resulting in no greater influence on the local environment than the original geologic formation. Factors, such as topography, hydrogeology, borehole or well construction, and contaminants, must be considered in a decommissioning operation.
 - a. Immediately prior to decommissioning a monitoring well, the water in the well must be disinfected, except water containing hydrocarbons should not be disinfected with a chlorine disinfectant or other reactive compounds.
 - b. Sealant materials cannot be native soil materials. An acceptable sealant for dry boreholes is concrete. Acceptable sealant materials for wet boreholes and monitoring wells include neat cement, bentonite grout, bentonite pellets, and bentonite chips. Sealant materials must:
 - (1) Be durable;
 - (2) Not adversely impact local geologic materials or ground water;
 - (3) Form a bond and seal with the sidewall; and
 - (4) Resist cracking or shrinkage.
 - c. Any settling of the sealant material must be topped off. Sealant material may be terminated two and one-half feet [0.761 meter] below the ground surface in agricultural areas, in which case a native soil plug must be placed on top of the sealant material.
 - d. When monitoring well construction and installation documentation is not available, the well has been damaged down hole or the well is located in a proposed future solid waste treatment or disposal area, all protective casing, riser, screen, seals, and filter pack must be removed by pulling or over drilling.
 - e. Monitoring wells known by available documentation to be constructed with an impermeable annular space seal may be decommissioned without removing the riser, screen, annular sealant, and filter pack provided:
 - (1) The remaining screen and riser are filled with sealant material;
 - (2) The ground surface seal and protective casing are removed; and

- (3) The riser must be cut off at a depth to preclude interference with site specific activities, but should be no less than two and one-half feet [0.761 meter] below the surface.

History: Effective March 1, 1997.
General Authority: NDCC 43-35-19.2
Law Implemented: NDCC 43-35-19.2

APRIL 1, 1997

CHAPTER 33-18-01

33-18-01-01. Responsibility. It is the responsibility of any person, partnership, association, or corporation engaged in the business of construction of water wells or the installation of water well pumps, pitless units, or other appurtenances, or both, to comply within the meaning of this chapter pursuant to North Dakota Century Code chapters 23-01, 43-35, and 61-28.1.

A person, partnership, association, or corporation may not engage in the business of water well construction or the installation of water well pumps, pitless units, or other appurtenances, or both, unless a certified water well contractor or water well pump and pitless unit installer is in charge.

The certified water well contractor or water well pump or water well pump and pitless installer in charge shall provide inspection and supervision of all water well construction activities or installation of water well pumps, pitless units, or other appurtenances, or both.

History: Amended effective January 1, 1984; April 1, 1997.

General Authority: NDCC 43-35-19

Law Implemented: NDCC 43-35-19

33-18-01-02. Definitions. For the purpose of this chapter, the following definitions shall apply:

1. "Abandoned well" means a well whose use has been permanently discontinued.

2. "Annular space" means the opening between a well hole excavation and the well casing or curb, or between a casing pipe and a liner pipe.
3. "Appurtenances" means valves, meters, taps, gauges, or other devices required for adequate control or measurement of the well output.
4. "Aquifer" means a water-bearing formation that transmits water in sufficient quantities to supply a well.
5. "Casing" shall mean the pipe installed in the drill hole to give unobstructed access to the water-bearing formation.
6. "Constructing" a well includes boring, digging, drilling, or excavation in installing casings, well screens, and other appurtenances.
7. "Contamination" means alteration of the physical, chemical, or biological quality of the water so that it is harmful or potentially injurious to the health of the users or for the intended use of the water.
8. "Department" means the North Dakota state department of health.
9. "Disinfection" means the killing of infectious agents outside the body by chemical or physical means.
10. "Drawdown" means the extent of lowering the water surface in a well and of the water table adjacent to the well, resulting from the discharge of water from the well by pumping or natural flow.
11. "Drilling" means making any opening in the earth's surface by drilling, boring, or otherwise, and includes inserting any object into any part of the earth's surface for the purpose of obtaining an underground water supply except drainage tiles or similar devices designed primarily to improve land by removing excess water.
12. "Established ground surface" means the permanent elevation of the surface of the ground at the site of the well.
13. "Filter pack" means a clean sand or sand and gravel material of selected grain size and gradation which is installed in the annular space between a well hole excavation and the outside of the well screen for the purpose of preventing formation material from entering the screen.
14. "Ground water source" means all water obtained from dug, drilled, bored, or driven well, infiltration lines, and springs.

- ~~14-~~ 15. "Grout" or "grouting material" means any stable impervious bonding material which is capable of providing a watertight seal between the casing and the formation throughout the depth required to protect against objectionable matter and which is reasonably free of shrinkage.
- ~~15-~~ 16. "Liner pipe" means a pipe installed inside a completed and cased well for the purpose of sealing off undesirable water or for repairing ruptured or punctured casing or screens.
- ~~16-~~ 17. "Pitless adapter" means a commercially manufactured device assembled-at-the-well-site designed for attachment to ~~one--or more--openings-through-the~~ a well casing and is so constructed as to prevent the entrance of contaminants into the well or potable water supply, conduct water from the well below the frostline to prevent freezing, and provide full access to the water system components within the well.
- ~~17-~~ 18. "Pitless unit" means a factory-assembled device with cap which extends the upper end of a well casing to above grade and is so constructed as to prevent the entrance of contaminants into the well or potable water supply, conduct water from the well below the frostline to prevent freezing, and provide full access to the well and the water system components within the well.
- ~~18-~~ 19. "Potable water" means water free from impurities in amounts sufficient to cause disease or harmful physiological effects, with the bacteriological and chemical quality conforming to applicable standards.
- ~~19-~~ 20. "Private water supply" means one that is not for public use.
- ~~20-~~ 21. "Pressure tank" or "hydropneumatic tank" means a closed water storage container constructed to operate under a designed pressure rating to modulate the water system pressure within a selected range.
- ~~21-~~ 22. "Public water supply" means a water supply connected to at least fifteen service connections or regularly serves an average of twenty-five persons daily, sixty days out of the year.
- ~~22-~~ 23. "Pumps" and "pumping equipment" means any equipment or materials utilized or intended for use in withdrawing or obtaining ground water for any use, including, without limitation, seals and tanks, together with fittings and controls.
- ~~23-~~ 24. "Repair" means any action which results in a breaking or opening of the well seal or replacement of a pump.

- ~~24-~~ 25. "Shall" means mandatory compliance with all aspects of the rules and regulations for water well construction and water well pump installation.
- ~~25-~~ 26. "Should" means provisions which are not mandatory but which are recommended or desirable procedures or methods. Deviation from the rules and regulations for water well construction and water well pump installation is subject to individual consideration.
- ~~26-~~ 27. "Static water level" means the elevation of the surface of the water in a well when no water is being discharged therefrom.
- ~~27-~~ 28. "Water well contractor" means any person who is certified to conduct the business of well drilling under the provisions of North Dakota Century Code chapter 43-35.
- ~~28-~~ 29. "Water well pump and pitless unit installer" means any person who is certified to conduct the business of installing water well pumps and pitless units under the provisions of North Dakota Century Code chapter 43-35.
30. "Well development" means the general process to achieve sand-free water at the highest possible well capacity.
- ~~29-~~ 31. "Well seal" means an approved arrangement or device used to cap a well or to establish and maintain a junction between the casing or curbing of a well and the piping or equipment installed therein, the purpose or function of which is to prevent pollutants from entering the well at the upper terminal.
- ~~30-~~ 32. "Well vent" means an outlet at the upper terminal of the well casing to allow equalization of air pressure in the well and escape of toxic or inflammable gases.
- ~~31-~~ 33. "Wells" means any artificial opening or artificially altered natural opening however made by which ground water is sought or through which ground water flows under natural pressure or is artificially withdrawn; provided, that this definition does not include a natural spring, stock ponds, or holes drilled for the purpose of exploration for production of oil, gas, gravel, or other minerals.

History: Amended effective September 1, 1986; April 1, 1997.

General Authority: NDCC 43-35-19, 43-35-19.1

Law Implemented: NDCC 43-35-19, 43-35-19.1

33-18-01-05. Protection of ground water sources.

1. **Minimum protective depths of wells.** All wells shall be watertight to exclude contamination. Wells shall be designed

to seal off formations that are or may be contaminated or undesirable.

Wells constructed in unconsolidated formations with stable overburdens cannot be expected to form a continuous contact seal. Unless approved otherwise by the department, the annular opening space between a well hole excavation and the outside of the well casing shall be filled with neat cement grout, high-solids bentonite clay grout, bentonite chips, or other approved material bentonite tablets at least one and one-half inches [3.81 centimeters] in thickness to from a depth of not less than twenty thirty feet [6.1 9.1 meters] to the ground surface or the upper end of the well casing if a pitless unit or adapter is installed. Wells with a depth of twenty thirty feet [6.1 9.1 meters] or less shall be grouted from within two feet [0.609 meter] of the top of the well screen to the ground surface or the upper end of the well casing if a pitless unit or adapter is installed. Greater depths are preferable and may be required for specific installations as determined by review of the plans and specifications.

The annular space of wells constructed in unconsolidated formations without overlying confining beds and static water levels less than thirty feet [9.1 meters] below the ground surface shall be filled with neat cement grout, high-solids bentonite clay grout, bentonite chips, or bentonite tablets at least one and one-half inches [3.81 centimeters] in thickness from the static water level or a depth of not less than ten feet [3.0 meters], whichever is greater, to the ground surface or the upper end of the well casing if a pitless unit or adapter is installed.

Driven well casing may, when conditions warrant, be installed without grouting.

2. Required protection for various sources.

a. Gravel-well-wells. The gravel used shall be free of foreign material, properly sized, washed, and then disinfected prior to or during placement. Where gravel refill pipes are used, their upper terminal shall be incorporated within the pump foundation and terminated with screwed or welded caps at least twelve inches [30.48 centimeters] above the pumphouse floor or concrete apron.

The outer casing or drill hole shall be of such diameter as to provide a minimum of one and one-half inches [3.81 centimeters] of grout around the gravel refill pipes when installed in the grouted annular opening. Provisions for prevention of leakage of grout into the gravel pack or screen shall be provided.

- b- Radial collector wells. The location of all caisson construction joints and porthole assemblies shall be indicated. The caisson wall shall be substantially reinforced. Radial collectors shall be in areas and at depths approved by the department. Provisions shall be made to assure minimum vertical rise. The top of the caisson shall be covered with a watertight floor. All openings in the floor shall be curbed and protected from entrance of foreign material. Pump discharge piping shall not be placed through caisson walls.
- e- b. Dug or bored wells. Dug or bored wells greater than two feet [0.609 meter] in diameter shall be developed only where geological conditions preclude the development of a satisfactory drilled well.

Every dug or bored well shall have a continuous watertight casing. The section of casing in the producing zone shall serve serving as the well screen, shall readily admit water, and shall be structurally sound to withstand external pressures.

The open space between the excavation and the installed casing shall be sealed with neat cement grout, high-solids bentonite clay grout, bentonite chips, or other-approved materials bentonite tablets.

The watertight casing shall extend at least twelve inches [30.48 centimeters] above finished ground surface. A cover slab at least four inches [10.16 centimeters] thick, adequately reinforced and having a diameter sufficient to overlap the lining by two inches [5.08 centimeters] shall be provided. The slab shall be constructed without joints.

The top of the slab shall be sloped to drain to all sides and a watertight joint made where the slab rests on the well casing using cement mortar or a mastic compound.

A manhole, if installed, shall be provided with a curb cast in the slab and extending at least four to six inches [10.16 to 15.24 centimeters] above the slab. The manhole shall have a watertight overlapping cover extending down around the curb by at least two inches [5.08 centimeters].

Adequate sized pipe sleeve or sleeves shall be cast in place in the slab to accommodate the type of pump or pump piping proposed for the well.

- d- c. Infiltration wells. Infiltration wells may be considered where geological conditions preclude possibility of developing an acceptable drilled well. The area around the well shall be under the control of the water purveyor

for a distance acceptable to or required by the department. The flow in the lines shall be by gravity to a collecting well. The water shall be continuously chlorinated to assure bacterial purity.

- e. d. Flowing wells. The construction of flowing wells shall be in compliance with North Dakota Century Code chapter 61-20.

The construction of flowing wells shall be such that the flow from them can be controlled. ~~The drill hole shall extend into, but not through, the confining bed.~~ A protective casing Well casing shall be installed, and the annular space grouted with neat cement to form a tight seal. The neat cement grout should shall extend upward from within five twenty feet [~~1.52 centimeters~~ 6.1 meters] of the top of the aquifer to the ground surface or the upper end of the well casing if a pitless unit or adapter is installed. ~~After the grout has set, the drill hole may be extended into the artesian formation.~~

~~An inner casing shall be required where erosion of the confining bed by the flowing water will occur.~~ This inner casing Well casings shall be joined in a watertight manner ~~to the protective casing.~~ Flow control should consist of valved pipe connections, watertight pump connections, or receiving reservoirs set at an elevation corresponding to the artesian head.

- f. e. Existing wells. The department shall be consulted for requirements concerning the reconstruction of existing wells.

History: Amended effective January 1, 1984; September 1, 1986; April 1, 1997.

General Authority: NDCC 43-35-19, 43-35-19.1

Law Implemented: NDCC 43-35-19, 43-35-19.1

33-18-01-06. General well construction requirements.

1. **Construction water.** Water used in the drilling process shall be obtained from a source which will not result in contamination of the well. Chlorination of the water with an initial dosage of not less than fifty milligrams per liter (one gallon [3.78 liters] of laundry bleach or 0.6 pounds [1.32 kilograms] of calcium hypochlorite per one thousand gallons [3.78 kiloliters] of drilling water) is recommended.

Waters from surface sources must be chlorinated with a minimum dosage of one hundred milligrams per liter (two gallons [7.56 liters] of laundry bleach or 1.2 pounds [2.64 kilograms] of

calcium hypochlorite per one thousand gallons [3.78 kiloliters] of drilling water).

2. Ferrous well casing.

- a. General. Casing and liner pipe of wrought iron or steel through ten inches [25.4 centimeters] in diameter shall be prime pipe meeting current American Society for Testing and Materials Schedule 40, or equivalent specifications. Larger diameter pipes shall have a minimum wall thickness of three hundred seventy-five thousandths of an inch [0.952 centimeters].

All casing shall have additional thickness and weight if standard thickness is not considered sufficient to assure reasonable life expectancy of the well or be capable of withstanding forces to which they are subjected.

- b. Drive shoe. Pipe that is to be driven shall be equipped with a drive shoe or other device approved by the department.
- c. Joints. Casing and liner pipe joints shall be properly welded or threaded.

3. Nonferrous well casing.

- a. General. Pipe other than wrought iron or steel must be adaptable to the stresses to which they will be subjected during and after installation and to the corrosiveness of the water.

- b. Thermoplastic well casing. Thermoplastic well casing shall conform with American Society for Testing and Materials Specification F480-81 or latest revision as follows:

- (1) Minimum standard dimension ratio shall be twenty-one for casings less than sixteen inches [40.64 centimeters] in diameter. Minimum standard dimension ratio shall be twenty-six for casings sixteen inches [40.64 centimeters] in diameter or larger. Casings with a lower standard dimension ratio (additional thickness) must be used when the minimum standard dimension ratio is not capable of withstanding the stresses encountered during and after installation.
- (2) Minimum pipe stiffness shall be two hundred twenty-four pounds foot/ (inch · inch) (kiloneutron/ (meter · meter)) when tested according to section 5.4.1 of American Society for Testing and Materials Specification F480.

(3) All casing five inches [12.7 centimeters] and larger shall be tested for impact resistance and meet or exceed IC-1 impact classification according to section 6.5 and table 6 of American Society for Testing and Materials Specification F480.

~~(4) Carry the seal of the national sanitation foundation.~~

~~All casing shall have additional thickness and weight if standard thickness is not capable of withstanding forces to which it is subject.~~

~~e. Poured-in-place concrete well casing. Poured-in-place well casing shall be at least six inches [15.24 centimeters] thick and be poured in one operation if possible. There shall be no construction joint within ten feet [3.05 meters] of the original ground surface.~~

d. c. Other materials. Other well casing materials that may be proposed shall carry the seal of the national sanitation foundation and be approved in writing by the department prior to installation.

4. **Packers.** Packers shall be of a material that will not impart taste, odors, toxic substances, or bacterial contamination to the water in the well. ~~Lead packers may, under certain conditions when in contact with soft aggressive waters possessing sufficient plumbosolvency, result in toxic concentrations of lead in the water. When the water is to be used for domestic or livestock purposes, lead packers shall be restricted to use with nonaggressive waters and used only when nontoxic packers such as neoprene cannot be properly installed.~~

5. **Screens.** ~~Screen openings shall provide the maximum amount of open area consistent with the strength of the screen and grading of the water-bearing formation or gravel pack. The size of the screen should be based on a sieve analysis. The openings shall permit maximum transmitting ability without clogging or jamming. Screens should be constructed of material which will not be damaged by chemical action of ground water or future cleaning operations and be installed so that exposure above pumping level will not occur. Lead shot, lead wool, or other toxic lead products shall not be used for sealing the bottom of well screens or casing. Screens must be constructed of corrosion-resistant material and sufficiently strong to withstand stresses encountered during and after installation. Screen slot openings, screen length, and screen diameter should be sized and designed to provide sufficient open area consistent with strength requirements to transmit sand-free water at a capacity at least equal to one and one-half times the capacity of water anticipated. Screen slot size should be based on sieve analysis of formation samples.~~

Screens should be installed so that exposure above pumping level will not occur. A screen must be attached or connected to the casing by a threaded, solvent-welded, or welded joint or by threaded fasteners or a nontoxic packer. Solvent-welded joints should not impart taste, odors, toxic substances, or bacterial contamination to the water in the well.

6. Filter pack. Material used as a filter pack shall be sand or sand and gravel that is free of foreign material, properly sized, washed, and then disinfected prior to or during placement. Provisions for prevention of leakage of grout into the filter pack or screen shall be provided.

7. Well development. Every well shall be developed prior to yield and drawdown testing. Well development includes procedures to apply physical energy to the screen and aquifer formation adjacent to the well. After development, the well should produce sand-free water at a capacity at least equal to one and one-half times the capacity of water anticipated.

6- 8. Yield and drawdown test. Every well should be tested for yield and drawdown. The test method to be followed should be clearly outlined in the specifications. The test pump should have a maximum capacity at least equal to one and one-half times the quantity capacity of water anticipated. The test pump should be able to operate continuously until the rate of decline of the pumping water level has stabilized. Test data to be recorded should include:

- a. Static water level.
- b. Pumping rate.
- c. Drawdown during test.
- d. Recovery water levels.
- e. Depth of pump setting.

Duration of the test shall be determined with due consideration given to pumping of sand, clarity of water pumped, and the obtaining of a representative sample of water for chemical analysis.

7- 9. Chemical conditioning. When chemical treatment of a public well is proposed, the method of conditioning shall be included in the specifications. The equipment, chemicals, and inhibitors to be used, the method of testing for chemical residuals and the disposal of waste shall be indicated.

8- 10. Grouting requirements.

- a. ~~Concrete grout. The mixture should consist of cement, sand, and water, in the proportion of one bag of cement (ninety-four pounds [38.04 kilograms]), and an equal volume of dry sand to not more than six gallons [22.71 liters] of clean water. Where large volumes are required to fill annular opening, gravel not larger than one-half inch [12.7 millimeters] in size may be added.~~
- b. Neat cement grout. The mixture should consist of one bag sack of cement (ninety-four pounds [38.04 42.64 kilograms]) to not more than six gallons [22.71 liters] of clean water. Additives Bentonite additives up to five pounds [11.02 2.27 kilograms] per sack of cement to increase fluidity may be used. Pozzuolana additives up to thirty-three pounds [14.97 kilograms] per sack of cement may be used.
- e. b. Heat of hydration. Care must be used when grouting thermoplastic well casing with neat cement grout. Heat caused by hydration during curing of the cement may cause weakening of the well casing. High peak temperatures may be minimized by adding sand or bentonite clay to the neat cement grout mixture to increase the curing time. The amount of sand or bentonite clay added to the neat cement grout may not exceed five pounds [11.02 2.27 kilograms] per sack of cement.
- d. c. ~~Bentonite High-solids bentonite clay grout. A sodium-base bentonite clay grout may be used to fill the annular space when thermoplastic casing is used.~~ The mixture must consist of not less than ~~two~~ three pounds [4.41 1.36 kilograms] of bentonite clay per gallon [3.79 liters] of clean water.
- High-solids bentonite clay grout, bentonite chips, or bentonite tablets must be commercially prepared specifically for the purpose of sealing water wells. The use of bentonite drilling fluids as a grouting material is not permitted.
- e. d. Grouting guides. Casing that is to be grouted in the drill hole or annular opening shall be provided with sufficient guides welded to the casing to permit the unobstructed flow and uniform thickness of grout.
- f. e. Grout application. Grout material must be positively and accurately placed to fill all voids. All grouting shall should be performed by adding the mixture, from the bottom of the annular opening space upward, in one continuous operation, until the annular opening space is filled. Sufficient annular opening shall be provided to permit a minimum of one and one-half inches [3.81 centimeters] of grout around the casing, including couplings, if used.

~~Bentonite or similar materials may be added to the annular opening in the manner indicated for grouting, to seal any small crevices or fissures, and assure that the space is open prior to final grouting.~~

Bentonite chips or tablets may be added from the top of the annular space to a maximum depth of thirty feet [9.1 meters] provided the grout material is positively and accurately placed to fill all voids and hydrated after placement.

- 9- 11. **Plumbness and alignment.** Every well shall be tested for plumbness and alignment upon completion of construction. The casing shall be sufficiently plumb so as not to interfere with the installation and operation of the pump. (See recommended procedures in the appendix to this chapter.)
- 10- 12. **Geological Well construction data.** The water well contractor shall provide the North Dakota board of water well contractors with an accurate record of well construction data. Drill cuttings should be obtained at five-foot [1.52-meter] intervals, and at all pronounced changes in formation. The driller shall supply the North Dakota state board of water well contractors with Well construction data shall include an accurate record of the drill hole diameters and depths, assembled order of size and length of casings and liners, grouting depths, formations penetrated, water levels, location of blast shots, and pumping tests. Well construction report forms are available from the North Dakota board of water well contractors.
- 11- 13. **Upper terminal of well.** The casing or pitless unit for all ground water sources shall project not less than twelve inches [30.48 centimeters] above the final ground elevation, the well cover slab, or pumphouse floor.
- Sites subject to flooding shall have the top of the protective casing, pitless unit, the cover of every dug well, and the floor of the pumphouse at least two feet [0.609 meter] above the highest known flood elevation and be surrounded by earthfill.
- 12- 14. **Capping.** ~~A properly fitted, firmly driven, solid wooden plug shall be the minimum acceptable method of capping a well until pumping equipment is installed. A welded metal plate is preferred. Nonferrous well casing shall be capped using a plug or cap designed for the type of well casing installed.~~ The well must be protected during construction. A properly fitted cap designed for the type of well casing installed shall be used to protect the well from surface contamination until pumping equipment is installed.

13- 15. Bacteriological and chemical quality of water. Every new, modified, or reconditioned ground water source shall be thoroughly cleaned and disinfected after the completion of construction and again after the permanent pump has been installed. ~~One~~ The certified water well contractor or pump and pitless unit installer in charge during well construction and pump installation shall advise the well owner that one or more water samples from the source shall should be submitted to a the department or other approved laboratory for bacteriological analysis and-if-found--satisfactory--shall--be approved--for--placement--in--service.--When-it-is-established that-the-ground-water-is-subject-to-continuous-or-intermittent contamination--provisions-for-continuous-disinfectant-will-be required and that the well should not be placed into service until satisfactory bacteriological results are obtained.

Wells intended for use by a public water system shall be sampled for bacteriological analysis and the following chemicals and not placed into service until the results are deemed by the department to comply with the primary drinking water standards established under the Safe Drinking Water Act: antimony, arsenic, barium, beryllium, cadmium, chromium, copper, cyanide, fluoride, lead, mercury, nickel, combined nitrate/nitrite, selenium, thallium, manganese, and sulfate. When it is established that the ground water is subject to continuous or intermittent contamination, or for public water systems that the ground water is under the direct influence of surface water, provisions for continuous disinfection will be required.

14- 16. Chemical quality of water. Every new, modified, or reconditioned ground water source should be examined for its chemical characteristics by tests of a representative sample in a department or other approved laboratory. The samples should be collected and tested as soon as practical.

15- 17. Water level measurement. Provisions should be made for periodic measurement of the static and pumping water levels in the completed well. The installation shall be made in such manner as to prevent the entrances of foreign material.

16- 18. Monitoring---wells,---irrigation--wells Water supply wells, geothermal ground water and return wells, and special purpose water wells. ~~Any--water--well~~ All wells designed as a monitoring--well,---irrigation---well water supply wells, geothermal ground water or return well wells, or for other purposes special purpose water wells shall be constructed in accordance with this chapter.

Each well shall be protected at its upper terminal to preclude the entrance of foreign materials.

- ~~17-~~ 19. **Abandoned wells.** Any abandoned water wells, including test wells, uncompleted wells, and completed wells shall be sealed by restoring as far as possible the controlling geological conditions which existed before the wells were drilled.

Sealing of wells results in:

- a. Elimination of physical hazards.
- b. Prevention of contamination of ground water.
- c. Conserving yield and hydrostatic head of aquifers.
- d. Prevention of intermingling of desirable and undesirable waters.

Wherever feasible the wells should be filled with concrete grout or other approved materials. (Note recommended grouting procedures in the appendix to this chapter.)

At no time shall any sewage or other contaminated or toxic materials be discharged into an abandoned well.

- ~~18-~~ 20. **Organic polymers.** The use of biodegradable organic polymers as a drilling fluid additive has resulted in persistent microbiological contamination of ground water supplies. Organic polymers shall be used only when approved in writing by the department for a specific well construction project.

History: Amended effective January 1, 1984; September 1, 1986; April 1, 1997.

General Authority: NDCC 43-35-19, 43-35-19.1

Law Implemented: NDCC 43-35-19, 43-35-19.1

33-18-01-07. Pump installation for water wells.

1. **Pumphouse appurtenances.** The installation of necessary appurtenances for public wells shall be as illustrated in pump installation details contained in the diagrams attached to this chapter.
 - a. **Floor drain.** The pumphouse floor shall be watertight and shall slope away from the pump base. The pumphouse floor shall be provided with a floor drain discharging to a sump at least twenty-five feet [7.62 meters] from the well.
 - b. **Vents.** Provisions shall be made for venting the well casing to atmosphere. There shall be no holes in the pump base which might allow wastewater or other material to enter the well. A breather tube shall be installed of sufficient size to permit air to enter and leave the well freely with the changing of water elevation caused by

starting and stopping the pump. The breather tube shall terminate in a full one hundred eighty degree bend at least eighteen inches [45.72 centimeters] above the floor, securely screened with sixteen mesh wire screen. If the breather tube or a depth gauge line passes through the base of the pump or through the seal connection into the well, the hole about the tube shall be sealed.

- c. **Water level measurement.** An access plug for a measuring tape or an air line and drawdown gauge for determining location of the water level shall be installed during the installation of the pump on all public wells. Installation of permanent water level measuring equipment shall be made using corrosion-resistant materials firmly attached, in a vertical position, to the drop pipe or pump column in such a manner as to prevent entrance of foreign materials. The air line shall extend from the top of the well to several feet [meters] below the lowest anticipated water level. The length of the air line shall be accurately measured and the length recorded.
2. **Cutting of well casing.** No casing shall be cut off or cut into below ground level except to install a pitless unit or adapter.
 3. **Pitless unit and adapter.**
 - a. **Pitless unit.** Pitless units designed to replace a section of well casing must meet the standards of the national sanitation foundation or the water systems council and must:
 - (1) Be factory fabricated from point of connection with the well casing to the unit cap or cover. The materials used must be durable, at least equal in quality to the well casing, to prevent excessive corrosion.
 - (2) Form an unbroken extension of the well casing from the point of discharge to a point above ground level as specified for upper well terminals.
 - (3) Have an inside diameter equal to or greater than the inside diameter of the well casing to facilitate work and repair on the well, pump, or well screen. Any deviation from this paragraph must be approved in writing by the department.
 - (4) Conduct water from a well casing without exposing the well to contamination through openings in the casing.
 - (5) Have access to the casing for disinfection of the well.

- (6) Be capped with a cover having a downward flange which will overlap the edge of the unit. The cover must be securely fastened to the unit and must be sufficiently snug to the unit to be verminproof or watertight if required.

The cover must provide for watertight entrance of electrical cables, vent piping, and an air line or a tap for wetted tape measurements of depth to water level of a well.

- (7) Be installed by threaded, welded, or compression flange gasketed connection to the cutoff casing. The threaded, welded, or compression flange gasketed connection to the cutoff casing must be watertight. If the connection to the casing is to be a field weld, the factory-assembled unit must be designed specifically for field welding.
- (8) Have all field connections between the pitless unit and the water service pipe threaded, flanged, or mechanical joint.

b. Pitless adapter. Pitless Commercially manufactured clamp-on or weld-on pitless adapters for attachment to the exterior of a well casing must may be installed only when approved in-writing by the department. Pitless adapters must be installed according to manufacturer's specifications and meet the standards of the national sanitation foundation or--the--water-systems-council. A list of approved pitless adapters is available from the department.

- (1) Pitless adapters must be constructed and installed so as to prevent the entrance of contaminants into the well or water supply through openings in the well casing.
- (2) The pitless adapter must provide adequate clearance within the well to permit insertion and withdrawal of the pump and system components through the upper terminal of the well casing.
- (3) The pitless adapter must be connected to the well casing with clamps-and-gasket or by welding and must be watertight. To assure a watertight connection between the pitless adapter and the well casing, care must be used in cutting the hole in the well casing, preferably with a hole-cutting saw. All burs from the cutting process must be removed. Both the outside and the inside surfaces of well casing surrounding the hole must be smooth.

- (4) A pitless cap or cover must enclose the upper terminal of the well casing. The cap, entrance of electrical cables, vent piping, air lines, etc., must be as specified for pitless units.
 - (5) All field connections between the pitless adapter and the water service pipe must be threaded, flanged, or mechanical joint.
 - (6) All other aspects of pitless adapter requirements must be as specified for pitless units.
- c. Freezing. Water service piping must be installed below recorded frost penetration. A minimum depth of seven feet [2.28 meters] below grade is recommended to prevent freezing.
4. **Over-the-well pumps.** Power-driven pumps located over a well shall be installed on a concrete base of sufficient height to permit the outside casing to extend one inch [2.54 centimeters] above the concrete base. On all public water wells the annular opening between the drill hole and casing shall be filled with cement grout before the pump base and pumphouse floor are constructed. If the well is of the gravel wall type, the outer casing shall extend at least twelve inches [30.48 centimeters] above the pumphouse floor with suitable provisions made for adding gravel. The inner casing shall extend one inch [2.54 centimeters] above the pump base. Note diagrams No. 1 and No. 2, pump installation details, in the diagrams attached to this chapter.

A sanitary well seal shall be installed at the top of the well casings to prevent the entrance of contaminated water or objectional material.

5. **Pump column.** A separate pump column, suction or discharge pipe shall be installed inside the well casing in all instances, whether the well is to be pumped by suction, airlift, or deep well pump.
6. **Submersible pumps.** The discharge line installed inside of the well casing must meet the standards for ferrous or nonferrous well casing in subsections 2 and 3 of section 33-18-01-06. The discharge line shall leave the well at the top of the casing. The opening between the discharge line and casing or pipe sleeve shall be sealed watertight with an expanding rubber seal or equivalent device. When an underground discharge is desired, a properly installed pitless unit or, when approved by the department, a pitless adapter shall be used.

The electrical cable shall be firmly attached to the pump riser at intervals of twenty feet [6.10 meters] or less.

When a check valve is not part of the pump, a check valve shall be installed on the pump discharge line within the well.

A check valve on the pump discharge line is not required on nonpressurized wells for livestock use that would be damaged by freezing, when an airgap or other cross-connection control protection is provided.

7. **Offset pumps.** Pumps offset from public wells shall be located in an aboveground pumphouse or other building. All portions of suction lines buried below the ground surface between the well and the pump shall be enclosed in a protective pipe of standard thickness and be sealed watertight at both ends.

This requirement shall be considered satisfied if the suction line lies within a pressure discharge line.

Offset pumps for private wells may be located in a basement provided that the pumps and all suction pipes are elevated at least twelve inches [30.48 centimeters] above the floor.

8. **Hand pumps.** Hand pumps shall be of the force type equipped with a packing gland around the pump rod, a delivery spout which is closed and downward directed, and a one-piece bell type base which is part of the pump stand or is attached to the pump column in a watertight manner.

The bell base of the pump shall be bolted with a gasket to a flange which is securely attached to the casing or pipe sleeve.

9. **Pump controls.**

- a. **Public water wells.** Pump controls for public water wells must be installed in accordance with the manufacturer's recommendations as shown on approved plans and specifications.

- b. **Private water wells.** Pump controls for private water wells should be installed in accordance with manufacturer's recommendations and must include:

- (1) A pressure-activated pump switch.
- (2) A thermal overload switch.
- (3) A flow control orifice or a low water level cutoff switch on all pumps having an output in excess of the well capacity.
- (4) A pressure relief valve on positive displacement pumps.

- (5) The installation of necessary appurtenances for private water wells should be as illustrated in diagram No. 4 - pitless unit and appurtenances for private wells.

History: Amended effective January 1, 1984; September 1, 1986; April 1, 1997.

General Authority: NDCC 43-35-19, 43-35-19.1

Law Implemented: NDCC 43-35-19, 43-35-19.1

APPENDIX

I. WELL DISINFECTION

A. General.

Immediately after construction or repair, always disinfect with a strong chlorine solution of fifty to one hundred milligrams per liter. Materials used in construction or repair of a well are contaminated with dirt and bacteria and the water from a well is considered safe to drink only when laboratory tests show that no harmful bacteria are present.

B. Procedure.

1. Determine the amount of water in the well by referring to the table.
2. Add the amount of chlorine compound necessary to give a dosage of fifty milligrams per liter as indicated on the table, into the opening between the casing and the drop pipe. On new well construction, the chlorine should be added just before installation of the pumping equipment.
 - a. Chlorine tablets may be dropped in the top of the well and allowed to settle to the bottom.
 - b. Deep wells with high water levels may require that chlorine solutions be added through a hose inserted down the well casing to ensure proper diffusion of the chlorine.

Chlorine can destroy only the bacteria with which it comes in contact. Agitation of the water in the well may be required to assure thorough mixing. After adding the chlorine, start the pump and operate until the odor of chlorine is detected at the pump discharge.

3. The storage and distribution system should be disinfected along with the well. Open the house faucets and let the water run until the odor of chlorine is apparent.
4. Allow the chlorine solution to remain in the well and distribution system for a period of twenty-four hours. Pump the well and flush the distribution system to remove all traces of chlorine.
5. After pumping, collect a water sample and submit to the North Dakota state department of health laboratory for a bacteriological analysis to assure the safety of the water supply. Special sample containers are available on request from the department. If contamination is shown to be still

present in the water supply, the chlorination procedure should be repeated.

6. When time does not permit well disinfection by the procedure previously described, apply to the entire depth of the well a total volume of 50 mg/l chlorine solution at least four times greater than the volume of water in the well. Allow the chlorine solution to remain in the well for a period of at least two hours. Pump the well and flush the distribution system to remove all traces of chlorine.

QUANTITY OF DISINFECTANT REQUIRED TO GIVE A DOSE OF
50 MILLIGRAMS PER LITER CHLORINE

Diameter of Well, Spring, or Pipe, in Inches	Gallons of Water Per Foot of Water Depth	Ounces of Disinfectant Per 10-ft. Depth of Water	
		65% Calcium Hypochlorite	5 1/4% Sodium Hypochlorite*
2	0.16	0.02	0.21
3	0.37	0.04	0.47
4	0.65	0.07	0.83
5	1.00	0.10	1.30
6	1.47	0.15	1.87
8	2.61	0.27	3.32
10	4.08	0.31	5.19
12	5.88	0.60	7.47
18	13.22	1.36	16.80
24	23.50	2.41	29.87
36	52.88	5.43	67.20
48	94.01	9.65	119.47

* Sodium Hypochlorite, also known as Bleach, Clorox, etc., can be purchased at most drug and grocery stores. One heaping tablespoon of 65% calcium hypochlorite = approximately one-half ounce. Six (6) 65% calcium hypochlorite tablets = approximately one ounce.

Heavy concentrations of chlorine on or near the well screen with waters very high in iron and/or iron bacteria may result in oxidation of iron on the well screen. Efficiency of the well screen and well output could be reduced under such conditions.

II. LABORATORY SERVICE. Chemical and microbiological laboratory service is provided by the North Dakota state department of health laboratory located at 1205 Avenue A West, Bismarck, North Dakota. Mailing address is:

North Dakota Department of Health
Public Health Laboratory
PO Box 1618
Bismarck, ND 58502

Microbiological laboratory service is available from:

First District Health Unit
801 - 11th Ave. SW
PO Box 1268
Minot, ND

Southwestern District Health Unit
Pulver Hall, Dickinson College
PO Box 1208
Dickinson, ND 58601

Fargo Community Health Center
401 - 3rd Ave. N
PO Box 728
Fargo, ND 58102

III. RECOMMENDED PROCEDURES.

A. Plumbness and Alignment.

Every public water well, before being officially accepted, should be tested for plumbness and alignment. The test method to be followed should be clearly stated in the specifications. As a minimum, a forty-foot [12.19-meters] section of pipe, or rigid dummy of the same length, having an outside diameter not more than one-half inch [12.7 millimeters] smaller than the diameter of the casing or hole being tested, shall move freely throughout the length of the casing or hole to the lowest anticipated pump setting. The well should not vary from the vertical in excess of two-thirds of the smallest inside diameter of that part of the well being tested, per one hundred foot [30.48 meters] of depth.

B. Abandoned Wells.

For detailed procedures for abandoning wells, see Section A1-13, Sealing Abandoned Wells, AWWA Standards for Deep Wells, A100-66 or later amendments prepared by the American Water Works Association and the National Water Well Association.

C. Springs.

Springs should be considered as a water supply only when it is not possible to develop an acceptable well. Springs shall be protected from entry of surface water and should be housed in a permanent structure. Continuous chlorination of springs is recommended to assure the bacterial purity of the water supply.

D. Continuous Chlorination of Public Well Water Supplies.

Continuous chlorination is recommended for the safeguarding of public well water supplies. Chlorination not only assists in maintaining the bacterial purity of the water, but also eliminates the growth of taste-and-odor-producing nuisance organisms.

E. Livestock Wells.

A check valve on the pump discharge line is not required on nonpressurized wells for livestock use that would be damaged by freezing. The pump discharge line shall have a minimum air gap equal to twice the effective diameter of the discharge line to prevent backflow or siphonage into the well to prevent contamination of the well.

IV. MEASUREMENT OF WATER WELL DRAWDOWN AND SPECIFIC CAPACITY.

Pumping tests of water supply wells can serve many purposes. Properly planned and conducted tests will reveal information about the performance and efficiency of the well being pumped. In addition, from the data obtained, calculations can be made which interpret ground water aquifer performance.

Measuring each well for pump and well yield, depth to water level, drawdown, and specific capacity should be done on a routine basis. These test results should be compared with previous tests to estimate current well and/or aquifer conditions.

A. Terminology.

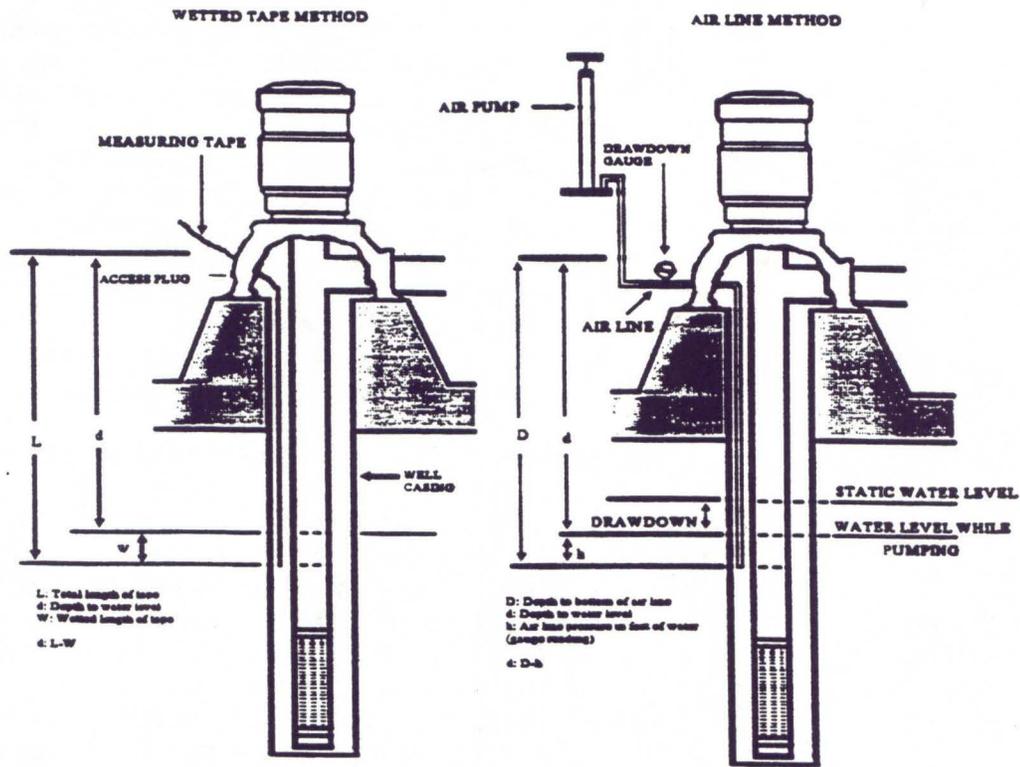
It is important to understand the meaning of the terms used relating to the pumping test. Some of these terms are as follows:

1. Static Water Level. This is the level at which water stands in the well when no water is being pumped. It is generally expressed as the distance in feet from the ground surface to the water level in the well.
2. Pumping Level. This is the level at which water stands in the well when pumping is in progress. The pumping level may also be referred to as the dynamic water level.
3. Drawdown. When a well is pumped, the water level in the vicinity of the well will be lowered. Drawdown is the difference, measured in feet, between the static water level and the pumping level.
4. Well Yield. The well yield is the volume of water per unit of time discharged from a well either by pumping or by free flow.
5. Specific Capacity. Specific capacity of the well is its yield per unit of drawdown, usually expressed as gallons per minute (gpm) per foot of drawdown.

B. Determination of Depth to Water Level.

1. **Wetted Tape Method.** The wetted tape method will accurately measure the depth to water in a well and can be used for depths up to one hundred feet [30.5 meters] or more. Attach a lead weight to the end of a steel measuring tape, if needed. Wipe dry the lower three or four feet [.91 or 1.22 meters] of the tape and coat with carpenter's chalk. Lower the tape into the well through the air vent or other opening until part of the chalked section is below water. Continue to lower the tape until the next even foot mark can be held exactly at a reference point and record the number of feet indicated. The tape is then removed from the well and note is made of the footage of chalked section washed away by the water. Subtract this reading from the reading obtained at the top reference point. The difference in these readings is the depth from the reference point to the water level.

2. **Air Line Method.** The air line method measures depth to water level by determining the air pressure required to push all of the water out of a submerged tube of known length. The air line consists of a one-fourth inch [6.35 millimeters] pipe, copper or plastic tubing extending from the top of the well to a point several feet below the lowest anticipated water level. To avoid turbulence near the intake of the pump, the lower end of the air line should be at least five feet [1.52 meters] above or below the point where water enters the pump. The exact length of the air line must be known or should be measured as it should be placed in the well. Make all joints airtight with a nontoxic or piping compound. The upper end of the tube is fitted with suitable connections for an air gauge, a tire valve, and an air pump.



Pump the air into the line until the gauge pressure is constant. This indicates that all of the water has been expelled from the tube. The gauge reading shows the pressure necessary to support a column of water of a height equal to the depth the tube was submerged. If the gauge indicates feet of water, then it shows directly the submerged length of the line in feet. Subtracting the submerged length from the total length of the air line gives the depth to static water level. Gauges calibrated in pounds per square inch (psi) may be converted to feet of water by multiplying by 2.31.

C. Determination of Drawdown

First, determine the static water level. Second, after the well has achieved a constant pumping rate or yield, measure the depth to the water level. The difference of these readings before and after pumping the well at a specific rate is measured in feet and recorded as feet of drawdown.

Example: Depth to water before pumping = 100 feet
 Depth to water after pumping = 125 feet

Drawdown = Depth after pumping - depth before pumping

$$= 125 \text{ feet} - 100 \text{ feet} = 25 \text{ feet}$$

D. Determination of Specific Capacity.

Specific capacity is calculated by dividing the yield of the well in gallons per minute by the drawdown. Both measurements shall be taken at the same time.

Example: Yield of well = 160 gpm Drawdown = 20 feet
Specific capacity = $160/20 = 8$ gpm per foot
of drawdown

E. Interpretation of Water Well Problems.

With proper records of water well tests, well problems can be interpreted. Some rules to follow are:

1. If the output of the well (gpm) drops, the drawdown decreases, and the specific capacity remains the same, the problem is most likely the pump.
2. If the output of the well (gpm) drops, the static water well level remains the same, the drawdown increases and the specific capacity decreases, the well may be plugging. Acid clean the well when the specific capacity drops about twenty-five percent.
3. If the output of the well (gpm) drops and the static water level is declining, the aquifer may be depleting.

V. GENERAL POLICY - GEOTHERMAL ENERGY

Geothermal energy, using ground water to heat and cool homes and businesses, is becoming increasingly popular in North Dakota. Because of the potential for contamination of drinking water systems and aquifers, and the pollution of surface waters, the North Dakota department of health provides the following guidance for users of geothermal energy. This policy relates primarily to private individual systems. Commercial and industrial projects should be constructed only after consultation with the department regarding water supply and disposal requirements.

1. The department encourages the conservation of ground water resources. Whenever possible, the water should be reinjected into the supply aquifer or used for other beneficial purposes such as irrigation or stock watering.
2. Users of geothermal energy must be aware of the scale-forming or corrosive nature of some of the highly mineralized water in North Dakota. Some ground water supplies may require treatment prior to use, or serious problems with operation of the heat exchange system can develop.

3. All supply and disposal wells shall be constructed to comply with department of health rules, chapter 33-18-01, "Water Well Construction and Water Well Pump Installation." The geothermal system should be constructed to eliminate all sources of contamination to the water supply system and the ground water aquifer.
4. If municipal water supply systems are to be used as a source of geothermal energy, an approved backflow prevention device shall be used to separate the geothermal energy from the public water supply system.
5. Heat exchange systems containing toxic or flammable substances must be separated from the drinking water supply by two separate thicknesses of metal.
6. Geothermal energy systems shall not discharge water to either municipal drinking water or sewer systems. Discharge to the municipal drinking water system is a cross-connection and could result in chemical and/or microbiological contamination of the system. Nearly all cities in the state have sewer use ordinances specifically prohibiting the connection of clear water discharges to the sewer system.
7. Geothermal energy systems may discharge to municipal storm sewer systems if the discharge water is compatible with the waters of the receiving stream. Degradation of surface waters by discharges from geothermal energy systems will not be allowed.
8. If water is to be reinjected into the ground water system, the discharge should be made to a similar or inferior quality aquifer.
9. Highly mineralized or saline waters, such as from the Dakota formation, should be returned to those aquifers if secondary use is not possible.
10. Evaporation ponds, which do not discharge, may be used as a means of disposal where other methods of disposal are not feasible.
11. Disposal permits under the Underground Injection Control Program or the National Pollutant Discharge Elimination System Regulations may be required. Users of geothermal energy systems should contact the department to determine whether a permit is required for their installation.

VI. ABANDONMENT OF TEST HOLES, PARTIALLY COMPLETED WELLS, AND COMPLETED WELLS

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Section 1.1 - General

The recommendations contained in this appendix pertain to wells and test holes in consolidated and unconsolidated formations. Each sealing job should be considered as an individual problem, and methods and materials should be determined only after carefully considering the objectives outlined in the standard.

Section 1.2 - Wells in Unconsolidated Formations

Normally, abandoned wells extending only into consolidated formations near the surface and containing water under water-table conditions can be adequately sealed by filling with concrete, grout, neat cement, clay, or clay and sand. In the event that the water-bearing formation consists of coarse gravel and producing wells are located nearby, care must be taken to select sealing materials that will not affect the producing wells. Concrete may be used if the producing wells can be shut down for a sufficient time to allow the concrete to set. Clean, disinfected sand or gravel may also be used as fill material opposite the water-bearing formation. The remainder of the well, especially the upper portion, should be filled with clay, concrete, grout, or neat cement to exclude surface water. The latter method, using clay as the upper sealing material, is especially applicable to large-diameter abandoned wells.

In gravel-packed, gravel-envelope, or other wells in which coarse material has been added around the inner casing to within twenty to thirty feet (6.1 to 9.1 m) of the surface, sealing outside the casing is very important. Sometimes this sealing may require removal of the gravel or perforation of the casing.

Section 1.4 - Wells in Noncreviced Rock Formations

Abandoned wells encountering noncreviced sandstone or other water-bearing consolidated formations below the surface deposits may be satisfactorily sealed by filling the entire depth with clay, provided there is no movement of water in the well. Clean sand, disinfected if other producing wells are nearby, may also be used through the sandstone up to a point ten to twenty feet (3.0 to 6.1 m) below the bottom of the casing. The upper portion of this type of well should be filled with concrete, neat cement, grout, or clay to provide an effective seal against entrance of surface water. If there is an appreciable amount of upward flow, pressure cementing or mudding may be advisable.

Section 1.5 - Multiple Aquifer Wells

Some special problems may develop in sealing wells extending into more than one aquifer. These wells should be filled and sealed in such a way that exchange of water from one aquifer to another is prevented. If no appreciable movement of water is encountered, filling with concrete, neat cement, grout, or alternate layers of these materials and sand will prove satisfactory. When velocities are high, the procedures outlined in section 1.6 are recommended. If alternate concrete plugs or bridges are used, they should be placed in known nonproducing horizons or, if locations of the nonproducing horizons are not known, at frequent intervals. Sometimes when the casing is not grouted or the formation is nocaving, it may be necessary to break, slit, or perforate the casing to fill any annular space on the outside.

Section 1.6 - Wells with Artesian Flow

The sealing of abandoned wells that have a movement of water between aquifers or to the surface requires special attention. Frequently the movements of water may be sufficient to make sealing by gravity placement of concrete, cement grout, neat cement, clay, or sand impractical. In such flow, if preshaped or precast plugs are used, they should be several times longer than the diameter of the well, to prevent tilting.

Since it is very important in wells of this type to prevent circulation between formations or loss of water to the surface or to the annular space outside the casing, it is recommended that pressure cementing, using the minimum quantity of water that will permit handling, be used. The use of wells, large stone aggregate (not more than one-third of the diameter of the hole), lead wool, steel shavings, a well packer, or a wood or cast-lead plug or bridge will be needed to restrict the flow and thereby permit the gravity placement of sealing material above the formation producing the pressure mudding instead of this process if sometimes permissible.

In wells which the hydrostatic head producing flow to the surface is low, the movement of water may be arrested by extending the well casing to an elevation above the artesian-pressure surface. Previously described sealing methods suitable to the geologic conditions can then be used.

Section 1.7 - Sealing Materials

A number of materials that can be used for sealing wells satisfactorily, including concrete, cement grout, neat cement, clay, sand, or combinations of these materials, are mentioned in this appendix. Each material has certain characteristics and distinctive properties; therefore, one material may be especially suited for doing a particular job. The selection of the material must be based on the construction of the well, the nature of the formations penetrated, the material and equipment available, the

location of the well with respect to possible sources of contamination, and the cost of doing the work.

Concrete is generally used for filling the upper part of the well or water-bearing formations, for plugging short sections of casings, or for filling large-diameter wells. Its use is cheaper than neat cement or grout, and it makes a stronger plug or seal. However, concrete will not penetrate seams, crevices, or interstices. Furthermore, if not properly placed, the aggregate is likely to separate from the cement.

Cement grout or neat cement and water are far superior for sealing small openings, for penetrating any annular space outside of casings, and for filling voids in the surrounding formation. When applied under pressure, they are strongly favored for sealing wells under artesian pressure or those encountering more than one aquifer. Neat cement is generally preferred to grout because it does not separate.

Clay, as a heavy mud-laden or special clay fluid applied under pressure, has most of the advantages of cement grout. Its use is preferred by some competent authorities, particularly for sealing artesian wells. Others feel that it may, under some conditions, eventually be carried away into the surrounding formations.

Clay in a relatively dry state, clay and sand, or sand alone may be used advantageously as sealing materials, particularly under water-table conditions where diameters are large, depths are great, formations are caving, and there is no need for achieving penetration of openings in casings, liners, or formations, or for obtaining a watertight seal at any given spot.

Frequently combinations of these materials are necessary. The more expensive materials are used when strength, penetration, or watertightness are needed. The less expensive materials are used for the remainder of the well. Cement grout or neat cement is now being mixed with bentonite clays and various aggregates. Superior results and lower cost are claimed for such mixtures.

ASTM STANDARD A 53*

Welded and Seamless Steel Pipe
Schedule 40 - Standard Weight

Nominal Size (Inches)	External Diameter (Inches)	Internal Diameter (Inches)	Wall Thickness (Inches)	Weight per Foot (lb)	
				Plain End	Threads and Couplings
1 1/4	1.660	1.380	0.140	2.27	2.28
1 1/2	1.900	1.610	0.145	2.72	2.73
2	2.375	2.067	0.154	3.65	3.68
2 1/2	2.875	2.469	0.203	5.79	5.82
3	3.500	3.068	0.216	7.58	7.62
3 1/2	4.000	3.568	0.226	9.11	9.20
4	4.500	4.026	0.237	10.79	10.89
5	5.563	5.047	0.258	14.62	14.81
6	6.625	6.065	0.280	18.97	19.18
8	8.625	7.981	0.322	28.55	29.35
10	10.750	10.020	0.365	40.48	41.85
12	12.750	12.000	0.375	49.56	51.15
14	14.000	13.250	0.375	54.57	57.00
16	16.000	15.250	0.375	62.58	65.30
18	18.000	17.250	0.375	70.59	73.00
20	20.000	19.250	0.375	78.60	81.00
22	22.000	21.000	0.500	114.81	
24	24.000	23.000	0.500	125.49	
26	26.000	25.000	0.500	136.17	
28	28.000	27.000	0.500	146.85	
30	30.000	29.000	0.500	157.53	
32	32.000	31.000	0.500	168.21	
34	34.000	33.000	0.500	178.89	
36	36.000	35.000	0.500	189.57	

ASTM STANDARD A 589*

Water-Well Reamed and Drifted Pipe

Nominal Size (Inches)	External Diameter (Inches)	Internal Diameter (Inches)	Wall Thickness (Inches)	Weight per Foot (lb)	
				Plain End	Threads and Couplings
1 1/4	1.660	1.380	0.140	2.27	2.30
1 1/2	1.900	1.610	0.145	2.72	2.75
2	2.375	2.067	0.154	3.65	3.75
2 1/2	2.875	2.469	0.203	5.79	5.90
3	3.500	3.068	0.216	7.58	7.70
3 1/2	4.000	3.548	0.226	9.11	9.25
4	4.500	4.026	0.237	10.79	11.00
5	5.563	5.047	0.258	14.62	15.00
6	6.625	6.065	0.280	18.97	19.45
8	8.625	7.981	0.322	28.55	29.35
10	10.750	10.020	0.365	40.48	41.85
12	12.750	12.000	0.375	49.56	51.15

*From "1973 Annual Book of ASTM Standards"

SDR RATED PVC CASING - WEIGHTS AND DIMENSIONS

NOMINAL SIZE	STANDARD DIMENSION RATIO (SDR)	AVERAGE INCHES O.D.	MIN. INCHES WELL	WEIGHT (LBS/FT)		MINIMUM I.D.					
				AIR	SP.C.-1	ROUND	I.D. AT ADDITIONAL % OUT OF ROUND				
							1%	2%	3%	4%	5%
4"	21	4.500	.214	1.875	.555	3.961	3.921	3.882	3.842	3.803	3.763
	17	4.500	.265	2.292	.678	3.882	3.843	3.804	3.765	3.726	3.688
	13.5	4.500	.333	2.831	.838	3.730	3.693	3.655	3.618	3.580	3.544
5"	21	5.563	.265	2.870	.850	4.909	4.860	4.811	4.762	4.713	4.664
	17	5.563	.327	3.497	1.035	4.791	4.743	4.695	4.647	4.598	4.552
	13.5	5.563	.412	4.341	1.285	4.601	4.555	4.509	4.463	4.417	4.371
6"	21	6.625	.316	4.074	1.206	5.856	5.797	5.738	5.680	5.621	5.563
	17	6.625	.390	4.966	1.470	5.705	5.648	5.590	5.534	5.478	5.420
	13.5	6.625	.491	6.144	1.819	5.481	5.426	5.371	5.317	5.262	5.207
8"	21	8.625	.410	6.884	2.038	7.617	7.541	7.464	7.388	7.312	7.236
	17	8.625	.508	8.421	2.493	7.427	7.353	7.278	7.204	7.130	7.056
10"	21	10.750	.511	10.693	3.165	9.516	9.421	9.325	9.230	9.135	9.040
12"	21	12.750	.606	15.042	4.452	11.302	11.189	11.076	10.963	10.849	10.736
16"		16.000	.762	23.748	7.029	14.235	14.093	13.950	13.808	13.666	13.523

Pvc / Vinyl Chloride (PVC) casing for water wells will carry the following labels for compliance with the American Society for Testing and Materials (ASTM) specification F480-81.

8" WELL CASING PVC 1120 SDR 21 IC2 F480 NSF-WC

This label includes the SDR, IC number, and the NSF-WC logo.

8" WELL CASING PVC 1120 200 PSI SDR 21 IC2 F480 NSF-WC D2241 NSF-PW

This label is the same as the first except it has also been tested as ASTM D2241 pressure pipe; therefore, the label includes the NSF-PW logo, as well as the NSF-WC logo.

NOTE: A label will also include the manufacturer's name and production code number, which are not included in the above labels.

JULY 1997

CHAPTER 33-33-04

33-33-04-01. ~~{1101}~~ **Definitions.** For the purpose of this chapter:

1. "Additive" has the meaning stated in the federal Food, Drug, and Cosmetic Act, subsection 201(s) and 21 CFR 170 and "color additive" has the meaning stated in the federal Food, Drug, and Cosmetic Act, subsection 201(t) and 21 CFR 70.
2. "Approved" means acceptable to the department based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.
3. "a_w" means water activity.
4. "Certification number" means a unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish dealer according to the provisions of the national shellfish sanitation program.
5. "CFR" or "Code of Federal Regulations" means the compilation of the general and permanent rules published in the federal register by the executive departments and agencies of the federal government which is published annually by the United States government printing office; and contains food and drug administration rules in 21 CFR, United States department of agriculture rules in 7 CFR and 9 CFR, and EPA rules in 40 CFR.
6. "Comminuted" means reduced in size by methods including chopping, flaking, grinding, or mincing and includes fish or meat products that are reduced in size and restructured or

reformulated such as gefilte fish, formed roast beef, gyros, ground beef, and sausage; and a mixture of two or more types of meat that have been reduced in size and combined, such as sausages made from two or more meats.

7. "Commissary" means a catering establishment, restaurant, or any other place in which food, containers, or supplies are kept, handled, prepared, packaged, or stored.
8. "Common dining area" means a central location in a group residence where people gather to eat at mealtime. Common dining area does not apply to a kitchenette or dining area located within a resident's private living quarters.
9. "Confirmed disease outbreak" means a foodborne disease outbreak in which laboratory analysis or appropriate specimens identifies a causative organism and epidemiological analysis implicates the food as the source of the illness.
10. "Consumer" means a person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food establishment or food processing plant, and does not offer the food for resale.
- 2- 11. "Corrosion-resistant materials" means those materials that maintain their--original acceptable surface cleanability characteristics under prolonged influence of the food to be contacted, normal use of cleaning compounds and bactericidal sanitizing solutions, and other conditions-of-use environment.
12. "Critical control point" means a point or procedure in a specific food system where loss of control may result in an unacceptable health risk.
13. "Critical item" means a provision of this code that, if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or environmental degradation.
14. "Critical limit" means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.
- 3- 15. "Department" means the state department of health and consolidated-laboratories or its designated agent.
- 4- 16. "Easily cleanable" means that surfaces are readily accessible and made of such materials and finish and so fabricated that residue may be removed effectively by normal cleaning methods.
17. "Easily movable" means weighing thirty pounds [14 kilograms] or less; mounted on casters, gliders, or rollers; or provided

with a mechanical means requiring no more than thirty pounds [14 kilograms] of force to safely tilt a unit of equipment for cleaning; and having no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.

- 5- 18. "Employee" means ~~the permit holder, --- individuals -- having supervisory or management duties and any other person -- working in -- a -- food -- service -- establishment~~ licenseholder, person in charge, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food establishment.
19. "EPA" means the United States environmental protection agency.
- 6- 20. "Equipment" means stoves, ovens, ranges, hoods, slicers, mixers, meatblocks, tables, counters, refrigerators, sinks, dishwashing machines, steamtables, and similar items other than utensils, used in the operation of a food service establishment.
21. "Fish" means fresh or saltwater finfish, molluscan shellfish, crustaceans, and other forms of aquatic animal life other than birds or mammals and includes any edible human food product derived in whole or in part from fish, including fish that has been processed in any manner.
- 7- 22. "Food" means any raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale, in whole or in part, for human consumption, or chewing gum.
23. "Foodborne disease outbreak" means an incident in which two or more persons experience a similar illness after ingestion of a common food and epidemiological analysis implicates the food as the source of the illness. Foodborne disease outbreak includes a single case of illness such as one person ill from botulism or chemical poisoning.
- 8- 24. "Food-contact surface" means those surfaces of equipment and utensils with which food normally comes in contact, and those surfaces from which food may drain, drip, or splash back onto surfaces normally in contact with food.
25. "Food employee" means an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.
26. "Food establishment":

a. "Food establishment" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:

(1) Such as a restaurant, satellite or catered feeding location, catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people, market, vending location, conveyance used to transport people, institution, or food bank; and

(2) That relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

b. "Food establishment" includes:

(1) An element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the department; and

(2) An operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

c. "Food establishment" does not include:

(1) An establishment that offers only prepackaged foods that are not potentially hazardous;

(2) A produce stand that only offers whole, uncut fresh fruits and vegetables;

(3) A food processing plant;

(4) A kitchen in a private home if the food is prepared for sale or service at a function such as a religious or charitable organization's bake sale;

(5) A private home that receives catered or home-delivered food.

9- 27. "Food processing establishment plant" means a commercial establishment in which food is manufactured or packaged for human consumption. The term does not include a food service establishment, retail food store, or commissary operation.

10. --"Food--service--establishment"--means--any--place--where--food--is prepared--and--intended--for--individual--portion--service,--and includes--the--site--at--which--individual--portions--are--provided. The--term--includes--any--such--place--regardless--of--whether consumption--is--on--or--off--the--premises--and--regardless--of whether--there--is--a--charge--for--the--food.---The--term--also includes--delicatessen--type--operations--that--prepare--sandwiches intended--for--individual--portion--service.---The--term--does--not include--private--homes--where--food--is--prepared--or--served--for individual--family--consumption,--retail--food--stores,---the location--of--food--vending--machines,--and--supply--vehicles.

28. "Game animal" means an animal, the products of which are food, that is not classified as cattle, sheep, swine, or goat in 9 CFR subchapter A - mandatory meat inspection, part 301, as poultry in 9 CFR subchapter 9C - Mandatory poultry products inspection, part 381, or as fish as defined in subparagraph 1-201.10(B)(26). Game animal includes animals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, bear, and muskrat; aquatic and nonaquatic birds such as wild ducks and geese, quail, and pheasant; nonaquatic reptiles such as rattlesnakes; aquatic mammals; exotic animals as defined in 9 CFR subchapter A - animal welfare, part 1, such as lion, tiger, leopard, elephant, camel, antelope, anteater, kangaroo, and water buffalo; and species of foreign domestic cattle, such as ankole, gayal, and yak.

29. "Group residence" means a private or public housing corporation or institutional facility that provides living quarters and meals. Group residence includes a domicile for unrelated persons such as a retirement home or long-term health care facility.

30. "HACCP plan" means a written document that delineates the formal procedures for following the hazard analysis critical control point principles developed by the national advisory committee on microbiological criteria for foods.

31. "Hazard" means a biological, chemical, or physical property that may cause an unacceptable consumer health risk.

11- 32. "Hermetically sealed container" means a container designed and intended to be secure against the entry of micro-organisms and in the case of low acid canned foods, to maintain the commercial sterility of its ~~content~~ contents after processing.

33. "Highly susceptible population" means a group of persons who are more likely than other populations to experience foodborne disease because they are immunocompromised or older adults and in a facility that provides health care or assisted living services, such as a hospital or nursing home; or preschool age children in a facility that provides custodial care, such as a day care center.

34. "Injected" means manipulating a meat so that infectious or toxigenic micro-organisms may be introduced from its surface to its interior through tenderizing with deep penetration or injecting the meat such as with juices which may be referred to as "injecting", "pinning", or "stitch pumping".
- 12- 35. "Kitchenware" means all-multiuse-utensils-other-than-tableware food preparation and storage utensils.
- 13- 36. "Law" includes applicable federal, state, and local statutes, ordinances, and regulations.
37. "License" means the document issued by the department that authorizes a person to operate a food establishment.
38. "Licenseholder" means the entity that is legally responsible for the operation of the food establishment such as the owner, the owner's agent, or other person; and possesses a valid license to operate a food establishment.
39. "Linens" means fabric items such as cloth hampers, cloth napkins, tablecloths, wiping cloths, and work garments including cloth gloves.
40. "Meat" means the flesh of animals used as food including the dressed flesh of cattle, swine, sheep, or goats and other edible animals, except fish and poultry, that is offered for human consumption.
- 14- 41. "Mobile food unit" means a vehicle-mounted food service establishment designed to be readily movable.
42. "Molluscan shellfish" means any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle.
- 15- 43. "Packaged" means bottled, canned, cartoned, or securely bagged, or securely wrapped, whether packaged in a food establishment or a food processing plant. Packaged does not include a wrapper, carryout box, or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer.
- 16- 44. "Person" includes any individual, partnership, corporation, association, or other legal entity.
- 17- 45. "Person in charge" means the individual present in a food service establishment who is the--apparent--supervisor--of responsible for the food-service-establishment operation at the time of inspection. If--no--individual--is--the--apparent supervisor,--then-any-employee-present-is-the-person-in-charge-

46. "Personal care items" means items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene, or appearance. Personal care items include items such as medications; first-aid supplies; and other items such as cosmetics, and toiletries such as toothpaste and mouthwash.
47. "pH" means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between zero and seven indicate acidity and values between seven and fourteen indicate alkalinity. The value for pure distilled water is seven, which is considered neutral.
48. "Physical facilities" means the structure and interior surfaces of a food establishment including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air-conditioning system vents.
49. "Poisonous or toxic materials" means substances that are not intended for ingestion and are included in four categories:
- a. Cleaners and sanitizers, which include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;
 - b. Pesticides, which include substances such as insecticides and rodenticides;
 - c. Substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants and personal care items that may be deleterious to health; and
 - d. Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.
18. 50. "Potentially--dangerous--food"--means--any--food--that--consists--in--whole--or--in--part--of--milk--or--milk--products,--eggs,--meat,--poultry,--fish,--shellfish,--edible--crustacea,--or--other--ingredients,--including--synthetic--ingredients,--in--a--form--capable--of--supporting--rapid--and--progressive--growth--of--infectious--or--toxigenic--micro-organisms.--The--term--does--not--include--foods--which--have--a--pH--level--of--4.6--or--below--or--a--water--activity--(a_w)--value--of--0.85--or--less. "Potentially hazardous food".
- a. "Potentially hazardous food" means a food that is a natural or synthetic and is in a form capable of supporting:
 - (1) The rapid and progressive growth of infectious or toxigenic micro-organisms;

- (2) The growth and toxin production of clostridium botulinum; or
- (3) In shell eggs, the growth of salmonella enteritidis.
- b. "Potentially hazardous food" includes an animal food (a food of animal origin) that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; and garlic and oil mixtures.
- c. "Potentially hazardous food" does not include:
- (1) A food with a water activity (A_w (a_w)) value of 0.85 or less;
- (2) A food with a hydrogen ion concentration (PH(pH)) level of 4.6 or below when measured at seventy-five degrees Fahrenheit [24 degrees Celsius];
- (3) A food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; and
- (4) A food for which a variance granted by the department is based upon laboratory evidence demonstrating that rapid and progressive growth of infectious and toxigenic micro-organisms or the slower growth of C. botulinum cannot occur.
51. "Poultry" means any domesticated bird including chickens, turkeys, ducks, geese, or guineas, whether live or dead.
52. "Premises" means the physical facility, its contents, and the contiguous land or property under the control of the licenseholder; or the physical facility, its contents, and the contiguous land or property and its facilities and contents that are under the control of the licenseholder that may impact food establishment personnel, facilities, or operations, if a food establishment is only one component of a larger organization such as a health care facility, motel, school, recreational camp, or prison.
- 19- 53. "Pushcart" means a non-self-propelled vehicle limited to serving potentially hazardous foods or commissary-wrapped food maintained at proper temperatures, or limited to the preparation and service of frankfurters.
54. "Ready-to-eat food".
- a. "Ready-to-eat food" means food that is in a form that is edible without washing, cooking, or additional preparation

by the food establishment or the consumer and that is reasonably expected to be consumed in that form.

b. "Ready-to-eat food" includes:

(1) Unpackaged potentially hazardous food that is cooked to the temperature and time required for the specific food under section 33-33-04-11;

(2) Raw, washed cut fruits and vegetables;

(3) Whole, raw cut fruits and vegetables that are presented for consumption without the need for further washing, such as at a buffet; and

(4) Other food presented for consumption for which further washing or cooking is not required and from which rinds, peels, husks, or shells are removed.

20- 55. "Reconstituted" means dehydrated food products recombined with water or other liquids.

56. "Reduced oxygen packaging" means the reduction of the amount of oxygen in a package by mechanically evacuating the oxygen; displacing the oxygen with another gas or combination of gases; or otherwise controlling the oxygen content in a package to a level below that normally found in the surrounding atmosphere, which is twenty-one percent oxygen. Reduced oxygen packaging includes methods that may be referred to as altered atmosphere, modified atmosphere, controlled atmosphere, low oxygen, and vacuum packaging including sous vide.

21- 57. "Regulatory authority" means the state and local enforcement authority or authorities having jurisdiction over the food service establishment.

22- 58. "Safe materials material" means articles-manufactured-from-or composed-of-materials-that-may-not-reasonably-be--expected--to result,--directly-or-indirectly,-in-their-becoming-a-component or-otherwise-affecting-the-characteristics-of--any--food----If materials--used--are--food--additives--or--color--additives-as defined-in-section-201(s)-or-(t)-of-the--Federal--Food,--Drug, and-Cosmetic-Act-[Pub.-L.-75-717;-52-Stat.-1040;-21-U.S.C.-301 et-seq.],-they-are-"safe"-only-if-they-are-used-in--conformity with--regulations--established--pursuant--to--section--409--or section-706-of-the-Act.--Other-materials-are-"safe"--only--if, as--used,--they--are--not-food-additives-or-color-additives-as defined-in-section-201(s)-or-(t)-of-the--Federal--Food,--Drug, and--Cosmetic--Act--and--are--used--in--conformity--with--all applicable-regulations-of-the-food-and-drug-administration an article manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly,

in their becoming a component or otherwise affecting the characteristics of food; an additive that is used as specified in subsection 409 or 706 of the federal Food, Drug, and Cosmetic Act; or other materials that are not additives and that are used in conformity with applicable regulations of the food and drug administration.

- 23- 59. "Sanitization" means effective--bactericidal--treatment-by-a process-that-provides-enough-accumulated-heat-or-concentration-of-chemicals--for--enough-time-to-reduce-the-bacterial-count,-including-pathogens,-to-a-safe-level-on-utensils-and-equipment the application of cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, yield a reduction of five logs, which is equal to 99.999 percent reduction, of representative disease micro-organisms of public health importance.
- 24- 60. "Sealed" means free of cracks or other openings that permit the entry or passage of moisture.
61. "Servicing area" means an operating base location to which a mobile establishment or transportation vehicle returns regularly for such things as discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.
62. "Shellstock" or "shucked shellfish" means raw, in-shell molluscan shellfish or molluscan shellfish that have one or both shells removed.
- 25- 63. "Single-service articles" means cups,--containers,--lids, closures,--plates,--knives,--forks,--spoons,--stirrers,--paddles, straws,--napkins,--wrapping-materials,--toothpicks,-and-similar articles--intended--for--one-time,--one-person--use--and--then discarded tableware, carryout utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one-time, one-person use.
64. "Single-use articles" means utensils and bulk food containers designed and constructed to be used once and discarded. Single-use articles includes items such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number ten cans which do not meet the materials, durability, strength, and cleanability specifications contained in sections 33-33-04-32 and 33-33-04-38 for multiuse utensils.
65. "Support animal" means a trained animal such as a seeing eye dog that accompanies a person with a disability to assist in managing the disability and enables the person to perform functions that the person would otherwise be unable to perform.

- 26- 66. "Tableware" means ~~multiuse--eating--and--drinking--utensils~~ eating, drinking, and serving utensils for table use such as flatware including forks, knives, and spoons and holloware including bowls, cups, serving dishes, tumblers, and plates.
- 27- 67. "Temporary food service establishment" means a food service establishment that operates at a fixed location for a period of time of not more than fourteen consecutive days in conjunction with a single event or celebration.
68. "Thermometer" means a thermocouple, thermistor, or other device that indicates the temperature of food, air, or water.
- 28- 69. "Utensil" means ~~any---implement---used---in--the--storage, preparation, transportation, or service of food~~ a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multiuse, single-service, or single-use; gloves used in contact with food; and thermometers.
70. "Warewashing" means the cleaning and sanitizing of food-contact surfaces of equipment and utensils.
71. "Water activity" means a measure of the free moisture in a food, is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol $AW(a_s)$.

History: Effective August 1, 1988; amended effective June 1, 1991; July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-01.1. Intent - Scope. The purpose of this chapter is to safeguard public health and to provide consumers with food that is safe, unadulterated, and honestly presented. This chapter establishes definitions; sets standards for management and personnel, food operations, and equipment and facilities; and provides for food establishment plan review, license issuance, inspection, and employee restrictions.

History: Effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-02. ~~(2101)~~ General care of food supplies. Food shall be in sound condition, free from spoilage, filth, or other contamination and shall be safe for human consumption. Food shall be obtained from sources that comply with all laws relating to food and food labeling.

The use of food in hermetically sealed containers that was not prepared in a food processing establishment is prohibited.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-03. 21092 Special requirements.

1. Fluid milk and fluid milk products used or served shall be pasteurized and shall meet the grade A quality standards established by law. Dry milk and dry milk products shall be made from pasteurized milk and milk products.
2. Fresh and frozen shucked shellfish (oysters, clams, or mussels) shall be packed in nonreturnable packages identified with the name and address of the original shell stock processor, shucker-packer, or repacker, and the interstate certification number issued according to law. Shell stock and shucked shellfish shall be kept in the container in which they were received until they are used. Each container of unshucked shell stock (oysters, clams, or mussels) shall be identified by an attached tag or label that states the name and address of the original shell stock processor, the kind and quantity of shell stock, and an interstate certification number issued by the state or foreign shellfish control agency. Shell stock tags or labels shall be retained for ninety days from the date the container is emptied. Molluscan shellfish that are recreationally caught may not be received for sale or service.
3. Only clean whole eggs, with shell intact and without cracks or checks, or pasteurized liquids, frozen, or dry eggs or pasteurized dry egg products shall be used, except that hard-boiled, peeled eggs, commercially prepared and packaged, may be used.
4. Raw eggs may not be used as an ingredient in the preparation of uncooked, ready-to-eat menu items. Commercially pasteurized eggs and egg products may be substituted for shell eggs in such items. Pasteurized eggs are also potentially hazardous and must also be protected against contamination and time or temperature abuses.
5. ~~Shell-eggs-may-not-be-peeled-if-the-peeled-eggs-are-to-be-held-before-or--after--cooking---Shell--eggs--may--be--peeled--for~~ immediate--cooking--followed-by-immediate-service. Pasteurized liquid, frozen, or dry eggs or egg products must be substituted for shell eggs in the preparation of eggs for a highly susceptible population if the eggs are broken, combined in a container, and not cooked immediately or if the eggs are held before service following cooking.

6. Individually prepared eggs and pooled eggs shall be cooked to heat all parts to one hundred forty-five degrees Fahrenheit [63 degrees Celsius] or above for fifteen seconds.
7. Cooked eggs requiring holding before service shall be held at an internal temperature of one hundred forty degrees Fahrenheit [60 degrees Celsius] or above.
8. Fish, other than molluscan shellfish, that are intended for consumption in their raw form and allowed as specified under subsection 2 of section 33-33-04-11 must be obtained from a supplier that freezes the fish or shall be frozen on the premises as specified in section 33-33-04-11.5.
9. Fish may not be received for sale or service unless they are commercially and legally caught and harvested.
10. Mushroom species picked in the wild must be obtained from sources where each mushroom is individually inspected and found to be safe by a mushroom identification expert.
11. Game animals and exotic species may be received for sale or service if raised, slaughtered, and processed under a voluntary inspection program that is conducted by the agency that has animal health jurisdiction. The inspection of game animals and exotic species must include an antemortem and postmortem examination by a veterinarian.
12. Ice for use as a food or a cooling medium must be made from drinking water. After use as a cooling medium, ice may not be used as food.

History: Effective August 1, 1988; amended effective June 1, 1991; July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-04. {2201} General food protection. At all times, including while being stored, prepared, displayed, served, or transported, food shall be protected from potential contamination, including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs and sneezes, flooding, drainage, overhead leakage or overhead drippage from condensation. The temperature of potentially hazardous food shall be ~~forty-five~~ forty-one degrees Fahrenheit [~~7.2 5~~ degrees Celsius] or below or one hundred forty degrees Fahrenheit [60 degrees Celsius] or above at all times, except as otherwise provided in this chapter.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-05. {2202} Emergency occurrences. In the event of a fire, flood, power outage, or similar event that might result in contamination of food, or that might prevent potentially hazardous food from being held at required temperatures, the person in charge shall immediately contact the department. Upon receiving the notice of this occurrence, the department shall take whatever action that it deems necessary to protect the public health.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-06. {2301} General food storage.

1. Food, whether raw or prepared, if removed from the container or package in which it was obtained, shall be stored in a clean covered container except during necessary periods of preparation or service. Container covers shall be impervious and nonabsorbent, except that linens or napkins may be used for lining or covering bread or roll containers. Solid cuts of meat shall be protected by being covered in storage, except that quarters or sides of meat may be hung uncovered on clean sanitized hooks if no food product is stored beneath the meat.
2. Containers of food shall be stored a minimum of six inches [15.24 centimeters] above the floor in a manner that protects the food from splash and other contamination, and that permits easy cleaning of the storage area, except that:
 - a. Metal pressurized beverage containers, and cased food packaged in cans, glass, or other waterproof containers need not be elevated when the food containers are not exposed to floor moisture.
 - b. Containers may be stored on dollies, racks, or pallets, if such equipment is easily movable.
3. Food and containers of food shall not be stored under exposed or unprotected sewerlines or waterlines except for automatic fire protection sprinkler heads that may be required by law. The storage of food in toilet rooms or vestibules is prohibited.
4. Food not subject to further washing or cooking before serving shall be stored in a way that protects it against cross-contamination from food requiring washing or cooking. Food employees shall avoid contact with exposed ready-to-eat food with their bare hands and shall use suitable utensils, such as deli tissue, spatulas, tongs, or single-use gloves, except when washing fruits and vegetables as specified in section 33-33-04-06.1 or as otherwise authorized by the department.

5. Packaged food shall not be stored in contact with water or drained ice. Wrapped sandwiches shall not be stored in direct contact with ice.
6. Unless its identity is unmistakable, bulk food such as cooking oil, syrup, salt, sugar, or flour, not stored in the product container or package in which it was obtained, shall be stored in a container identifying the food by common name.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-07. {2302} Refrigerated storage.

1. Enough conveniently located refrigeration facilities or effectively insulated facilities shall be provided to assure the maintenance of potentially hazardous food at required temperatures during storage. Each mechanically refrigerated facility storing potentially hazardous food shall be provided with a numerically scaled indicating thermometer, accurate to plus or minus three degrees Fahrenheit [plus or minus ~~16.11~~ 1.7 degrees Celsius], located to measure the air temperature in the warmest part of the facility and located to be easily readable. Recording thermometers, accurate to ~~plus or minus three degrees Fahrenheit~~ [~~plus or minus 16.11~~ plus or minus 1.7 degrees Celsius], may be used in lieu of indicating thermometers.
2. Potentially hazardous food requiring refrigeration after preparation shall be rapidly cooled to an internal temperature of ~~forty-five~~ forty-one degrees Fahrenheit [~~7.2~~ 5 degrees Celsius] or below. Potentially hazardous foods of large volume or prepared in large quantities shall be rapidly cooled, utilizing such methods as shallow pans, agitation, quick chilling, or water circulation external to the food container so that the ~~cooling period shall not exceed four hours~~ food cools from one hundred forty degrees Fahrenheit [60 degrees Celsius] to seventy degrees Fahrenheit [21 degrees Celsius] within two hours and from seventy degrees Fahrenheit [21 degrees Celsius] to forty-one degrees Fahrenheit [5 degrees Celsius] or below within four hours. Potentially hazardous food to be transported shall be prechilled and held at a temperature of ~~forty-five~~ forty-one degrees Fahrenheit [~~7.2~~ 5 degrees Celsius] or below unless maintained in accordance with subsection 2 of section 33-33-04-08.
3. Frozen food shall be kept frozen and should be stored at a temperature of zero degrees Fahrenheit [17.78 degrees Celsius] or below.
4. ~~Ice intended for human consumption shall not be used as a medium for cooling stored food, food containers, or food~~

~~utensils,--except--that--such--ice--may--be--used--for--cooling--tubes
conveying--beverages--or--beverage--ingredients--to--a--dispenser
head.---Ice--used--for--cooling--stored--food--and--food--containers
shall--not--be--used--for--human--consumption. After use as a
medium for cooling the exterior surfaces of food such as
melons or fish, packaged foods such as canned beverages, or
cooling coils and tubes of equipment, ice may not be used as
food.~~

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-07.1. Ready-to-eat, potentially hazardous food - Date marking.

1. Except as specified in subsection 3, refrigerated, ready-to-eat, potentially hazardous food prepared and held for more than twenty-four hours in a food establishment must be marked with the date of preparation and consumed by date as specified under subsection 1 of section 33-33-04-07.2.
2. Except as specified in subsections 3 and 4, a container of refrigerated, ready-to-eat, potentially hazardous food prepared and packaged by a food processing plant must be marked to indicate the date, as specified under subsection 3 of section 33-33-04-07.2, by which the food shall be consumed.
3. Subsections 1 and 2 do not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request.
4. Subsection 2 does not apply to whole, unsliced portions of a cured and processed product with original casing maintained on the remaining portion, such as bologna, salami, or other sausage in a cellulose casing.

History: Effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-07.2. Ready-to-eat, potentially hazardous food - Disposition.

1. A food specified in subsection 1 of section 33-33-04-07.1 must be discarded if not consumed within ten calendar days from the date of preparation; or if maintained at forty-five degrees Fahrenheit [7 degrees Celsius], must be discarded after three days for ready-to-eat potentially hazardous foods.

2. Refrigerated, ready-to-eat, potentially hazardous food prepared in a food establishment and dispensed through a vending machine with an automatic shutoff control that is activated at a temperature of:
 - a. Forty-one degrees Fahrenheit [5 degrees Celsius] must be discarded if not sold within ten days, or
 - b. Forty-five degrees Fahrenheit [7 degrees Celsius] must be discarded if not sold within three days; and
3. A food specified in subsection 2 of section 33-33-04-07.1 must be discarded if not consumed within ten calendar days after the original package is opened in a food establishment.

History: Effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-07.3. Time as a public health control. Time only, rather than time in conjunction with temperature, may be used as the public health control for a working supply of potentially hazardous food before cooking, or for ready-to-eat potentially hazardous food that is displayed or held for service for immediate consumption, if:

1. The food is marked or otherwise identified with the time within which it must be cooked, served, or discarded;
2. The food is served or discarded within four hours from the point in time when the food is removed from temperature control;
3. Food in unmarked containers or packages, or for which the time expires, is discarded; and
4. Written procedures are maintained in the food establishment and made available to the regulatory authority upon request, to ensure compliance with:
 - a. Subsections 1 through 3; and
 - b. Section 33-33-04-07, for food that is prepared, cooked, and refrigerated before time is used as a public health control.

History: Effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-07.4. Consumption of raw or undercooked animal foods. If a raw or undercooked animal food such as beef, eggs, fish, lamb,

milk, pork, poultry, or shellfish is offered in a ready-to-eat form as a deli, menu, vended, or other item; or as a raw ingredient in another ready-to-eat food, the licenseholder shall inform consumers by brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means of the significantly increased risk associated with certain especially vulnerable consumers eating such foods in raw or undercooked form. See appendix A.

History: Effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-08. {2303} Hot storage.

1. Enough conveniently located hot food storage facilities shall be provided to assure the maintenance of food at the required temperature during storage. Each hot food facility storing potentially hazardous food shall be provided with a numerically scaled recording or indicating thermometer, accurate to plus or minus three degrees Fahrenheit [~~±16.11~~ plus or minus 1.7 degrees Celsius], located to measure the air temperature in the coolest part of the facility and located to be easily readable. Where it is impractical to install thermometers on equipment such as bainmaries, steamtables, steam kettles, heat lamps, cal-rod units, or insulated food transport carriers, a product thermometer must be available and used to check internal food temperature.
2. The internal temperature of potentially hazardous food requiring hot storage shall be one hundred forty degrees Fahrenheit [60 degrees Celsius] or above except during necessary periods of preparation. Potentially hazardous food to be transported shall be held at a temperature of one hundred forty degrees Fahrenheit [60 degrees Celsius] or above unless maintained in accordance with subsection 2 of section 33-33-04-07.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-09. {2401} General food preparation. Food shall be prepared with the least possible manual contact, with suitable utensils, and on surfaces that prior to use have been cleaned, rinsed, and sanitized to prevent cross-contamination.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-10. (2402)---Raw Washing raw fruits and raw vegetables. Raw fruits and raw vegetables shall be thoroughly washed with potable water before being cooked or served. Raw fruits and vegetables must be thoroughly washed in water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption in ready-to-eat form except that whole, raw fruits and vegetables that are intended for washing by the consumer before consumption need not be washed before they are sold.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-11. (2403) Cooking potentially hazardous foods. Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to a temperature of at least one hundred forty degrees Fahrenheit [60 degrees Celsius], except that:

1. Poultry, poultry stuffing, stuffed meats, and stuffing containing meat shall be cooked to heat all parts of the food to at least one hundred sixty-five degrees Fahrenheit [73.88 degrees Celsius] with no interruption of the cooking process.

2. Pork and any food containing pork shall be cooked to heat all parts of the food to at least one hundred fifty degrees Fahrenheit [65.55 degrees Celsius].

3. Rare roast beef shall be cooked to an internal temperature of at least one hundred thirty degrees Fahrenheit [54.4 degrees Celsius], and rare beefsteak shall be cooked to a temperature of one hundred thirty degrees Fahrenheit [54.4 degrees Celsius] unless otherwise ordered by the immediate consumer.

4. Individually prepared eggs and pooled eggs must be cooked to heat all parts to one hundred forty degrees Fahrenheit [60 degrees Celsius] or above.

5. Cooked eggs requiring holding before service must be held at an internal temperature of one hundred forty degrees Fahrenheit [60 degrees Celsius] or above.

1. Except as specified in subsections 2 and 3, raw animal foods such as eggs, fish, poultry, meat, and foods containing these raw animal foods, must be cooked to heat all parts of the food to a temperature and for a time that are at least:

a. One hundred forty-five degrees Fahrenheit [63 degrees Celsius] or above for fifteen seconds for:

(1) Shell eggs that are broken and prepared in response to a consumer's order and for immediate service; and

(2) Fish and meat that are not specified in subdivision b;

b. For pork and exotic species of game animals, comminuted fish and meats, injected meats, and eggs that are not prepared as specified in subdivision a, one hundred fifty-five degrees Fahrenheit [68 degrees Celsius] for fifteen seconds or the temperature specified in section 33-33-04-11.1 that corresponds to the cooking time;

c. As specified in section 33-33-04-11.3 for roasts of beef and corned beef; or

d. One hundred sixty-five degrees Fahrenheit [74 degrees Celsius] or above for fifteen seconds for wild game animals, poultry, stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, or stuffing containing fish, meat, or poultry.

2. Subsection 1 does not apply if:

a. Except for food establishments serving a highly susceptible population, the food is a raw animal food such as raw, marinated fish; raw molluscan shellfish; steak tartare; or a partially cooked food such as lightly cooked fish, rare meat, and soft cooked eggs that is served or offered for sale in a ready-to-eat form, and the consumer is informed as specified under section 33-33-04-07.4 that to ensure its safety, the food should be cooked as specified under subsection 1; or

b. The regulatory authority grants a variance from subsection 1 as specified in section 33-33-04-138 based on an HACCP plan that:

(1) Is submitted by the licenseholder and approved by the regulatory authority as specified under section 33-33-04-139;

(2) Documents scientific data or other information that shows that a lesser time and temperature regimen results in a safe food; and

(3) Verified that equipment and procedures for food preparation and training of food employees at the food establishment meet the conditions of the variance.

3. Beef roasts must be cooked:

a. In an oven that is preheated to the temperature specified for their weight in section 33-33-04-11.2 and that is held at or above that temperature; and

b. To a food temperature as specified in section 33-33-04-11.3 for the corresponding amount of time specified in section 33-33-04-11.3 for that temperature.

4. When ordered by the immediate consumer, whole muscle-intact beef steaks, which have been seared on both sides, shall be exempted from minimum cooking temperatures.

Minimum Cooking Times and Temperatures		
Temperatures	Time	Food
145°F [63°C]	15 seconds	shell eggs for individual order, immediate service, fish, seafood, beef, veal, lamb, mutton, etc. not specified below
155°F [68°C] 150°F [66°C] 145°F [63°C]	15 seconds, or 1 minute, or 3 minutes	pork, game animals, ground, chopped meat and fish, injected meats, eggs in multi-serving batches
165°F [74°C]	15 seconds	field dressed wild game, poultry, stuffing, meat pasta or poultry, stuffed fish, meat or poultry

History: Effective August 1, 1988; amended effective June 1, 1991; July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-11.1. Minimum food temperature and holding time. Minimum food temperature and holding time required under subparagraph 3-401.11(A)(2) for cooking all parts of pork and exotic species of game animals, comminuted fish and meats, and injected meats.

Minimum	
Temperature	Time
145°F [63°C]	3 minutes
150°F [66°C]	1 minute

History: Effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-11.2. Oven parameters required for destruction of pathogens. Oven parameters required for destruction of pathogens on the surface of roasts of beef and corned beef.

Oven Type	Oven Temperature	
	Roast Weight	
	Less than or equal to 4.5 kg (10 lbs)	Greater than 4.5 kg (10 lbs)
Still Dry	350°F [177°C]	250°F [121°C]
Convection	325°F [163°C]	325°F [163°C]
High Humidity ¹	less than 250°F [121°C]	less than 250°F [121°C]

¹Relative humidity greater than 90% for at least 1 hour as measured in the cooking chamber or exit of the oven; or in a moisture-impermeable bag that provides 100% humidity.

History: Effective July 1, 1997.
 General Authority: NDCC 19-02.1-20, 23-01-03(3)
 Law Implemented: NDCC 19-02.1-09

33-33-04-11.3. Minimum holding times required at specified temperatures. Minimum holding times required at specified temperatures for cooking all parts of roasts of beef and corned beef.

Temperature	Time ¹	Temperature	Time ¹	Temperature	Time ¹
130°F [54°C]	121 minutes	136°F [58°C]	32 minutes	142°F [61°C]	8 minutes
132°F [56°C]	77 minutes	138°F [59°C]	19 minutes	144°F [62°C]	5 minutes
134°F [57°C]	47 minutes	140°F [60°C]	12 minutes	145°F [63°C]	3 minutes

¹ Holding time may include post-oven heat rise.

History: Effective July 1, 1997.
 General Authority: NDCC 19-02.1-20, 23-01-03(3)
 Law Implemented: NDCC 19-02.1-09

33-33-04-11.4. Microwave cooking. Raw animal foods cooked in a microwave must be:

1. Rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat.
2. Covered to retain surface moisture.
3. Heated an additional twenty-five degrees Fahrenheit [14 degrees Celsius] above the temperature specified in subdivisions a, b, and d of subsection 1 of section 33-33-04-11.
4. Allowed to stand covered for two minutes after cooking to obtain temperature equilibrium.

History: Effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-11.5. Parasite destruction. Before service or sale in ready-to-eat form, raw, marinated, raw marinated, lightly cooked-marinated, or partially cooked fish other than molluscan shellfish must be frozen throughout to a temperature of:

1. Minus four degrees Fahrenheit [-20 degrees Celsius] or below for one hundred sixty-eight hours (seven days) in a freezer; or
2. Minus thirty-one degrees Fahrenheit [-35 degrees Celsius] or below for fifteen hours in a blast freezer.

History: Effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-12. {2404} Dry milk and dry milk products. Reconstituted dry milk and dry milk products may be used in instant desserts and whipped products; or for cooking and baking purposes.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-13. {2405} Liquid, frozen, dry eggs and egg products. Liquid, frozen, dry eggs and egg products shall be used only for cooking and baking purposes.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-14. {2406} Reheating. Potentially hazardous foods that have been cooked and then refrigerated, shall must be reheated rapidly to one hundred sixty-five degrees Fahrenheit [73.88 degrees Celsius] or higher for fifteen seconds throughout before being served or before being placed in a hot food storage facility. The use of steamtables, bainmaries, warmers, and similar hot food holding facilities for the rapid reheating of potentially hazardous foods is prohibited. Food reheated for hot holding in a microwave must be heated to a temperature of at least one hundred ninety degrees Fahrenheit [88 degrees Celsius] and allowed to stand two minutes after reheating. Ready-to-eat food taken from a commercially processed, hermetically sealed container, or from an intact package from a food processing plant that is inspected by the food regulatory authority that has jurisdiction over the plant, must be heated to a temperature of at least one hundred forty degrees Fahrenheit [50 degrees Celsius] for hot holding. Heating for hot holding must be done rapidly and the minimum temperature must be reached within two hours. Cooked and refrigerated food that is prepared for immediate service in response to an individual consumer order may be served at any temperature.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-15. {2407} Nondairy products. Nondairy creaming, whitening, or whipping agents may be reconstituted on the premises only when they are stored in sanitized, covered containers not exceeding one gallon [3.785 liters] in capacity and cooled to ~~forty-five~~ forty-one degrees Fahrenheit [~~7.2~~ 5 degrees Celsius] or below within four hours after preparation.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-16. {2408} Product thermometers. ~~Meta--stem-type numerically-sealed-indicating-thermometers,--accurate--to--#two--degrees Fahrenheit--[#-16.67--degrees--Celsius],--shall--be-provided-and-used-to assure-the--attainment--and--maintenance--of--proper--internal--cooking, holding,--or--refrigeration--temperatures--of--all--potentially-hazardous foods.~~ Repealed effective July 1, 1997.

History: Effective-August-1,-1988.
General Authority: NDCC-19-02.1-20,-23-01-03(3)
Law Implemented: NDCC-19-02.1-09

33-33-04-17. {2409} Thawing potentially hazardous foods. Potentially hazardous foods shall be thawed in any one of the following ways:

1. In refrigerated units at a temperature not to exceed ~~forty-five~~ forty-one degrees Fahrenheit [7.2 5 degrees Celsius].
2. Under potable running water of a temperature of seventy degrees Fahrenheit [21.1 degrees Celsius] or below, with sufficient water velocity to agitate and float off loose food particles into the overflow for a period of time that does not allow thawed portions of ready-to-eat food to rise above forty-one degrees Fahrenheit [5 degrees Celsius] or for a period of time that does not allow thawed portions of raw animal food requiring cooking to be above forty-one degrees Fahrenheit [5 degrees Celsius] for more than four hours including the time needed for preparation for cooking or the time it takes under refrigeration to lower the food temperature to forty-one degrees Fahrenheit [5 degrees Celsius].
3. In a microwave oven only when the food will be immediately transferred to conventional cooking facilities as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven.
4. As part of the conventional cooking process.

History: Effective August 1, 1988; amended effective July 1, 1997.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-18. {2501} Food display and service of potentially hazardous foods. Potentially hazardous foods shall be kept at an interval temperature of ~~forty-five~~ forty-one degrees Fahrenheit [7.2 5 degrees Celsius] or below or an interval temperature of one hundred forty degrees Fahrenheit [60 degrees Celsius] or above during display and service, except that rare roast beef shall be held for service at a temperature of at least one hundred thirty degrees Fahrenheit [54.4 degrees Celsius].

History: Effective August 1, 1988; amended effective July 1, 1997.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-18.1. Variance requirement. A food establishment shall obtain a variance from the department as specified in section 33-33-04-138 and under section 33-33-04-139 before smoking or curing food; brewing alcoholic beverages; using food additives as a method of food preservation rather than as a method of flavor enhancement; using a reduced oxygen method of packaging food except as specified in section 33-33-04-18.2 where a barrier to clostridium botulinum exists; custom processing animals that are for personal use as food and not for sale or service in a food establishment; or preparing food by another method that is determined by the department to require a variance.

History: Effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-18.2. Reduced oxygen packaging - Criteria.

1. A food establishment that packages food using a reduced oxygen packaging methods shall have an HACCP plan that contains the information specified under subsection 3 of section 33-33-04-142 which:

a. Identifies the food to be packaged;

b. Limits the food packaged to a food that does not support the growth of clostridium botulinum because it complies with one of the following:

(1) Has an Aw (a_w) of 0.91 or less;

(2) Has a PH (pH) of 4.6 or less;

(3) Is a meat product cured at a food processing plant regulated by the United States department of agriculture, using a combination of nitrites, nitrates, and salt that at the time of processing consists of one hundred twenty MG/L or higher concentration of sodium nitrite and a brine concentration of at least 3.50 percent and is received in an intact package; or

(4) Is a food with a high level of competing organisms such as raw meat or raw poultry;

c. Specifies methods for maintaining food at forty-one degrees Fahrenheit [5 degrees Celsius] or below;

d. Describes how the packages must be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to:

- (1) Maintain the food at forty-one degrees Fahrenheit [5 degrees Celsius] or below; and
 - (2) Discard the food if within fourteen calendar days of its packaging it is not served for on-premises consumption, or consumed if served or sold for off-premises consumption;
- e. Limits the shelf life to no more than fourteen calendar days from packaging to consumption or the original manufacturer's "sell by" or "use by" date, whichever occurs first;
- f. Includes operational procedures that:
- (1) Limit contacting food with bare hands;
 - (2) Identify a designated area and the method by which:
 - (a) Physical barriers or methods of separation of raw foods and ready-to-eat foods minimize cross-contamination; and
 - (b) Access to the processing equipment is restricted to responsible trained personnel familiar with the potential hazards of the operation; and
 - (3) Delineate cleaning and sanitization procedures for food-contact surfaces; and
- g. Ensure that the individual responsible for the reduced oxygen packaging operation understands the:
- (1) Concepts required for a safe operation;
 - (2) Equipment and facilities; and
 - (3) Procedures specified in subdivision f of subsection 1 and subsection 4 of section 33-33-04-142.
2. Except for fish that is frozen before, during, and after packaging, a food establishment may not package fish using a reduced oxygen packaging method.

History: Effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-19. {2502} Milk and cream dispensing.

1. Milk and milk products for drinking purposes shall ~~must~~ be provided to the consumer in an unopened, commercially filled

package not exceeding one pint [0.473 liters] in capacity, or drawn from a commercially filled container stored in a mechanically refrigerated bulk milk dispenser. Where a dispenser for milk and milk products is not available and portions of less than one-half pint [0.236 liters] are required for mixed drinks, cereal, or dessert service, milk and milk products may be poured from a commercially filled container of not more than one-half gallon [1.892 liters] capacity.

2. Cream of half and half shall must be provided in an individual service container, protected pour-type pitcher, or drawn from a refrigerated dispenser designed for such service.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-19.1. Dispensing equipment, protection of equipment, and food. In equipment that dispenses or vends liquid food or ice in unpackaged form:

1. The delivery tube, chute, orifice, and splash surfaces directly above the container receiving the food must be designed in a manner, such as with barriers, baffles, or drip aprons, so that drips from condensation and splash are diverted from the opening of the container receiving the food.
2. The delivery tube, chute, and orifice must be protected from manual contact and be designed so that the delivery tube or chute and orifice are protected from dust, insects, rodents, and other contamination by a self-closing door if the equipment is:
 - a. Located in an outside area that does not afford the protection of an enclosure against rain, windblown debris, insects, rodents, and other contaminants.
 - b. Available for self-service during hours when it is not under the full-time supervision of a food employee.
3. The dispensing equipment actuating lever or mechanism and filling device of consumer self-service beverage dispensing equipment must be designed to prevent contact with the lip contact surface of glasses or cups that are refillable.

History: Effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-19.2. Molluscan shellfish tanks. Molluscan shellfish life-support system display tanks that are used to store and display shellfish that are offered for human consumption must be operated and maintained to ensure that:

1. Water used with fish other than molluscan shellfish does not flow into the molluscan tanks.
2. The safety and quality of the shellfish as they were received are not compromised by use of the tank.
3. The identity of the source of the shell stock is retained as specified in subsection 2 of section 33-33-04-03.

History: Effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-20. {2503} Nondairy product dispensing. Nondairy creaming or whitening agents shall must be provided in an individual service container, protected pour-type pitcher, or drawn from a refrigerated dispenser designed for such service.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-21. {2504} Condiment dispensing.

1. Condiments, seasonings, and dressings for self-service use shall must be provided in individual packages, from dispensers, or from containers protected in accordance with section 33-33-04-25.
2. Condiments provided for table or counter service shall must be individually portioned, except that catsup and other sauces may be served in the original container or pour-type dispenser. Sugar for consumer use shall must be provided in individual packages or in pour-type dispensers.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-22. {2505} Ice dispensing. Ice for consumer use shall must be dispensed only by employees with scoops, tongs, or other ice-dispensing utensils or through automatic self-service, ice-dispensing equipment. Ice-dispensing utensils shall must be stored on a clean surface or in the ice with the dispensing utensil's handle extended out of the ice. Between uses, ice transfer receptacles shall

must be stored in a way that protects them from contamination. Ice storage bins shall be drained through an airgap. Liquid water drain lines may not pass through an ice machine or ice storage bin.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-23. {2506} Dispensing utensils. To avoid unnecessary manual contact with food, suitable dispensing utensils shall must be used by employees or provided to consumers who serve themselves. Between uses during service, dispensing utensils shall must be stored in any one of the following ways:

1. Stored in the food with the dispensing utensil handle extended out of the food.
2. Stored clean and dry.
3. Stored in running water.
4. Stored either in a running water dipper well, or clean and dry in the case of dispensing utensils and malt collars used in preparing frozen desserts.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-24. {2507} Re-serving. Once served to a consumer, portions of leftover food shall may not be served again, except that packaged food, other than potentially hazardous food, that is still packaged and is still in sound condition, may be re-served.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-25. {2508} Display equipment. Food on display shall must be protected from consumer contamination by the use of packaging or by the use of easily cleanable counter, serving line or salad bar protector devices, display cases, or other effective means. Enough hot or cold food facilities shall must be available to maintain the required temperature of potentially hazardous food on display.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-26. {2509} Reuse of tableware. Reuse of soiled tableware by self-service consumers returning to the service area for additional food is prohibited. Beverage cups and glasses are-exempt may be reused by self-service consumers if refilling is a contamination-free process.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-27. {2601} General food transportation. During transportation, food and food utensils shall must be kept in covered containers or completely wrapped or packaged so as to be protected from contamination. Foods in original individual packages do not need to be overwrapped or covered if the original package has not been torn or broken. During transportation, including transportation to another location for service or catering operations, food shall must meet the requirements relating to food protection and food storage.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-27.1. Management and personnel. The licenseholder shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the food establishment during all hours of operation.

History: Effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-27.2. Demonstration of knowledge. Based on the risks of foodborne illness inherent to the food operation, during inspections and upon request the person in charge shall demonstrate to the regulatory authority knowledge of foodborne disease prevention, application of the hazard analysis critical control point principles, and the requirements of this code, as it relates to the food operation. The person in charge shall demonstrate this knowledge by compliance with this code, or by being a certified food protection manager who has shown proficiency of required information through passing an accredited test, or by responding correctly to the inspector's questions as they relate to the specific food operation.

History: Effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

~~33-33-04-28. (3101)---General-employee-health;--No-person;-while infected-with-a-disease-in-a-communicable-form-that-can--be--transmitted by--foods-or-who-is-a-carrier-of-organisms-that-can-cause-such-a-disease or-while--afflicted--with--a--boil;--an--infected--wound;--or--an--acute respiratory-infection;--shall-work-in-a-food-service-establishment-in-any capacity-in-which-there-is-a-likelihood--of--such--person--contaminating food--or-food-contact-surfaces-with-pathogenic-organisms-or-transmitting disease-to-other-persons.~~ Employee health. (See appendix B). The licenseholder shall require food employee applicants to whom a conditional offer of employment is made and food employees to report to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food. A food employee or applicant shall report the information in a manner that allows the person in charge to prevent the likelihood of foodborne disease transmission, including the date of onset of jaundice or of an illness specified in subsection 3, if the food employee or applicant:

1. Is diagnosed with an illness due to:

- a. Salmonella typhi;
- b. Shigella spp.;
- c. Escherichia coli0157:H7; or
- d. Hepatitis A virus;

2. Has a symptom caused by illness, infection, or other source that is:

a. Associated with an acute gastrointestinal illness such as:

- (1) Diarrhea;
- (2) Fever;
- (3) Vomiting;
- (4) Jaundice; or
- (5) Sore throat with fever; or

b. A lesion containing pus such as a boil or infected wound that is open or draining and is:

- (1) On the hands or wrists, unless an impermeable cover such as a finger cot or stall protects the lesion and a single-use glove is worn over the impermeable cover;
- (2) On exposed portions of the arms, unless the lesion is protected by an impermeable cover; or

- (3) On other parts of the body, unless the lesion is covered by a dry, durable, tight-fitting bandage;
3. Had a past illness from an infectious agent specified in subsection 1; or
4. Meets one or more of the following high-risk conditions:
- a. Is suspected of causing, or being exposed to, a confirmed disease outbreak caused by S. typhi, Shigella spp., E. coli0157:H7, or hepatitis A virus illness including an outbreak at an event such as a family meal, church supper, or ethnic festival because the food employee or applicant:
- (1) Prepared food implicated in the outbreak;
- (2) Consumed food implicated in the outbreak; or
- (3) Consumed food at the event prepared by a person who is infected or ill with the infectious agent that caused the outbreak or who is suspected of being a carrier of the infectious agent; or
- b. Lives in the same household as a person who is diagnosed with a disease caused by S. typhi, Shigella spp., E. coli0157:H7, or hepatitis A virus infection;
- c. Lives in the same household as a person who attends or works in a setting where there is a confirmed disease outbreak caused by S. typhi, Shigella spp., E. coli0157:H7, or hepatitis A virus infection; or
- d. Traveled out of the United States within the last fifty calendar days.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-28.1. Employee exclusions and restrictions. The person in charge shall:

1. Exclude a food employee from a food establishment if the food employee is diagnosed with an infectious agent specified in subsection 1 of section 33-33-04-28.
2. Except as specified under subsection 3, restrict a food employee from working with exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles, in a food establishment if the food employee is:

- a. Suffering from a symptom specified in subsection 2 of section 33-33-04-28; or
 - b. Is not experiencing a symptom of acute gastroenteritis specified in subdivision a of subsection 2 of section 33-33-04-28 but has a stool that yields a specimen culture that is positive for Salmonella typhi.
3. If the population served is a highly susceptible population, exclude a food employee who:
- a. Is experiencing a symptom of acute gastrointestinal illness specified in subdivision a of subsection 2 of section 33-33-04-28 and meets a high-risk condition specified in subdivisions a through d of subsection 4 of section 33-33-04-28.
 - b. Is not experiencing a symptom of acute gastroenteritis specified in subdivision a of subsection 2 of section 33-33-04-28 but has a stool that yields a specimen culture that is positive for S. typhi, Shigella spp., or Escherichia coli0157:H7:
 - (1) Had a past illness from S. typhi within the last three months; or
 - (2) Had a past illness from Shigella spp. or E. coli0157:H7 within the last month.
4. For a food employee who is jaundiced:
- a. If the onset of jaundice occurred within the last seven calendar days, exclude the food employee from the food establishment; or
 - b. If the onset of jaundice occurred more than seven calendar days before:
 - (1) Exclude the food employee from a food establishment that serves a highly susceptible population; or
 - (2) Restrict the food employee from activities specified in subsection 2, if the food establishment does not serve a highly susceptible population.

History: Effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-28.2. Removal of exclusions and restrictions.

1. The person in charge may remove an exclusion specified in subsection 1 of section 33-33-04-28.1 if the person in charge obtains approval from the regulatory authority and if the person excluded as specified in subsection 1 of section 33-33-04-28.1 provides to the person in charge written medical documentation from a physician licensed to practice medicine that specifies that the excluded person:
 - a. May work in an unrestricted capacity in a food establishment, including an establishment that serves a highly susceptible population, because the person is free of:
 - (1) The infectious agent of concern as specified in section 33-33-04-28.8, or
 - (2) Symptoms, if hepatitis A virus is the infectious agent of concern; or
 - b. May only work in an unrestricted capacity in a food establishment that does not serve a highly susceptible population because the person is free of the symptoms specified in subdivision a of subsection 2 of section 33-33-04-28.
2. The person in charge may remove a restriction specified in:
 - a. Subdivision a of subsection 1 of section 33-33-04-28.1 if the restricted person:
 - (1) Is free of the symptoms specified in subsection 2 of section 33-33-04-28; and
 - (2) Provides written medical documentation from a physician licensed to practice medicine stating that the restricted person is free of the infectious agent that is suspected of causing the person's symptoms or causing foodborne illness, as specified in subsection 2 of section 33-33-04-28; or
 - (3) Provides written medical documentation from a physician licensed to practice medicine stating that the symptoms experienced result from a chronic noninfectious condition such as ulcerative colitis or irritable bowel syndrome; or
 - b. Subdivision b of subsection 2 of section 33-33-04-28.1 if the restricted person provides written medical documentation according to the criteria specified in section 33-33-04-28.8 that indicates the stools are free of Salmonella typhi.

3. The person in charge may remove an exclusion specified under subsection 3 of section 33-33-04-28.1 if the excluded person provides written medical documentation from a physician licensed to practice medicine that the person is free of S. typhi, Shigella spp., E coli0157:H7, or hepatitis A virus infection, whichever is the infectious agent of concern, as specified in section 33-33-04-28.8.
4. The person in charge may remove an exclusion specified in subdivisions a and b of subsection 4 of section 33-33-04-28.1 and a restriction specified in subdivision b of subsection 4 of section 33-33-04-28.1 if:
 - a. No foodborne illness occurs that may have been caused by the excluded or restricted person and the person:
 - (1) Provides written medical documentation from a physician licensed to practice medicine stating that the person is free of hepatitis A virus as specified in subdivision b of subsection 4 of section 33-33-04-28.8.
 - (2) Is no longer jaundiced; or
 - b. The excluded or restricted person is suspected of causing foodborne illness and complies with subdivision a.

History: Effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-28.3. Responsibility of a food employee or an applicant to report to the person in charge. A food employee or a person who applies for a job as a food employee shall:

1. In a manner specified in section 33-33-04-28, report to the person in charge the information specified in section 33-33-04-28.
2. Comply with exclusions and restrictions that are specified in section 33-33-04-28.1.

History: Effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-28.4. Reporting by the person in charge. The person in charge shall notify the regulatory authority of a food employee or a person who applies for a job as a food employee who is diagnosed with, or is suspected of having an illness due to, Salmonella typhi, Shigella spp., Escherichia coli0157:H7; or hepatitis A virus infection.

History: Effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-28.5. Obtaining information - Personal history of illness, medical examination, and specimen analysis. The department shall act when it has reasonable cause to believe that a food employee has possibly transmitted disease; may be infected with a disease in a communicable form that is transmissible through food; may be a carrier of infectious agents that cause a disease that is transmissible through food; or is affected with a boil, an infected wound, or acute respiratory infection, by:

1. Securing a confidential medical history of the employee suspected of transmitting disease or making other investigations as deemed appropriate; and
2. Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected employee and other employees.

History: Effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-28.6. Restriction or exclusion of food employee or summary suspension of license. Based on the findings of an investigation related to an employee who is suspected of being infected or diseased, the department may issue an order to the suspected employee or licenseholder instituting one or more of the following control measures:

1. Restricting the employee's services to specific areas and tasks in a food establishment that present no risk of transmitting the disease;
2. Excluding the employee from a food establishment; or
3. Closing the food establishment by summarily suspending a license to operate in accordance with law.

History: Effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-28.7. Restriction or exclusion order - Warning or hearing not required - Information required in order. Based on the findings of the investigation as specified in section 33-33-04-28.5 and to control disease transmission, the department may issue an order of

restriction or exclusion to a suspected employee or the licenseholder without prior warning, notice of a hearing, or a hearing if the order:

1. States the reasons for the restriction or exclusion that is ordered;
2. States the evidence that the employee or licenseholder shall provide in order to demonstrate that the reasons for the restriction or exclusion are eliminated;
3. States that the suspected employee or the licenseholder may request an appeal hearing by submitting a timely request as provided under law; and
4. Provides the name and address of the department representative to whom a request for an appeal hearing may be made.

History: Effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-28.8. Release of employee from restriction or exclusion. The department shall release an employee from restriction or exclusion according to law and the following conditions:

1. An employee who was infected with Salmonella typhi if the employee's stools are negative for Salmonella typhi based on testing of at least three consecutive stool specimen cultures that are taken:
 - a. Not earlier than one month after onset;
 - b. At least forty-eight hours after discontinuance of antibiotics; and
 - c. At least twenty-four hours apart; and
2. If one of the cultures taken as specified in subsection 1 is positive, repeat cultures are taken at intervals of one month until at least three consecutive negative stool specimen cultures are obtained.
3. An employee who was infected with Shigella spp. or Escherichia coli0157:H7 if the employee's stools are negative for Shigella spp., or Escherichia coli0157:H7 based on testing of two consecutive stool specimen cultures that are taken:
 - a. Not earlier than forty-eight hours after discontinuance of antibiotics; and
 - b. At least twenty-four hours apart.

4. An employee who was infected with hepatitis A virus if:
- a. Symptoms cease; or
 - b. At least two blood tests show falling liver enzymes.

History: Effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-29. {3201} General personal cleanliness. Employees shall thoroughly wash their hands and the exposed portions of their arms with soap and warm water for at least twenty seconds before starting work, during work as often as necessary to keep them clean, and after smoking, eating, drinking, or using the toilet, contacting body fluids and discharges, and when switching between working with raw foods and ready-to-eat foods. Food employees handling edible fish in aquariums, shellfish or crustacea in display tanks shall wash their hands before handling exposed food, cleaning equipment, utensils, and linens, or unwrapped single-service and single-use articles. Employees shall keep their fingernails clean and trimmed.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-30. {3301} General clothing.

1. The outer clothing of all employees shall must be clean.
2. ~~Employees shall use effective hair restraints to prevent the contamination of food or food contact surfaces.~~

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-31. {3401} General employee practices.

1. Employees shall may consume food only in designated dining areas. An employee dining area shall may not be so designated if consuming food there may result in contamination of other food, equipment, utensils, or other items needing protection.
2. Employees shall may not use tobacco in any form while engaged in food preparation or service, or while in areas used for equipment or utensil washing or food preparation. Employees shall may use tobacco only in designated areas. An employee tobacco-use area shall may not be designated for that purpose

if the use of tobacco there may result in contamination of food, equipment, utensils, or other items needing protection.

3. Employees shall handle soiled tableware in a way that minimizes contamination of their hands.
4. Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during all working periods in the food service establishment.
5. A food employee may drink from a closed beverage container if the container is handled to prevent contamination of the employee's hands, the container, and exposed food, equipment, utensils, linens, and single-service articles.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-31.1. Hair restraints.

1. Except as provided under subsection 2, food employees shall wear hair restraints such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that are designed and worn to effectively keep their hair from contacting exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.
2. This section does not apply to food employees such as counter staff who only serve beverages and wrapped or packaged foods, hostesses, and wait staff if they present a minimal risk of contaminating exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

History: Effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-32. (4101) General equipment and utensils materials.

Multiuse equipment and utensils shall be constructed and repaired with safe materials, including finishing materials, shall be corrosion resistant and nonabsorbent; and shall be smooth, easily cleanable, and durable under conditions of normal use. Single-service articles shall be made from clean, sanitary, safe materials. Equipment, utensils, and single-service articles shall not allow the migration of deleterious substances or impart odors, color, or taste;--nor--contribute--to--the contamination-of-food. Specific materials limitations are as follows:

1. Cast iron may not be used for utensils or food-contact surfaces of equipment except as a surface for cooking and in

utensils for serving food if the utensils are used only as part of an uninterrupted process from cooking through service.

2. Ceramic, china, crystal utensils, and decorative utensils such as hand-painted ceramic or china that are used in contact with food must be lead-free or contain levels of lead not excluding the following limits:

Utensil Category	Description	Maximum Lead
Hot Beverage Mugs	Coffee Mugs	0.5 mg/L
Large Hollowware	Bowls > 1.1L [1.16 QT]	1 mg/L
Small Hollowware	Bowls < 1.1L [1.16 QT]	2.0 mg/L
Flat Utensils	Plates, Saucers	3.0 mg/L

3. Copper and copper alloys such as brass may not be used in contact with a food that has a pH below six such as vinegar, fruit juice, or wine or for a fitting or tubing installed between a backflow prevention device and a carbonator.

4. Galvanized metal may not be used for utensils or food-contact surfaces of equipment that are used for beverages, acidic food, moist food, or hygroscopic food.

History: Effective August 1, 1998; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-33. {4102} Solder. If solder is used, it shall must be composed of safe materials and be corrosion resistant. Solder and flux containing lead in excess of 0.2 percent may not be used on surfaces that contact food.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-34. (4103) Wood. Hard maple or equivalently nonabsorbent material that meets the general requirements set forth in section 33-33-04-32 may be used for cutting blocks, cutting boards, salad bowls, and baker's tables. Wood may be used for single-service articles, such as chopsticks, stirrers, or ice cream spoons. The use of wood as a food-contact surface under other circumstances is prohibited.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-34.1. Cutting surfaces. Surfaces such as cutting blocks and boards that are subject to scratching and scoring must be resurfaced if they can no longer be effectively cleaned and sanitized or discarded if they are not capable of being sanitized.

History: Effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-35. (4104) Plastics. Safe plastic, safe rubber, or safe rubberlike materials that are resistant, under normal conditions of use, to scratching, scoring, decomposition, crazing, chipping, and distortion, that are of sufficient weight and thickness to permit cleaning and sanitizing by normal dishwashing methods, and which meet the general requirements set forth in section 33-33-04-32 are permitted for repeated use.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-36. (4105) Mollusk and crustacea shells. Mollusk and crustacea shells may be used only once as a serving container. Reuse of such shells for food service is prohibited.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-36.1. Slash-resistant gloves. Slash-resistant gloves that are used to protect hands during operations requiring cutting, may be used in direct contact only with food that is subsequently cooked. Slash-resistant gloves may be used with ready-to-eat foods that will not be subsequently cooked if the slash-resistant gloves have a smooth, durable, and nonabsorbent outer surface or are covered with a smooth, durable, nonabsorbent glove, or single-use glove.

History: Effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-37. {4106} Single-service articles. Reuse of single-service articles is prohibited.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-38. {4201} General design and fabrication. All equipment and utensils, including plasticware, shall be designed and fabricated for durability under conditions of normal use and shall must be resistant to denting, buckling, pitting, chipping, and crazing, and shall must meet the following standards as applicable:

1. Food-contact surfaces shall be easily cleanable, smooth, and free of breaks, open seams, cracks, chips, pits, and similar imperfections, and free of difficult-to-clean internal corners and crevices. ~~Cast-iron-may-be-used-as-a-food-contact-surface only--if--the--surface--is--heated,--such-as-in-grills,--griddle tops,--and--skillets.~~ Threads shall must be designed to facilitate cleaning, ordinary "V"-type threads shall may not be used in food-contact surfaces, except that in equipment such as icemakers or hot oil cooking equipment and hot oil filtering systems where such threads shall must be minimized.
2. Equipment containing bearings and gears requiring unsafe lubricants shall must be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces. Only safe lubricants shall may be used on equipment designed to receive lubrication of bearings and gears on or within food-contact surfaces.
3. Tubing conveying beverages or beverage ingredients to dispensing heads may be in contact with stored ice provided such tubing is fabricated from safe materials, is grommited at entry and exit points to preclude moisture (condensation) from entering the ice machine or the ice storage bin, and is kept clean. Drainage or drainage tubes from dispensing units shall may not pass through the ice machine or the ice storage bin.
4. Sinks and drainboards shall must be self-draining.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-39. {4202} Accessibility. Unless designed for in-place cleaning, food-contact surfaces shall must be accessible for cleaning and inspection in any of the following ways:

1. Without being disassembled.
2. By disassembling without the use of tools.
3. By easy disassembling with the use of only simple tools such as a mallet, a screwdriver, or an open-end wrench kept available near the equipment.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-40. {4203} In-place cleaning. Equipment intended for in-place cleaning shall must be so designed and fabricated that all of the following requirements are met:

1. Cleaning and sanitizing solutions are circulated throughout a fixed system using an effective cleaning and sanitizing regimen.
2. Cleaning and sanitizing solutions contact all interior food-contact surfaces.
3. The system is self-draining or capable of being completely evacuated.
4. Provides inspection access points to ensure all surfaces are being effectively cleaned.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-41. {4204} Pressure spray cleaning. Fixed equipment designed and constructed to be cleaned and sanitized by pressure spray methods shall have sealed electrical wiring, switches, and connections.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-42. {4205} Thermometers. Indicating--thermometers required-for-immersion-into-food-or-cooking--media--shall--be--of--metal stem-type--construction,-numerically-sealed-and-accurate-to-#two-degrees Fahrenheit-[-16.67-degrees-Celsius]. Thermometers may not have sensors or stems constructed of glass, except that thermometers with glass

sensors or stems that are encased in a shatterproof coating such as candy thermometers may be used. Thermometers that are scaled only in Celsius or dually scaled in Celsius and Fahrenheit must be accurate to plus or minus one point eight degrees Fahrenheit [plus or minus 1 degree Celsius]. Thermometers that are scaled only in Fahrenheit must be accurate to plus or minus two degrees Fahrenheit [plus or minus 1.1 degrees Celsius]. Ambient air and water thermometers that are scaled in Celsius or dually scaled in Celsius and Fahrenheit must be readable and accurate to plus or minus two point seven degrees Fahrenheit [plus or minus 1.5 degrees Celsius] at the use range. Ambient air and water thermometers that are scaled only in Fahrenheit must be accurate to plus or minus three degrees Fahrenheit [plus or minus 1.7 degrees Celsius] at the use range. Thermometers must be calibrated in accordance with manufacturer's specifications as necessary to ensure their accuracy.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-43. {4206} Nonfood-contact surfaces. Surfaces of equipment not intended for contact with food, but which are exposed to splash or food debris or which otherwise require frequent cleaning, shall must be designed and constructed to be smooth, washable, free of unnecessary ledges, projections, or crevices, and readily accessible for cleaning, and shall must be of such material and in such repair as to be easily maintained in a clean and sanitary condition. Kick plates must be designed so that the areas behind them are accessible for inspection and cleaning by being removable without being disassembled, by disassembling without the use of tools, or by easy disassembling with use of tools kept near the equipment and are accessible for use.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-44. {4207} Ventilation hoods. Ventilation hoods and devices shall must be designed to prevent grease or condensation from collecting on walls and ceilings and from dripping into food or onto food-contact surfaces. Filters or other grease-extracting equipment shall must be readily removable for cleaning and replacement if not designed to be cleaned in place.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-45. {4208} Existing equipment. Equipment installed in a food service establishment prior to ~~October 1, 1979~~ July 1, 1997, that does not fully meet all of the design and construction requirements of

this chapter, shall must be deemed acceptable in that establishment if it is in good repair, capable of being maintained in a sanitary condition, and if the food-contact surfaces are nontoxic. Replacement equipment and new equipment acquired after ~~October--1,--1979~~, shall July 1, 1997, must meet the requirements of this chapter.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-46. {4301} General equipment installation and location.

Equipment, including icemakers and ice storage equipment, shall may not be located under exposed or unprotected sewerlines or waterlines, open stairwells, or other sources of contamination. This requirement does not apply to automatic fire protection sprinkler heads that may be required by law.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-47. {4302} Table-mounted equipment.

1. Equipment that is placed on tables or counters, unless portable, shall must be sealed to the table or counter or elevated on legs to provide at least a four-inch [10.16-centimeter] clearance between the table or counter and equipment, and shall must be installed to facilitate the cleaning of the equipment and adjacent areas.
2. Equipment is portable within the meaning of subsection 1 if both of the following requirements are met:
 - a. Small and light enough to be moved easily by one person.
 - b. It has no utility connection, or has a utility connection that disconnects quickly, or has a flexible utility connection line of sufficient length to permit the equipment to be moved for easy cleaning.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-48. {4303} Floor-mounted equipment.

1. Floor-mounted equipment, unless easily movable, shall must be:
 - a. Sealed to the floor;

- b. Installed on a raised platform of concrete or other smooth masonry in a way that meets all the requirements for sealing or floor clearance; or
 - c. Elevated on legs to provide at least a six-inch [15.24-centimeter] clearance between the floor and equipment. However, vertically mounted floor mixers may be elevated to provide at least a four-inch [10.16-centimeter] clearance between the floor and equipment if no part of the floor under the mixer is more than six inches [15.24 centimeters] from cleaning access.
2. Equipment is easily movable if:
- a. It is mounted on wheels or casters; and
 - b. It has no utility connection or has a utility connection that connects quickly, or has a flexible utility line of sufficient length to permit the equipment to be moved for easy cleaning.
3. Unless sufficient space is provided for easy cleaning between, behind, and above each unit of fixed equipment, the space between it and adjoining equipment units and adjacent walls or ceilings shall be not more than one thirty-second of an inch [~~.794--millimeters~~ 1 millimeter]; or if exposed to seepage, the equipment shall must be sealed to the adjoining equipment or adjacent walls or ceilings.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-49. {4304} Aisles and working spaces. Aisles and working spaces between units of equipment and walls shall must be unobstructed and of sufficient width or space to permit employees to perform their duties readily without contamination of food or food-contact surfaces by clothing or personal contact. All easily movable storage equipment such as pallets, racks, and dollies shall must be positioned to provide accessibility to working areas.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-50. {5101} Cleaning frequency of equipment and utensils cleaning and sanitizing.

- 1. Tableware shall must be washed, rinsed, and sanitized after each use.

2. To prevent cross-contamination, kitchenware and food-contact surfaces of equipment shall must be washed, rinsed, and sanitized after each use and following any interruption of operations during which time contamination may have occurred.
3. Where equipment and utensils are used for the preparation of potentially hazardous foods on a continuous or production line basis, utensils and the food-contact surfaces of equipment shall must be washed, rinsed, and sanitized ~~at--intervals throughout--the--day--on-a-schedule-based-on-food-temperature, type-of-food,-and-amount-of-food-particle-accumulation~~ before each use with a different type of raw animal food or each time there is a change from working with raw foods and ready-to-eat foods.
4. The food-contact surfaces of grills, griddles, and similar cooking devices and the cavities and door seals of microwave ovens shall must be cleaned at least once a day. However, this shall does not apply to hot oil cooking equipment and hot oil filtering systems. The food-contact surfaces of all cooking equipment shall must be kept free of encrusted grease deposits and other accumulated soil.
5. Nonfood-contact surfaces of equipment shall must be cleaned as often as is necessary to keep the equipment free of accumulation of dust, dirt, food particles, and other debris.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-50.1. Returnables - Cleaning and refilling.

1. Except as specified in subsections 2 and 3, returned empty containers intended for cleaning and refilling with food must be cleaned and refilled in a regulated food processing plant.
2. A food-specific container for beverages may be refilled at a food establishment if:
 - a. Only a beverage that is not a potentially hazardous food;
 - b. The design of the container and of the rinsing equipment and the nature of the beverage, when considered together, allow effective cleaning at home or in the food establishment;
 - c. Facilities for rinsing before refilling returned containers with fresh, hot water that is under pressure and not recirculated are provided as part of the dispensing system;

d. The consumer-owned container returned to the food establishment for refilling is refilled for sale or service only to the same consumer; and

e. The container is refilled by:

(1) An employee of the food establishment; or

(2) The owner of the container if the beverage system includes a contamination-free transfer process that cannot be bypassed by the container owner.

3. Consumer-owned containers that are not food-specific may be filled at a water vending machine or system.

History: Effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-51. {5102} Wiping cloths.

1. Cloths used for wiping food spills on tableware, such as plates or bowls, being served to the consumer, shall must be clean, dry, and used for no other purpose.
2. Moist cloths or--sponges used for wiping food spills on kitchenware and food-contact surfaces of equipment shall must be clean and rinsed frequently in one of the sanitizing solutions permitted in section 33-33-04-52 and used for no other purpose. These cloths and--sponges--shall must be stored in the sanitizing solution between uses.
3. Moist cloths or--sponges used for cleaning nonfood-contact surfaces of equipment, such as counters, dining tabletops, and shelves, shall must be clean and rinsed as specified in subsection 2 and used for no other purpose. These cloths and sponges--shall must be stored in the sanitizing solution between uses.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-52. {5103} Manual cleaning and sanitizing.

1. For manual washing, rinsing, and sanitizing of utensils and equipment, a sink with not fewer than three compartments shall must be provided and used. Sink compartments shall must be large enough to permit the accommodation of the equipment and utensils, and each compartment of the sink shall must be supplied with hot and cold potable running water. Fixed

equipment and utensils and equipment too large to be cleaned in sink compartments shall must be washed manually or cleaned through pressure spray methods.

2. Drainboards or easily movable dish tables of adequate size shall must be provided for proper handling of soiled utensils prior to washing and for cleaned utensils following sanitizing, and shall must be located so as not to interfere with the proper use of the dishwashing facilities.
3. Equipment and utensils shall must be preflushed or prescraped and, when necessary, presoaked to remove gross food particles and soil.
4. Except for fixed equipment and utensils too large to be cleaned in sink compartments, manual washing, rinsing, and sanitizing shall must be conducted in the following sequence:
 - a. Sinks shall must be cleaned prior to use.
 - b. Equipment and utensils shall must be thoroughly washed in the first compartment with a hot detergent solution that is kept clean and maintained at not less than one hundred ten degrees Fahrenheit [43 degrees Celsius].
 - c. Equipment and utensils shall must be rinsed free of detergent and abrasives with clean water in the second compartment.
 - d. Equipment and utensils shall must be sanitized in the third compartment according to one of the methods included in subdivisions a through d of subsection 5.
 - e. Equipment and utensils may be air-dried and used only after adequate draining.
5. The food-contact surfaces of all equipment and utensils shall must be sanitized by any of the following methods:
 - a. Immersion for at least one-half minute in clean, hot water at a temperature of at least one hundred seventy degrees Fahrenheit [76.67 degrees Celsius].
 - b. Immersion for at least one minute in a clean solution containing at least fifty parts per million of available chlorine as a hypochlorite at a temperature of at least seventy-five degrees Fahrenheit [23.89 degrees Celsius].
 - c. Immersion for at least one minute in a clean solution containing at least twelve point five parts per million of available iodine and having a pH not higher than five point zero at a temperature of at least seventy-five degrees Fahrenheit [23.89 degrees Celsius].

- d. Immersion in a clean solution containing any other chemical sanitizing agent allowed under 21 CFR 178.1010 that will provide the equivalent bactericidal effect of a solution at least fifty parts per million of available chlorine as a hypochlorite at a temperature of at least seventy-five degrees Fahrenheit [23.89 degrees Celsius] for one minute.
 - e. Treatment with steam which is free from materials or additives other than those specified in 21 CFR 173.310, in the case of equipment too large to sanitize by immersion, but in which steam can be confined.
 - f. Rinsing, spraying, or swabbing with a chemical sanitizing solution at least twice the strength required for that particular sanitizing solution under subdivision d in the case of equipment too large to sanitize by immersion.
6. When hot water is used for sanitizing, all of the following facilities shall must be provided and used:
- a. An integral heating device or fixture installed in, on, or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least one hundred seventy seventy-one degrees Fahrenheit [76.67 degrees Celsius] or above.
 - b. A numerically scaled indicating thermometer, accurate to plus or minus three degrees Fahrenheit [plus or minus ~~16-11~~ 1.7 degrees Celsius], convenient to the sink for frequent checks of water temperature.
 - c. Dish baskets of such size and design to permit complete immersion of the tableware, kitchenware, and equipment in the hot water.
7. When chemicals are used for sanitization, they shall may not have concentrations higher than the maximum permitted under 21 CFR 178.1010 and a test kit or other device that accurately measures the parts per million concentration of the solution shall be provided and used.
8. A warewashing sink may not be used for handwashing or dumping mop water.
9. A warewashing sink may be used to wash wiping cloths, wash produce, or thaw food if the sink is cleaned and sanitized before and after each time it is used to wash wiping cloths, wash produce, or thaw food.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-53. (5104) Mechanical cleaning and sanitizing.

1. Cleaning and sanitizing may be done by spray-type or immersion dishwashing machines or by any other type of machine or device, if it is demonstrated that it thoroughly cleans and sanitizes equipment and utensils. These machines and devices shall must be properly installed and maintained in good repair. The machines must be provided with an easily accessible and readable data plate that indicate the machines design and operating specifications. These machines and devices shall must be operated in accordance with manufacturers' instructions, and utensils and equipment placed in these machines shall must be exposed to all dishwashing cycles. Automatic detergent dispensers, wetting agent dispensers, and liquid sanitizer injectors, if any, shall must be properly installed and maintained.
2. The pressure of final rinse water supplies to spray-type dishwashing machines shall may not be less than fifteen nor more than twenty-five pounds per square inch [11.34 kilograms per 6.45 square centimeters] measured in the waterline immediately adjacent to the final rinse control valve. A one-fourth inch [6.35 millimeters] IPS valve shall must be provided immediately downstream or upstream from the final rinse control valve to permit checking the flow pressure of the final rinse water.
3. Machine or waterline mounted numerically scaled indicating thermometers, accurate to plus or minus three degrees Fahrenheit [plus or minus ~~±6.11~~ 1.7 degrees Celsius], shall be provided to indicate the temperature of the water in each tank of the machine and the temperature of the final rinse water as it enters the manifold.
4. Rinse water tanks shall must be protected by baffles, curtains, or other effective means, to minimize the entry of wash water into the rinse water. Conveyors in dishwashing machines shall must be accurately timed to assure proper exposure times in wash and rinse cycles, in accordance with manufacturers' specifications attached to the machines.
5. Drainboards shall must be provided and be of adequate size for the proper handling of soiled utensils prior to washing and cleaned utensils following sanitization, and shall must be so located and constructed as not to interfere with the proper use of the dishwashing facilities. This does not preclude the use of easily movable dish tables for the storage of clean or soiled utensils following sanitization.
6. Equipment and utensils shall must be flushed or scraped and, when necessary, soaked to remove gross food particles and soil prior to being washed in a dishwashing machine, unless a prewash cycle is a part of the dishwashing machine operation.

Equipment and utensils shall must be placed in racks, trays, or baskets, or on conveyors, in a way that food-contact surfaces are exposed to the unobstructed application of detergent wash and clean rinse waters and that permits free draining.

7. Machines (single-tank, stationary-rack, door-type machines and spray-type glass washers) using chemicals for sanitization may be used if the following requirements are met:

- a. The temperature of the wash water shall may not be less than one hundred twenty degrees Fahrenheit [48-89 49 degrees Celsius].
- b. The wash water shall must be kept clean.
- c. Chemicals added for sanitization purposes shall must be automatically dispensed.
- d. Utensils and equipment shall must be exposed to the final chemical sanitizing rinse in accordance with manufacturers' specifications for time and concentration.

e. ~~The--chemical--sanitizing--rinse--water--temperature--shall--be--not--less--than--seventy-five--degrees--Fahrenheit--{23-89--degrees--Celsius},--nor--less--than--the--temperature--specified--by--the--machine's--manufacturer.~~ A chemical sanitizer used in a sanitizing solution for a manual or mechanical operation must be used in accordance with the EPA-approved manufacturer's label use instructions, and must be used as follows:

(1) A chlorine solution must have a minimum temperature based on the concentration and PH (pH) of the solution as listed in the following chart:

Minimum Concentration	Minimum Temperature	
	MG/L (mg/L)	PH (pH) 10 or less
25	120°F [49°C]	120°F [49°C]
50	100°F [38°C]	75°F [24°C]
100	55°F [13°C]	55°F [13°C]

Equipment and utensils may be sanitized using a chlorine solution that is applied as the final step in a commercial spray-type warewashing machine and that, upon completion of the machine operation, results in a minimum residual concentration of fifty parts per million free available chlorine on the wetted surfaces and utensils. This method is

acceptable only when the complete cycle of the warewashing machine has been demonstrated to be effective in rendering utensils free of soil and micro-organisms of public health significance.

(2) An iodine solution must have a:

(a) Minimum temperature of seventy-five degrees Fahrenheit [24 degrees Celsius];

(b) PH (pH) of 5.0 or less, unless the manufacturer's use directions included in the labeling specify a higher PH (pH) limit of effectiveness; and

(c) Concentration between 12.5 MG/L(mg/L) and twenty-five MG/L(mg/L);

(3) A quaternary ammonium compound solution must:

(a) Have a minimum temperature of seventy-five degrees Fahrenheit [24 degrees Celsius];

(b) Have a concentration as specified by the manufacturer's use directions included in the labeling; and

(c) Be used only in water with five hundred MG/L(mg/L) hardness or less;

(4) Other solutions of the chemicals specified in paragraphs 1 through 3 may be used if demonstrated to the regulatory authority to achieve sanitization and approved by the regulatory authority; or

(5) Other chemicals sanitizers may be used if they are applied in accordance with the manufacturer's use directions included in the labeling.

f. Chemical sanitizers used shall must meet the requirements of 21 CFR 178.1010.

g. A test kit or other device that accurately measures the parts per million concentration of the solution shall mus be available and used.

8. Machines using hot water for sanitization may be used if the wash water and pumped rinse water is kept clean and the water is maintained at not less than the temperature stated in this section.

a. Single-tank, stationary-rack, dual temperature machine:

Wash temperature One hundred fifty degrees Fahrenheit
[~~65-55~~ 66 degrees Celsius]
Final rinse temperature One hundred eighty degrees
Fahrenheit [82.22 degrees
Celsius]

b. Single-tank, stationary-rack, single-temperature machine:

Wash temperature One hundred sixty-five degrees
Fahrenheit [73.88 degrees Celsius]

Final rinse temperature One hundred sixty-five
degrees Fahrenheit
[73.88 degrees Celsius]

c. Single-tank, conveyor machine:

Wash temperature One hundred sixty degrees
Fahrenheit
[~~71-11~~ 71 degrees Celsius]

Final rinse temperature One hundred eighty degrees
Fahrenheit [82.22 degrees Celsius]

d. Multitank, conveyor machine:

Wash temperature One hundred fifty degrees Fahrenheit
[~~65-55~~ 66 degrees Celsius]

Pumped rinse temperature One hundred sixty degrees Fahrenheit
[~~71-11~~ 71 degrees Celsius]

Final rinse temperature One hundred eighty degrees Fahrenheit
[82.22 degrees Celsius]

e. Single-tank, pot, pan, and utensil washer (either
stationary or moving rack):

Wash temperature One hundred forty degrees Fahrenheit
[60 degrees Celsius]

Final rinse temperature One hundred eighty degrees Fahrenheit
[82.22 degrees Celsius]

9. All dishwashing machines shall must be thoroughly cleaned at least once a day or more often when necessary to maintain them in a satisfactory operating condition.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-54. {5105} Drying. After sanitization, all equipment and utensils shall must be air dried.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-55. {5201} Handling of equipment and utensil storage. Cleaned and sanitized equipment and utensils shall must be handled in a way that protects them from contamination. Spoons, knives, and forks shall may be touched only by their handles. Cups, glasses, bowls, plates, and similar items shall must be handled without contact with inside surfaces or surfaces that contact the user's mouth.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-56. {5202} Storage.

1. Cleaned and sanitized utensils and equipment shall must be stored at least six inches [15.24 centimeters] above the floor in a clean, dry location in a way that protects them from contamination by splash, dust, and other means. The food-contact surfaces of fixed equipment shall must also be protected from contamination. Equipment and utensils shall may not be placed under exposed sewerlines or waterlines, except for automatic fire protection sprinkler heads that may be required by law.
2. Utensils shall must be air dried before being stored or shall must be stored in a self-draining position.
3. Glasses and cups shall must be stored inverted. Other stored utensils shall must be covered or inverted, whenever practical. Facilities for the storage of knives, forks, and spoons shall must be designed and used to present the handle to the employee or consumer. Unless tableware is prewrapped, holders for knives, forks, and spoons at self-service locations shall must protect these articles from contamination and present the handle of the utensil to the consumer.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-56.1. Preset tableware. Tableware may be preset if:

1. It is protected from contamination by being wrapped, covered, or inverted;

2. It is exposed and unused settings are removed when a consumer is seated; or
3. It is exposed and unused settings are not removed when a consumer is seated, and are cleaned and sanitized before further use.

History: Effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-57. {5203} Single-service articles.

1. Single-service articles shall be stored at least six inches [15.24 centimeters] above the floor in closed cartons or containers which protect them from contamination and shall not be placed under exposed sewerlines or waterlines, except for automatic fire protection sprinkler heads that may be required by law.
2. Single-service articles shall be handled and dispensed in a manner that prevents contamination of surfaces which may come in contact with food or with the mouth of the user.
3. Single-service knives, forks, and spoons packaged in bulk shall be inserted into holders or be wrapped by an employee who has washed one's hands immediately prior to sorting or wrapping the utensils. Unless single-service knives, forks, and spoons are prewrapped or prepackaged, holders shall be provided to protect these items from contamination and present the handle of the utensil to the consumer.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-58. {5204} Prohibited storage areas. The storage of food, equipment, utensils, or single-service articles in locker rooms, garbage rooms, under open stairwells, toilet rooms, or vestibules is prohibited.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-59. {6101} General water supplies. ~~Enough-potable water-for-the-needs-of-the-food-service-establishment-shall-be--provided from-a-source-constructed-and-operated-according-to-law.~~ Drinking water must be obtained from an approved source that is a public water system

or a nonpublic water system that is constructed, maintained, and operated according to law.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-60. {6102} Transportation. All potable water not provided directly by pipe to the food service establishment from the source shall be transported in a bulk water transport system and shall be delivered to a closed-water system. Both of these systems shall be constructed and operated according to law.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-61. {6103} Bottled water. Bottled and packaged potable water shall be obtained from a source that complies with all laws and shall be handled and stored in a way that protects it from contamination. Bottled and packaged potable water shall be dispensed from the original container.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-62. {6104} Water under pressure. Water under pressure at the required temperatures shall be provided to all fixtures and equipment that use water.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-62.1. Water reservoir of fogging devices.

1. A reservoir that is used to supply water to a device such as a produce fogger must be:

a. Maintained in accordance with manufacturer's specifications; and

b. Cleaned in accordance with manufacturer's specifications or according to the procedures specified under subsection 2 whichever is more stringent.

2. Cleaning procedures must include at least the following steps and must be conducted at least once a week:

- a. Draining and complete disassembly of the water and aerosol contact parts;
- b. Brush-cleaning the reservoir, aerosol tubing, and discharge nozzles with a suitable detergent solution;
- c. Flushing the complete system with water to remove the detergent solution and particulate accumulation; and
- d. Rinsing by immersing, spraying, or swabbing the reservoir, aerosol tubing, and discharge nozzles with at least fifty MG/L (mg/L) hypochlorite solution.

History: Effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-63. {6105} **Steam.** Steam used in contact with food or food-contact surfaces shall be free from any materials or additives other than those specified in 21 CFR 173.310.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-64. {6201} **General sewage.** All sewage, including liquid waste, shall be disposed of by a public sewerage system or by a sewage disposal system constructed and operated according to law. Nonwater-carried sewage disposal facilities are prohibited, except as permitted by sections 33-33-04-125 and 33-33-04-132 (pertaining to temporary food service establishments), or as permitted by this department in remote areas or because of special situations.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-65. {6301} **General plumbing.** Plumbing shall be sized, installed, and maintained according to law. There shall be no cross-connection between the potable water supply and any nonpotable or questionable water supply or any source of pollution through which the potable water supply might become contaminated.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-66. {6302} **Nonpotable water system.** Use of a nonpotable water system is permitted only for purposes such as

air-conditioning and fire protection, and only if the system is installed according to law and the nonpotable water does not contact, directly or indirectly, food, potable water, equipment that contacts food, or utensils. The piping of any nonpotable water system shall be durably identified so that it is readily distinguishable from piping that carries potable water.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-67. {6303} Backflow. The potable water system shall be installed to preclude the possibility of backflow. Devices shall be installed to protect against backflow and back siphonage at all fixtures and equipment where an airgap at least twice the diameter of the water supply inlet is not provided between the water supply inlet and the fixture's flood level rim. A hose shall not be attached to a faucet unless a backflow prevention device is installed.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-68. {6304} Grease traps. If used, grease traps shall be located to be easily cleaned.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-69. {6305} Garbage grinders. If used, garbage grinders shall be installed and maintained according to law.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-70. 6306 Drains. Except for properly trapped open sinks, there shall be no direct connection between the sewerage system and any drains originating from equipment in which food, portable equipment, or utensils are placed. When a dishwashing machine is located within five feet [1.52 meters] of a trapped floor drain, the dishwasher waste outlet may be connected directly on the inlet side of a properly vented floor drain trap.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-71. {6401} Toilet facility installation. Toilet facilities shall be installed according to law, shall be the number required by law, shall be conveniently located, and shall be accessible to employees at all times.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-72. {6402} Toilet design. Toilets and urinals shall be designed to be easily cleaned.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-73. {6403} Toilet rooms. Toilet rooms shall be completely enclosed and shall have tight-fitting, self-closing, solid doors, which shall be closed except during cleaning or maintenance unless otherwise provided by law.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-74. {6404} Toilet fixtures. Toilet fixtures shall be kept clean and in good repair. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials. Toilet rooms used by women shall have at least one covered waste receptacle.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-75. {6501} Lavatory facility installation.

1. Lavatories shall be at least the number required by law, shall be installed according to law, and shall be located to permit convenient use by all employees in food preparation and utensil-washing areas.
2. Lavatories shall be accessible to employees at all times.
3. Lavatories shall also be located in or immediately adjacent to toilet rooms. Sinks used for food preparation or for washing equipment or utensils shall not be used for handwashing.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-76. {6502} Lavatory faucets. Each lavatory shall be provided with hot and cold water tempered to at least one hundred ten degrees Fahrenheit [43 degrees Celsius] by means of a mixing valve or combination faucet. Any self-closing, slow-closing, or metering faucet shall be designed to provide a flow of water for at least fifteen seconds without the need to reactivate the faucet. Use of steam-mixing valves is prohibited.

History: Effective August 1, 1988; amended effective July 1, 1997.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-77. {6503} Lavatory supplies. A supply of hand-cleansing soap or detergent shall be available at each lavatory. A supply of sanitary disposable towels, clean continuous towel system, or a hand-drying device providing heated air shall be conveniently located near each lavatory. The use of common towels is prohibited. If disposable towels are used, easily cleanable waste receptacles shall be conveniently located near the handwashing facilities.

History: Effective August 1, 1988; amended effective July 1, 1997.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-78. {6504} Lavatory maintenance. Lavatories, soap dispensers, hand-drying devices; and all related fixtures shall be kept clean and in good repair.

History: Effective August 1, 1988; amended effective July 1, 1997.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-79. {6601} Garbage and refuse containers.

1. Garbage and refuse shall be kept in durable, easily cleanable, insect and rodent-proof containers that do not leak and do not absorb liquids. Plastic bags and wet-strength paper bags may be used to line these containers or for storage inside the food service establishment.
2. Containers used in food preparation and utensil washing areas shall be kept covered after they are filled.
3. Containers stored outside the establishment, and dumpsters, compactors, and compactor systems shall be easily cleanable, shall be provided with tight-fitting lids, doors, or covers,

and shall be kept covered when not in actual use. In containers designed with drains, drain plugs shall be in place at all times, except during cleaning.

4. There shall be a sufficient number of containers to hold all the garbage and refuse that accumulates.
5. Soiled containers shall be cleaned at a frequency to prevent insect and rodent attraction. Each container shall be thoroughly cleaned on the inside and outside in a way that does not contaminate food, equipment, utensils, or food preparation areas. Suitable facilities, including hot water and detergent or steam, shall be provided and used for washing containers. Liquid waste from compacting or cleaning operations shall be disposed of as sewage.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-80. {6602} Storage.

1. Garbage and refuse on the premises shall be stored in a manner which makes them inaccessible to insects and rodents. Outside storage of unprotected plastic bags or wet-strength paper bags or baled units containing garbage or refuse is prohibited. Cardboard or other packaging materials not containing garbage or food wastes need not be stored in covered containers.
2. Garbage or refuse storage rooms, if used, shall be constructed of easily cleanable, nonabsorbent, washable materials, shall be kept clean, shall be insect-proof and rodent-proof, and shall be large enough to store the garbage and refuse containers that accumulate.
3. Outside storage areas or enclosures shall be large enough to store the garbage and refuse containers that accumulate and shall be kept clean. Garbage and refuse containers, dumpsters, and compactor systems located outside shall be stored on or above a smooth surface or nonabsorbent material, such as concrete or machine-laid asphalt, that is kept clean and, maintained in good repair, and sloped to drain.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-81. {6603} Disposal.

1. Garbage and refuse shall be disposed of often enough to prevent the development of odor and the attraction of insects and rodents.
2. Where garbage or refuse is burned on the premises, it shall be done by controlled incineration which prevents the escape of particulate matter in accordance with law. Areas around incineration facilities shall be clean and orderly.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-82. {6701} General insect and rodent control.

Effective measures intended to minimize the presence of rodents, flies, cockroaches, and other insects on the premises shall be utilized. The premises shall be kept in such condition as to prevent the harborage or feeding of insects or rodents. Devices that are used to electrocute flying insects must be designed to have "escape-resistant" trays. Devices that are used to electrocute flying insects and that may impel insects or insect fragments or to trap insects by adherence must be installed so that:

1. The devices are not located over a food preparation area.
2. Dead insects and insect fragments are prevented from being impelled onto or falling on exposed food, clean equipment, utensils, and linens, and unwrapped single-service and single-use articles.

Dead or trapped birds, insects, rodents, and other pests must be removed from control devices and the premises at a frequency that prevents their accumulation, decomposition, or the attraction of pests. Rodent bait must be contained in covered, tamper-resistant bait stations. A tracking powder pesticide may not be used in a food establishment. If used, a nontoxic tracking powder such as talcum or flour, may not contaminate food, equipment, utensils, linens, and single-service articles.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-83. {6702} Openings. Openings to the outside shall be effectively protected against the entrance of rodents. Outside openings shall be protected against the entrance of insects by tight-fitting, self-closing doors, closed windows, screening, controlled air currents, or other means. Screen doors shall be self-closing, and screens for windows, doors, skylights, transoms, intake and exhaust air ducts, and other openings to the outside shall be tight fitting and free of breaks.

Screening material shall not be less than sixteen mesh to the inch [2.54 centimeters].

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-84. {7101} Construction and maintenance of floor construction. Floors and floor coverings of all food preparation, food storage, and utensil-washing areas, walk-in refrigerating units, dressing rooms, locker rooms, toilet rooms, and vestibules shall be constructed of smooth durable material, such as sealed concrete, terrazzo, ceramic tile, durable grades of linoleum or plastic, or tight wood impregnated with plastic, and shall be maintained in good repair. Nothing in this section shall prohibit the use of antislip floor covering in areas where necessary for safety reasons.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-85. {7102} Floor carpeting. Carpeting, if used as a floor covering, shall be of closely woven construction, properly installed, easily cleanable, and maintained in good repair. Carpeting is prohibited in food preparation, equipment-washing, and utensil-washing areas where it would be exposed to large amounts of grease and water, in food storage areas, refuse storage areas, and toilet room areas where urinals or toilet fixtures are located.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-86. {7103} Prohibited floor covering. The use of sawdust, wood shavings, peanut hulls, or similar material as a floor covering is prohibited.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-87. {7104} Floor drains. Properly installed, trapped floor drains shall be provided in floors that are water-flushed for cleaning, or that receive discharges of water or other fluid waste from equipment, or in areas where pressure spray methods for cleaning equipment are used. Such floors shall be constructed only of sealed concrete, terrazzo, ceramic tile, or similar materials, and shall be graded to drain.

History: Effective August 1, 1988; amended effective July 1, 1997.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-88. {7105} Mats and duckboards. Mats and duckboards shall be of nonabsorbent, grease-resistant materials and of such size, design, and construction as to facilitate easy cleaning. Duckboards shall not be used as storage racks.

History: Effective August 1, 1988; amended effective July 1, 1997.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-89. {7106} Floor junctures. In all new or extensively remodeled establishments utilizing concrete, terrazzo, ceramic tile, or similar flooring materials, and where water-flush cleaning methods are used, the junctures between walls and floors shall not present an open seam of more than one thirty-second of an inch [~~794-millimeters~~ 1 millimeter].

History: Effective August 1, 1988; amended effective July 1, 1997.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-90. {7107} Utility line installation. Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the floor. In all new or extensively remodeled establishments, installation of exposed horizontal utility lines and pipes on the floor is prohibited.

History: Effective August 1, 1988; amended effective July 1, 1997.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-91. {7201} Wall and ceiling maintenance. Walls and ceilings, including doors, windows, skylights, and similar closures, shall be maintained in good repair.

History: Effective August 1, 1988; amended effective July 1, 1997.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-92. {7202} Construction. The walls, including nonsupporting partitions, wall coverings, and the ceilings of walk-in refrigerating units, food preparation areas, equipment and utensil-washing areas, toilet rooms, and vestibules shall be light colored, smooth, nonabsorbent, and easily cleanable. Concrete or pumice

blocks used for interior wall construction in these locations shall be finished and sealed to provide an easily cleanable surface.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-93. {7203} Exposed construction. Studs, joists, and rafters shall not be exposed in walk-in refrigerating units, food preparation areas, equipment and utensil-washing areas, toilet rooms, and vestibules. If exposed in other rooms or areas, they shall be finished to provide an easily cleanable surface.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-94. {7204} Utility line installation. Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the walls and ceilings. Utility service lines and pipes shall not be unnecessarily exposed on walls or ceilings in walk-in refrigerating units, food preparation areas, equipment and utensil-washing areas, toilet rooms, and vestibules.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-95. {7205} Attachments. Light fixtures, vent covers, wall-mounted fans, decorative materials, and similar equipment attached to walls and ceilings shall be easily cleanable and shall be maintained in good repair.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-96. {7206} Covering material installation. Wall and ceiling covering materials shall be attached and sealed as to be easily cleaned.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-97. {7301} General cleaning physical facilities. Cleaning of floor and walls, except emergency cleaning of floors, shall

be done during periods when the least amount of food is exposed, such as after closing or between meals. Floors, mats, duckboards, walls, ceilings, and attached equipment and decorative materials shall be kept clean. Only dustless methods of cleaning floors and walls shall be used, such as vacuum cleaning, wet cleaning, or the use of dust-arresting sweeping compounds with brooms.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-98. {7302} Utility facility. In new or extensively remodeled establishments at least one utility sink or curbed cleaning facility with a floor drain shall be provided and used for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mopwater or similar liquid wastes. The use of lavatories, utensil or equipment-washing, or food preparation sinks for this purpose is prohibited in new or extensively remodeled establishments.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-99. {7401} General lighting.

1. Permanently fixed artificial light sources shall must be installed to provide at least twenty fifty foot-candles of light on all food preparation surfaces and-at-equipment-or utensil-washing-work-levels where equipment such as knives, slicers, grinders, and saws are used.
2. Permanently fixed artificial light sources shall must be installed to provide, at a distance of thirty inches [76.2 centimeters] from the floor.
 - a. At least twenty foot-candles of light at a distance of thirty inches [75 centimeters] above the floor in utensil and equipment storage areas and in lavatory and toilet areas; and
 - b. At least ten foot-candles of light at a distance of thirty inches [75 centimeters] above the floor in walk-in refrigerating units, dry food storage areas, and in all other areas, including dining areas during cleaning operations.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-100. {7402} Protective shielding.

1. Shielding to protect against broken glass falling onto food shall must be provided for all artificial lighting fixtures located over, by, or within food storage, preparation, service, and display facilities.
2. Infrared or other heat lamps shall must be protected against breakage by a shield surrounding and extending beyond the bulb, leaving only the face of the bulb exposed.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-101. {7501} General ventilation. All rooms shall have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke, and fumes. Ventilation systems shall be installed and operated according to law and, when vented to the outside, shall not create an unsightly, harmful, or unlawful discharge.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-102. {7502} Special ventilation.

1. Intake and exhaust air ducts shall be maintained to prevent the entrance of dust, dirt, and other contaminating materials.
2. In new or extensively remodeled establishments, all rooms from which obnoxious odors, vapors, or fumes originate shall be mechanically vented to the outside.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-103. {7601} Dressing rooms or areas. If employees routinely change clothes within the establishment, rooms or areas shall be designated and used for that purpose. These designated rooms or areas shall not be used for food preparation, storage or service, or for utensil washing or storage.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-104. {7602} Locker area. Enough lockers or other suitable facilities shall be provided and used for the orderly storage of employee clothing and other belongings. Lockers or other suitable facilities may be located only in the designated dressing rooms, in food storage rooms, or areas containing only completely packaged food or packaged single-service articles.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-105. {7701} Poisonous or toxic materials permitted. There shall be present in food service establishments only those poisonous or toxic materials necessary for maintaining the establishment, cleaning and sanitizing equipment and utensils, and controlling insects and rodents. This section does not apply to packaged poisonous or toxic materials that are for retail sale.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-106. {7702} Labeling of materials. Containers of poisonous or toxic materials shall be ~~prominently and distinctly labeled according to law for easy identification of contents~~ bear a legible manufacturer's label. Working containers used for storing poisonous or toxic materials such as cleaners and sanitizers taken from bulk supplies must be clearly and individually identified with the common name of the material.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-107. {7703} Storage of materials.

1. Poisonous or toxic materials consist of the following ~~three~~ four categories:
 - a. ~~Insecticides and rodenticides~~ Pesticides.
 - b. Detergents, sanitizers, and related cleaning or drying agents.
 - c. ~~Gausties, acids, polishes, and other chemicals~~ Substances necessary for the operation and maintenance of the establishment such as nonfood-grade lubricants and personal care items that may be deleterious to health.

d. Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.

2. Each of the ~~three~~ four categories set forth in subsection 1 shall must be stored and physically located separate from each other. All poisonous or toxic materials shall be stored in cabinets or in a similar physically separate place used for no other purpose. To preclude contamination, poisonous or toxic materials shall not be stored above food, food equipment, utensils, or single-service articles, except that this requirement does not prohibit the convenient location of detergents or sanitizers at utensil or dishwashing stations.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-108. {7704} Use of materials.

1. Bactericides, cleaning compounds, or other compounds intended for use on food-contact surfaces shall not be used in a way that leaves a toxic residue on such surfaces or that constitutes a hazard to employees or other persons.
2. Poisonous or toxic materials shall not be used in a way that contaminates food, equipment, or utensils, in a way that constitutes a hazard to employees or other persons, or in a way other than in full compliance with the manufacturer's labeling.
3. A container previously used to store poisonous or toxic materials may not be used to store, transport, or dispense food.
4. Drying agents used in conjunction with sanitization may contain only components that are listed in 21 Code of Federal Regulations.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-109. {7705} Personal medications. ~~Personal medications shall not be stored in food-storage, preparation, or service areas~~ Only those medicines necessary for the health of employees are allowed in a food establishment. This section does not apply to medicines that are stored or displayed for retail sale. Medicines for employees use must be labeled as specified in section 33-33-04-106 and located to prevent the contamination of food, equipment, utensils, linens, and single-service articles.

History: Effective August 1, 1988; amended effective July 1, 1997.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-110. {7706} First-aid supplies. First-aid supplies shall be stored in a way that prevents them from contaminating food and food-contact surfaces.

History: Effective August 1, 1988; amended effective July 1, 1997.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-111. {7801} General premises.

1. Food service establishments and all property used in connection with their operations shall be kept free of litter.
2. The walking and driving surfaces of all exterior areas of food service establishments shall be surfaced with concrete or asphalt, or with gravel or similar material effectively treated to facilitate maintenance and minimize dust. These surfaces shall be graded to prevent pooling and shall be kept free of litter.
3. Only articles necessary for the operation and maintenance of the food service establishment shall be stored on the premises.
4. The traffic of unnecessary persons through the food preparation and utensil-washing areas is prohibited.

History: Effective August 1, 1988; amended effective July 1, 1997.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-112. {7802} Living areas. No operations of a food service establishment shall be conducted in any room used as living or sleeping quarters. Food service operations shall be separated from any living or sleeping quarters by complete partitioning and solid, self-closing doors.

History: Effective August 1, 1988; amended effective July 1, 1997.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-113. {7803} Laundry facilities.

1. Laundry facilities in a food service establishment shall be used only for the washing and drying of linens, cloths,

uniforms, and aprons necessary to the operation. If such items are laundered on the premises, an electric or gas dryer shall be provided and used.

2. Separate rooms shall be provided for laundry facilities except that such operations may be conducted in storage rooms containing only packaged foods or packaged single-service articles.
3. If on-premises laundering is limited to wiping cloths intended to be used moist, or air dried in a location and manner that prevents contamination of food, equipment, utensils, linens, and the wiping cloths, a mechanical washer and dryer need not be provided. The wiping cloths may be laundered in a warewashing or food preparation sink that is cleaned before use, throughout the day at a frequency to prevent recontamination, or if used, at least every twenty-four hours.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-114. {7804} Linen and clothes storage.

1. Clean clothes and linens shall be stored in a clean place and protected from contamination until used.
2. Soiled clothes and linens shall be stored in nonabsorbent containers or washable laundry bags until removed for laundering.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-115. {7805} Cleaning equipment storage. Maintenance and cleaning tools such as brooms, mops, vacuum cleaners, and similar equipment shall be maintained and stored in a way that does not contaminate food, utensils, equipment, or linens and shall be stored in an orderly manner.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-116. {7806}--Animals Prohibiting animals. Live-animals, including-birds-and-turtles, shall-be-excluded--from--the--food--service premises--and-from-adjacent-areas-under-the-control-of-the-permit-holder. This-exclusion-does-not-apply-to-edible-fish, crustacea, shellfish, or fish---in---aquariums.---Patrol--dogs--accompanying--security--or--police

~~officers, or guide dogs accompanying blind persons, shall be permitted in dining areas.~~

1. Except as specified in subsections 2 and 3, live animals may not be allowed on the premises of a food establishment.
2. Live animals may be allowed in the following situations if the contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles cannot result:
 - a. Edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems;
 - b. Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;
 - c. In areas that are not used for food preparation such as dining and sales areas, support animals such as guide dogs that are trained to assist an employee or other person who is handicapped, are controlled by the handicapped employee or person, and are not allowed to be on seats or tables; and
 - d. Pets in the common dining areas of group residences at times other than during meals if:
 - (1) Effective partitioning and self-closing doors separate the common dining areas from food storage or food preparation areas;
 - (2) Condiments, equipment, and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present; and
 - (3) Dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service.
3. Live or dead fish bait must be stored so that contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles cannot result.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-117. {8101} General mobile food service. Mobile food units or pushcarts shall comply with the requirements of this chapter, except as otherwise provided in this section and in section

33-33-04-118. The department may impose additional requirements to protect against health hazards related to the conduct of the food service establishment as a mobile operation, may prohibit the sale of some or all potentially hazardous food, and when no health hazard will result, may waive or modify requirements of this chapter relating to physical facilities, except those requirements of sections 33-33-04-120, 33-33-04-121, 33-33-04-122, 33-33-04-123, and 33-33-04-124, which may not be waived.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-118. {8102} General mobile food service - Restricted operations. Mobile food units or pushcarts serving only food prepared, packaged in individual servings, transported and stored under conditions meeting the requirements of this chapter, or beverages that are not potentially hazardous and are dispensed from covered urns or other protected equipment, need not comply with requirements of this chapter pertaining to the necessity of water and sewage systems or those requirements pertaining to the cleaning and sanitization of equipment and utensils if the required equipment for cleaning and sanitization exists at the commissary. However, frankfurters may be prepared and served from these units or pushcarts.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-119. {8103} Single-service articles. Mobile food units or pushcarts shall provide only single-service articles for use by the consumer.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-120. {8104} Water system. A mobile food unit requiring a water system shall have a potable water system under pressure. The system shall be of sufficient capacity to furnish enough hot and cold water for food preparation, utensil cleaning and sanitizing, and handwashing, in accordance with the requirements of this chapter. The water inlet shall be located so that it will not be contaminated by waste discharge, road dust, oil, or grease, and it shall be kept capped unless being filled. The water inlet shall be provided with a transition connection of a size or type that will prevent its use for any other service. All water distribution pipes or tubing shall be constructed and installed in accordance with the requirements of this chapter. A hose used for conveying drinking water from a water tank must have a smooth interior surface, be of good grade material, and, if

not permanently attached, be clearly and durably identified as to its use. A water tank, pump, and hoses used for conveying drinking water may be used for no other purpose.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-121. {8105} Waste retention. If liquid waste results from operation of a mobile food unit, the waste shall be stored in a permanently installed retention tank that has a capacity of at least fifteen percent or larger than the water supply tank. Liquid waste shall not be discharged from the retention tank when the mobile food unit is in motion. All connections of the vehicle for servicing mobile food unit waste disposal facilities shall be of a different size or type than those used for supplying potable water to the mobile food unit. The waste connection shall be located lower than the water inlet connection to preclude contamination of the potable water system.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-122. {8201} Base of commissary operations.

1. Mobile food units or pushcarts shall operate out of a commissary or other fixed food service establishment and shall report at least daily to all such locations for all supplies and cleaning and servicing operations.
2. The commissary or other fixed food service establishments used as a base of operation for mobile food units or pushcarts shall be constructed and operated in compliance with the requirements of this section.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-123. {8301} Serving area and operations.

1. A mobile food unit servicing area shall be provided and shall include at least overhead protection for any supplying, cleaning, or servicing operation. Within this servicing area there shall be a location provided for the flushing and drainage of liquid wastes which is separate from the locations provided for water servicing and for the loading and unloading of food and related supplies. This servicing area will not be required where only packaged food is placed on the mobile food

unit or pushcart, or where mobile food units do not contain waste retention tanks.

2. The surface of the servicing area shall be constructed of a smooth nonabsorbent material, such as concrete or machine-laid asphalt, and shall be maintained in good repair, kept clean, and graded to drain.
3. The construction of the walls and ceilings of the servicing area is exempted from the provision of sections 33-33-04-91 through 33-33-04-96.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-124. {8302} Servicing operations.

1. Potable water servicing equipment shall be installed according to law and shall be stored and handled in a way that protects the water and equipment from contamination.
2. The mobile food unit liquid waste retention tank, where used, shall be thoroughly flushed and drained during the servicing operation. All liquid waste shall be discharged into a sanitary sewerage disposal system in accordance with section 33-33-04-64.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-125. {9101} Temporary food service establishment. A temporary food service establishment shall comply with the requirements of this chapter, except as otherwise provided in this section. The department may impose additional requirements to protect against health hazards, related to the conduct of the temporary food service establishments, may prohibit the sale of some or all potentially hazardous foods, and when no health hazard will result, may waive or modify requirements of this chapter relating to temporary food service establishments.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-126. {9102} Temporary food service establishment - Restricted operations.

1. This section is applicable whenever a temporary food service establishment is permitted, under the provisions of section 33-33-04-125 to operate without complying with all the requirements.
2. Only those potentially hazardous foods requiring limited preparation, such as hamburgers and frankfurters that only require seasoning and cooking, shall be prepared or served. The preparation or service of other potentially hazardous foods, including pastries filled with cream or synthetic cream, custards, and similar products, and salads or sandwiches containing meat, poultry, eggs, or fish, is prohibited. This prohibition does not apply to any potentially hazardous food that has been prepared and packaged under conditions meeting the requirements of this chapter, is packaged in individual servings, is stored at a temperature of ~~forty-five~~ forty-one degrees Fahrenheit [~~7-2~~ 5 degrees Celsius] or below or at a temperature of one hundred forty degrees Fahrenheit [60 degrees Celsius] or above in facilities meeting the requirements of this chapter, and is served directly in the unopened container in which it was packaged.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-127. {9103} Ice. Ice that is consumed or that contacts food shall be made under conditions meeting the requirements of this chapter. The ice shall be obtained only in chipped, crushed, or cubed form and packaged in single-use safe plastic or wet-strength paper bags filled and sealed at the point of manufacture. The ice shall be held in these bags until it is dispensed in a way that protects it from contamination.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-128. {9104} Equipment.

1. Equipment shall be located and installed in a way that prevents food contamination and that also facilitates cleaning the establishment.
2. Food-contact surfaces of equipment shall be protected from contamination by consumers and other contaminating agents. Effective shields for such equipment shall be provided, as necessary, to prevent contamination.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-129. {9105} Single-service articles. All temporary food service establishments without effective facilities for cleaning and sanitizing tableware shall provide only single-service articles for use by the consumer.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-130. {9106} Water. Enough potable water shall be available in the establishment for food preparation, for cleaning and sanitizing utensils and equipment, and for handwashing. A heating facility capable of producing enough hot water for these purposes shall be provided on the premises.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-131. {9107} Wet storage. Storage of packaged food in contact with water or undrained ice is prohibited. Wrapped sandwiches shall not be stored in direct contact with ice.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-132. {9108} Waste. All sewage, including liquid waste, shall be disposed of according to law.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-133. {9109} Handwashing. A convenient handwashing facility shall be available for employee handwashing. At a minimum, this facility shall consist of warm running water, soap, and individual paper towels.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-134. {9110} Floors. Floors shall be constructed of concrete, asphalt, tight wood, or other similar cleanable material kept

in good repair. However, dirt or gravel, when graded to drain, may be used as subflooring when covered with clean, removable platforms or duckboards, or covered with wood chips, shavings, or other suitable materials effectively treated to control dust.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-135. {9111} Walls and ceilings of food preparation areas.

1. Ceilings shall be made of wood, canvas, or other material that protects the interior of the establishment from the weather. Walls and ceilings of food preparation areas shall be constructed in a way that prevents the entrance of insects. Doors to food preparation areas shall be solid or screened and shall be self-closing. Screening material used for walls, doors, or windows shall be at least sixteen mesh to the inch [2.54 centimeters].
2. Counter-service openings shall be no larger than necessary for the particular operation conducted. These openings shall must be provided with tight-fitting solid or screened doors or windows or shall be provided with fans installed and operated to restrict the entrance of flying insects. Counter-service openings shall be kept closed, except when in actual use.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-136. {10205} Inspection report form FD 2420. The inspection report form is attached to this chapter as an appendix. Repealed effective July 1, 1997.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-137. {10401} Submission of plans. Whenever a food service establishment is constructed or extensively remodeled, and whenever an existing structure is converted to use as a food service establishment, properly prepared plans and specifications for such construction, remodeling, or conversion shall must be submitted to this the department for review and approval before construction, remodeling, or conversion is begun. The plans and specifications shall must indicate the intended menu, anticipated volume of food to be stored, prepared, and sold or served, proposed layout, arrangement, mechanical plans, and construction materials of work areas, and the types and

models of proposed fixed equipment and facilities. The department shall approve the plans and specifications if they meet the requirements of this chapter. No food service establishment shall may be constructed, extensively remodeled, or converted except in accordance with plans and specifications approved by the department.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-138. (10402) Preoperational inspection. Whenever plans and specifications are required by section 33-33-04-137 to be submitted to the department, the department shall inspect the food service establishment prior to the start of operations to determine compliance with the approved plans and specifications and with the requirements of this chapter.

History: Effective August 1, 1988; amended effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-139. Modifications and waivers. The department may grant a variance by modifying or waiving the requirements of this code if in the opinion of the department a health hazard will not result from the variance. If a variance is granted, the department shall retain the information specified in section 33-33-04-140 in its records for the food establishment.

History: Effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-140. Documentation of proposed variance and justification. Before a variance from a requirement of this code is approved by the department, the information that must be provided by the person requesting the variance and retained by the department's file on the food establishment includes:

1. A statement of the proposed variance of the code requirement citing relevant code section numbers;
2. An analysis of the rationale for how the potential public health hazards addressed by the relevant code sections will be alternatively addressed by the proposal;
3. An HACCP plan if required as specified in subsection 1 of section 33-33-04-142 which includes the information specified in section 33-33-04-143 so it is relevant to the variance requested.

History: Effective July 1, 1997.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-141. Conformance with approved procedures. If the department grants a variance as specified in section 33-33-04-139, or an HACCP plan is otherwise required as specified in section 33-33-04-142, the licenseholder shall:

1. Comply with the HACCP plans and procedures that are submitted and approved as specified in section 33-33-04-143 as a basis for the modification or waiver.
2. Maintain and provide to the department, upon request, records specified in subsection 3 of section 33-33-04-143 which demonstrate that the following are routinely employed:
 - a. Procedures for monitoring critical control points.
 - b. Monitoring the critical control points.
 - c. Verification of the effectiveness of an operation or process.
 - d. Necessary corrective actions if there is failure at a critical control point.

History: Effective July 1, 1997.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-142. When an HACCP plan is required.

1. Before engaging in an activity that requires an HACCP plan, a license applicant or licenseholder shall submit to the department for approval a properly prepared HACCP plan as specified under section 33-33-04-143 and the relevant provisions of this code if:
 - a. Submission of an HACCP plan is required according to law;
 - b. A variance is required as specified under section 33-33-04-18.1;
 - c. The department determines that a food preparation or processing method requires a variance based on a plan submittal specified under section 33-33-04-137, an inspectional finding, or a variance request.
2. A license applicant or licenseholder must have a properly prepared HACCP plan as specified under section 33-33-04-18.1.

History: Effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-143. Contents of an HACCP plan. For a food establishment that is required under section 33-33-04-142 to have an HACCP plan, the plan and specifications must indicate:

1. A categorization of the types of potentially hazardous foods that are specified in the menu such as soups and sauces, salads, and bulk, solid foods such as meat roasts, or of other foods that are specified by the department;
2. A flow diagram by specific food or category type identifying critical control points and providing information on the following:
 - a. Ingredients, materials, and equipment used in the preparation of that food; and
 - b. Formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved;
3. A statement of standard operating procedures for the plan under consideration including clearly identifying:
 - a. Each critical control point;
 - b. The critical limits for each critical control point;
 - c. The method and frequency for monitoring and controlling each critical control point by the food employee designated by the person in charge;
 - d. The method and frequency for the person in charge to routinely verify that the food employee is following standard operating procedures and monitoring critical control points;
 - e. Action to be taken by the person in charge if the critical limits for each critical control point are not met; and
 - f. Records to be maintained by the person in charge to demonstrate that the HACCP plan is properly operated and managed; and
4. Additional scientific data or other information, as required by the department, supporting the determination that food safety is not compromised by the proposal.

History: Effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

Consumer Advisories

Thoroughly cooking foods of animal origin such as beef, eggs, fish, lamb, pork, poultry or shellfish reduces the risk of foodborne illness. Individuals with certain health conditions may be at higher risk if these foods are consumed raw or undercooked. Consult your physician or public health official for further information.

EXCLUSIONS & RESTRICTIONS

Note: These tables are not a replacement to reading sections 33-33-04-28 through 33-33-04-28.8, but are viewed only as a learning aid.

Note: A diagnosis can only be made after an individual has been examined by a physician. The code does not mandate that an individual see a physician, but because of the severity of an illness with the "Big 4", most of those afflicted will visit their doctor.

Key for Abbreviations: FBI - foodborne illness; GI - gastrointestinal; HAV - hepatitis A virus; IgG - Immune gama globulin; MD - medical doctor; PIC - person in charge

GENERAL POPULATION FACILITIES		REINSTATING:
EXCLUDE	If diagnosed with "Big 4": S. Typhi, Shigella spp., E. Coli 0157:H7 & HAV (per 33-33-04-28.1(1), agents listed in 33-33-04-28(1)).	Regulatory approval & MD clearance: free of symptoms and negative stool for S. typhi (per 33-33-04-28.2(1) via 33-33-04-28.8). Asymptomatic & positive stools for Shigella & 0157:H7 are OK, (per 33-33-04-28.2(1)(b)).
	Jaundice ≤ 7 days (per 33-33-04-28.1(4)(a)) (Cause of jaundice may not be HAV)	1) If diagnosed as HAV, then regulatory approval & MD clearance; jaundice ceases or at least 2 blood tests show falling liver enzymes, (per 33-33-04-28.2(1)(a)(i & ii) via 33-33-04-28.8(4)). 2) If not seen by MD , then via the PIC when jaundice ceases (per 33-33-04-28.2(4)(a)(ii)). 3) Free of/not HAV via MD documentation (per 33-33-04-28.2(4)(a)(i)). 4) If suspected of causing FBI , then MD clearance: not shedding the virus & jaundice ceases, (per 33-33-04-28.2(4)(b)).
RESTRICT	Experiencing GI symptoms (listed in 33-33-04-28(2)(a), no diagnosis of "Big 4", OR exposed lesion, boil or wound (per 33-33-04-28.1(2)(a)).	1) Once symptoms cease & no FBI , via the PIC (per 33-33-04-28.2(2)(a)(i)). 2) If FBI is suspected , then MD clearance: free of symptoms & agent (per 33-33-04-28.2(2)(a)(ii) via 33-33-04-28.8). 3) Chronic noninfectious condition exists , then MD documentation, (per 33-33-04-28.2(2)(a)(iii)).
	Asymptomatic & positive stool for S. typhi (shedder) (per 33-33-04-28.1(2)(b)).	MD clearance (per 33-33-04-28.2(2)(b)) via 3 consecutive negative stools (via 33-33-04-28.8(1)).
	Jaundice > 7 days (per 33-33-04-28.1(4)(b)(ii)) (Cause of jaundice may not be HAV)	1) If diagnosed as HAV, then regulatory approval & MD clearance: jaundice ceases or at least 2 blood tests show falling liver enzymes, (per 33-33-04-28.2(1)(a)(i&ii) via 33-33-04-28.8(4)). 2) If not seen by MD , then via the PIC when jaundice ceases (per 33-33-04-28.2(4)(a)(ii)). 3) Free of/not HAV via MD documentation (per 33-33-04-28.2(4)(a)(i)). 4) If suspected of causing FBI , then MD clearance: not shedding the virus & jaundice ceases, (per 33-33-04-28.2(4)(b)).
	Persistent sneezing, coughing or runny nose	Once symptoms cease, via the PIC
NOT ROUTINELY RESTRICTED	Asymptomatic & blood tests indicative of current HAV infection	RATIONALE: Dependent on duties, personal hygiene, previous exposure & recipient of IgG.

GENERAL POPULATION FACILITIES		REINSTATING:
NOT RESTRICTED	Prior illness from S. typhi when stools are negative (per 33-33-04-28.8(1)).	
	Asymptomatic & positive stool for Shigella spp. or E. coli O157:H7 (per 33-33-04-28.2(1)(b)(i&ii)).	
	Other prior illnesses and/or other asymptomatic conditions	
HIGHLY SUSCEPTIBLE POPULATIONS		REINSTATING:
EXCLUDE	If <u>diagnosed</u> with "Big 4": S. typhi, Shigella spp., E. coli O157:H7 & HAV (per 33-33-04-28.1(1), agents listed in (33-33-04-28(1)).	Regulatory approval and MD clearance: free of symptoms & negative stools for agent, (per 33-33-04-28.2(1) via (33-33-04-28.8).
	Jaundice ≤ 7 days (per 33-33-04-28.1(4)(a)) Jaundice > 7 days (per 33-33-04-28.1(4)(b)(i)) (Cause of jaundice may not be HAV)	1) If <u>diagnosed</u> as HAV, then regulatory approval & MD clearance: jaundice ceases or at least 2 blood tests show falling liver enzymes, (per 33-33-04-28.2(1)(a)(i&ii) via 33-33-04-28.8(4)). 2) If not seen by MD, then via the PIC when jaundice ceases (per 33-33-04-28.2(4)(a)(ii)). 3) Free of/not HAV via MD documentation (per 33-33-04-28.2(4)(a)(i)). 4) If suspected of causing FBI, then MD clearance: not shedding the virus and jaundice ceases, (per 33-33-04-28.2(4)(b)).
	Asymptomatic & positive stool for S. typhi, Shigella spp. or E. coli O157:H7 (shedder) (per 33-33-04-28.1(3)(b))	MD clearance: free of agent, (per 33-33-04-28.2(3) via 33-33-04-28.8(1-3) negative stools).
	Prior illness with: S. typhi within last 3 months (per 33-33-04-28.1(3)(c)), Shigella or E. coli O157:H7 within last month (per 33-33-04-28.1(3)(d))	Free of agent by MD clearance (per 33-33-04-28.2(3) via 33-33-04-28.8(1-3), negative stools).
	Experiencing GI symptoms (per 33-33-04-28(2)) <u>AND</u> meets high risk conditions (per 33-33-04-28(4)), (exclude per 33-33-04-28.1(3)(a)).	Free of "Big 4" by MD clearance (per 33-33-04-28.2(3) via 33-33-04-28.8(1-4) negative stools or falling liver enzymes).
RESTRICT	Experiencing GI symptoms (listed in 33-33-04-28(2)(a), no diagnosis of "Big 4"), OR exposed lesion, boil or wound (per 33-33-04-28.1(2)(a)).	1) Once symptoms cease & no FBI, via the PIC (per 33-33-04-28.2(2)(a)(i)). 2) If FBI is suspected, then MD clearance: free of symptoms & agent (per 33-33-04-28.2(2)(a)(ii) via 33-33-04-28.8). 3) Chronic noninfectious condition exists, then MD documentation, (per 33-33-04-28.2(2)(a)(iii)).
	Persistent sneezing, coughing or runny nose	Once symptoms cease, via the PIC
NOT ROUTINELY RESTRICTED	Asymptomatic & blood tests indicative of current HAV infection	RATIONALE: Dependent on duties, personal hygiene, previous exposure & recipient of IgG.
NOT RESTRICTED	Other prior illnesses and/or other asymptomatic conditions	

STAFF COMMENT: Article 33-38 contains all new material but is not underscored so as to improve readability.

ARTICLE 33-38

STATE TRAUMA SYSTEM

Chapter
33-38-01 Trauma System Regulation

CHAPTER 33-38-01 Trauma System Regulation

Section	
33-38-01-01	Definitions
33-38-01-02	Trauma System
33-38-01-03	Activation of Trauma Codes For Major Trauma Patients
33-38-01-04	Emergency Medical Services
33-38-01-05	Local Emergency Medical Services Transport Plans
33-38-01-06	Trauma Center Designation
33-38-01-07	Trauma Center Revocation of Designation
33-38-01-08	State Trauma Registry
33-38-01-09	Quality Improvement Process
33-38-01-10	State Trauma Committee Membership
33-38-01-11	Trauma Regions - Regional Trauma Committee
33-38-01-12	Trauma Center Name Restriction

33-38-01-01. Definitions. Words defined in North Dakota Century Code chapter 23-01.2 have the same meaning in this chapter. As used in this chapter:

1. "Department" means the state department of health.
2. "Emergency medical services" means the system of personnel who provide medical care from the time of injury to hospital admission.
3. "Local emergency medical services transport plans" means plans developed by emergency medical services, medical directors, and hospital officials which establish the most efficient method to transport trauma patients.

4. "Major trauma patient" means any patient that fits the trauma triage algorithm adopted by American college of surgeons, committee on trauma, Resources for Optimal Care of the Injured Patient: 1993, page 20.
5. "Trauma" means tissue damage caused by the transfer of thermal, mechanical, electrical, or chemical energy, or by the absence of heat or oxygen.
6. "Trauma center" means a facility that has made a commitment to serve the trauma patient, has met the standards of the trauma system, and has obtained designation as a trauma center.
7. "Trauma code" includes the activation and assembly of the trauma team to provide care to the major trauma patient.
8. "Trauma quality improvement program" means a system of evaluating the prehospital, trauma center, and rehabilitative care of trauma patients.
9. "Trauma registry" includes the collection and analysis of trauma data from the trauma system.
10. "Trauma team" includes a group of health care professionals organized to provide care to the trauma patient.

History: Effective July 1, 1997.

General Authority: NDCC 23-01.2-01

Law Implemented: NDCC 23-01.2-01

33-38-01-02. Trauma system. A statewide trauma system shall be adopted by the state health council. The trauma system shall consist of the following:

1. Standardized definition of major trauma patient.
2. Trauma code activation protocols.
3. Local emergency medical services transport plans.
4. Trauma center designation process.
5. Revocation of trauma center designation process.
6. Statewide trauma registry.
7. Quality improvement process.
8. State trauma committee.
9. Four regional trauma committees.

History: Effective July 1, 1997.
General Authority: NDCC 23-01.2-01
Law Implemented: NDCC 23-01.2-01

33-38-01-03. Activation of trauma codes for major trauma patients. Emergency medical services and trauma centers shall triage patients and activate a trauma code if the patient meets the major trauma definition.

History: Effective July 1, 1997.
General Authority: NDCC 23-01.2-01
Law Implemented: NDCC 23-01.2-01

33-38-01-04. Emergency medical services. All emergency medical services licensed or certified by the department shall establish each of the following:

1. Trauma code activation protocols.
2. Trauma patient care protocols that have been reviewed and approved by a medical director.
3. Local emergency medical services transport plans.

History: Effective July 1, 1997.
General Authority: NDCC 23-01.2-01
Law Implemented: NDCC 23-01.2-01

33-38-01-05. Local emergency medical services transport plans. Emergency medical services shall develop local emergency medical services transport plans. The plans are subject to approval by all the participating health care entities named in the plan, then submitted for review and approval to the regional trauma committee. Following approval, the local emergency medical services transport plans must be filed with the department and distributed to participating dispatch centers.

After activation of a trauma code, a dispatch center shall notify the necessary facilities and the emergency medical service unit shall transport the patient according to its local emergency medical services transport plan.

History: Effective July 1, 1997.
General Authority: NDCC 23-01.2-01
Law Implemented: NDCC 23-01.2-01

33-38-01-06. Trauma center designation.

1. Four levels of hospital designation must be established based on the standards developed for trauma center verification by the American college of surgeons. The standards must be those indicated in the American college of surgeons, committee on trauma, Resources for Optimal Care of the Injured Patient: 1993, pages 29 through 33. Beginning January 1, 1999, a physician with advanced trauma life support training shall respond to each trauma code.
2. Hospitals applying for level I, level II, or level III designation shall present evidence of having current trauma center verification from the American college of surgeons. The department shall issue designation with an expiration date consistent with the American college of surgeons verification expiration date.
3. Hospitals applying for level IV trauma center designation must submit an application to the department. Once the application is approved by the department, an onsite verification visit shall be conducted by the department or its designee. The verification team shall compile a report. The application and report will be reviewed by the state trauma committee. If approved, the department shall issue the designation to the facility.

History: Effective July 1, 1997.

General Authority: NDCC 23-01.2-01

Law Implemented: NDCC 23-01.2-01

33-38-01-07. Trauma center revocation of designation. The department may revoke designation of a trauma center if evidence exists that the facility does not meet the required trauma center standards. The department or its designee may inspect any trauma center or applicant for trauma center designation at any time for compliance with the standards. Designation must be revoked if a facility denies or refuses inspection.

A trauma center that fails to maintain the standards, or voluntarily relinquishes its designation, may submit a plan for correction. Once the plan is approved by the department, the trauma center may be reinstated as a designated trauma center. Failure to follow an approved plan of correction results in revocation of the trauma center's designation.

History: Effective July 1, 1997.

General Authority: NDCC 23-01.2-01

Law Implemented: NDCC 23-01.2-01

33-38-01-08. State trauma registry. The department shall establish a trauma registry including the minimum data elements. All hospitals must report the minimum data elements to the department for

patients who have an international classification of diseases, ninth revision (ICD-9) code of 800-959.9 and one of the following criteria:

1. Trauma deaths.
2. Hospital admission greater than forty-eight hours.
3. Patients admitted that go to the intensive care unit or operating room.
4. Patients transferred into or out of the hospital.

Reporting may occur electronically by downloading computer files or through completion of the North Dakota transfer form. Information may not be released from the state trauma registry except as permitted by North Dakota Century Code sections 23-01-15 and 23-01-02.1.

History: Effective July 1, 1997.

General Authority: NDCC 23-01.2-01

Law Implemented: NDCC 23-01.2-01

33-38-01-09. Quality improvement process. A quality improvement process shall be established by the state trauma committee. The process must include evaluation criteria that will provide guidelines for acceptable standards of care.

The regional committees shall evaluate the trauma system within their regions based upon the evaluation criteria. The regional trauma committee shall make recommendations to emergency medical services and trauma centers in the development of plans to improve the system.

History: Effective July 1, 1997.

General Authority: NDCC 23-01.2-01

Law Implemented: NDCC 23-01.2-01

33-38-01-10. State trauma committee membership. The state trauma committee membership must include the following:

1. One member from the North Dakota committee on trauma - American college of surgeons, appointed by the committee.
2. One member from the American college of emergency physicians - North Dakota chapter, appointed by the chapter.
3. One member from the North Dakota health care association, appointed by the association.
4. One member from the North Dakota medical association, appointed by the association.

5. One member from the North Dakota EMS association - basic life support, appointed by the association.
6. One member from the North Dakota EMS association - advanced life support, appointed by the association.
7. One member from the North Dakota nurses association, appointed by the association.
8. One member on the faculty of the university of North Dakota school of medicine, appointed by the dean of the medical school.
9. One member from the North Dakota emergency nurses association, appointed by the association.
10. One member from Indian health service, appointed by the Aberdeen area director of the service.
11. One member from accredited trauma rehabilitation facilities, appointed by the state health council.
12. One member who is a hospital trauma coordinator, appointed by the trauma coordinators committee.
13. The medical director of the division of emergency health services of the department.
14. The regional trauma committee chair from each region, if not representing an association.
15. Four additional members, appointed by the state health council.

History: Effective July 1, 1997.

General Authority: NDCC 23-01.2-01

Law Implemented: NDCC 23-01.2-01

33-38-01-11. Trauma regions - Regional trauma committee. The state trauma committee shall establish four trauma regions. The regions must be designated northwest, northeast, southeast, and southwest. An emergency medical service or trauma center that is located within fifteen miles [24.14 kilometers] of a regional boundary may request to function within another region. This request shall be reviewed and is subject to approval by the state trauma committee.

The state trauma committee shall appoint a regional trauma committee to serve each trauma region. The regional committees may consist of members representing the following:

1. North Dakota committee on trauma - American college of surgeons.

2. North Dakota chapter of American college of emergency physicians.
3. Physician of a level IV trauma center.
4. Level IV hospital representative.
5. Hospital trauma coordinator.
6. Accredited rehabilitation facility representative.
7. Indian health service or tribal government representative.
8. North Dakota EMS association.
9. Other members, chosen by the state trauma committee.

History: Effective July 1, 1997.

General Authority: NDCC 23-01.2-01

Law Implemented: NDCC 23-01.2-01

33-38-01-12. Trauma center name restriction. No health care facility in North Dakota may use the title "trauma center" or otherwise hold itself out as a trauma center unless the facility is designated by the department as a trauma center.

History: Effective July 1, 1997.

General Authority: NDCC 23-01.2-01

Law Implemented: NDCC 23-01.2-01

TITLE 43
Industrial Commission

DECEMBER 1996

CHAPTER 43-02-03

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

1. "Adjusted allowable" means the allowable production a proration unit receives after all adjustments are applied.
2. "Allocated pool" is one in which the total oil or natural gas production is restricted and allocated to various proration units and fractional proration units therein in accordance with proration schedules.
3. "Allowable production" means that number of barrels of oil or cubic feet [meters] of natural gas authorized to be produced from the respective proration units and fractional proration units in an allocated pool.
4. "Back allowable" means the authorized accumulative underage or shortage for a given proration unit or fractional proration unit.
5. "Barrel" means forty-two United States gallons [158.99 liters] measured at sixty degrees Fahrenheit [15.56 degrees Celsius] and atmospheric pressure at sea level.
6. "Barrel of oil" means forty-two United States gallons [158.99 liters] of oil after deductions for the full amount of basic sediment, water, and other impurities present, ascertained by centrifugal or other recognized and customary test.

7. "Bottom hole or subsurface pressure" means the pressure in pounds [kilograms] per square inch [square centimeters] gauge under conditions existing at or near the producing horizon.
8. "Bradenhead gas well" means any well capable of producing gas through wellhead connections from a gas reservoir which has been successfully cased off from an underlying oil or gas reservoir.
9. "Casinghead gas" means any gas or vapor, or both gas and vapor, indigenous to and produced from a pool classified as an oil pool by the commission.
10. "Common purchaser for natural gas" means any person now or hereafter engaged in purchasing, from one or more producers, gas produced from gas wells within each common source of supply from which it purchases, for processing or resale.
11. "Common purchaser for oil" means every person now engaged or hereafter engaging in the business of purchasing oil in this state.
12. "Common source of supply" is synonymous with pool and is a common accumulation of oil or gas, or both, as defined by commission orders.
13. "Completion" means an oil well shall be considered completed when the first oil is produced through wellhead equipment into tanks from the ultimate producing interval after casing has been run. A gas well shall be considered complete when the well is capable of producing gas through wellhead equipment from the ultimate producing zone after casing has been run. A dry hole shall be considered complete when all provisions of plugging are complied with as set out in this chapter.
14. "Condensate" means the liquid hydrocarbons recovered at the surface that result from condensation due to reduced pressure or temperature of petroleum hydrocarbons existing in a gaseous phase in the reservoir.
15. "Cubic foot of gas" means that volume of gas contained in one cubic foot [28.32 liters] of space and computed at a pressure of fourteen and seventy-three hundredths pounds per square inch [1034.19 grams per square centimeter] absolute at a base temperature of sixty degrees Fahrenheit [15.56 degrees Celsius].
16. "Director" means the director of oil and gas of the industrial commission, the assistant director of oil and gas of the industrial commission, and their designated representatives.
17. "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy

extrinsic to the pool, which artificial means or application includes pressuring, cycling, pressure maintenance, or injection to the pool of a substance or form of energy but does not include the injection in a well of a substance or form of energy for the sole purpose of (a) aiding in the lifting of fluids in the well, or (b) stimulation of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means.

18. "Exception well location" means a location which does not conform to the general spacing requirements established by the rules or orders of the commission but which has been specifically approved by the commission.
19. "Fractional proration unit for oil" means a tract of land containing more or less than forty acres [16.19 hectares] predominantly situated within the confines of a pool.
20. "Gas lift" means any method of lifting liquid to the surface by injecting gas into a well from which oil production is obtained.
21. "Gas-oil ratio" means the ratio of the gas produced in cubic feet [cubic meters] to a barrel of oil concurrently produced during any stated period.
22. "Gas-oil ratio adjustment" means the reduction in allowable of a high gas-oil ratio proration unit to conform with the production permitted by the limiting gas-oil ratio for the particular pool during a particular proration period.
23. "Gas transportation facility" means a pipeline in operation serving one or more gas wells for the transportation of natural gas, or some other device or equipment in like operation whereby natural gas produced from gas wells connected therewith can be transported.
24. "Gas well" means a well producing gas or natural gas from a common source of gas supply as determined by the commission.
25. "High gas-oil ratio proration unit" means a proration unit with a producing oil well with a gas-oil ratio in excess of the limiting gas-oil ratio for the pool.
26. "Injection or input well" means any well used for the injection of air, gas, water, or other fluids into any underground stratum.
27. "Limiting gas-oil ratio" means the gas-oil ratio assigned by the commission to a particular oil pool to limit the volumes of casinghead gas which may be produced from the various oil-producing units within that particular pool.

28. "Log or well log" means a systematic, detailed, and correct record of formations encountered in the drilling of a well, including commercial electric logs, radioactive logs, dip meter logs, and other related logs.
29. "Marginal unit" means a proration unit or fractional proration unit that cannot produce at a rate equal to the top unit allowable for the proration period for the pool.
30. "Minimum allowable" means the minimum amount of production from an oil or gas well which will encourage the continued operation of such well and below which the well might be threatened with premature plugging and resulting waste.
31. "Multiple completion" means the completion of any well so as to permit the production from more than one common source of supply.
32. "Natural gas or gas" means and includes all natural gas and all other fluid hydrocarbons not herein defined as oil.
33. "Nonmarginal unit" means a proration unit or a fractional proration unit that can produce at a rate equal to the top unit allowable for the proration period for the pool.
34. "Normal unit allowable" means the amount of allowable production allocated to proration units which are producing from a depth of five thousand feet [1,524 meters] or above.
35. "Official gas-oil ratio test" means the periodic gas-oil ratio test made by order of the commission and by such method and means and in such manner as prescribed by the commission.
36. "Offset" means a well drilled on a forty-acre [16.19-hectare] tract cornering or contiguous to a forty-acre [16.19-hectare] tract having an existing oil well, or a well drilled on a one hundred sixty-acre [64.75-hectare] tract cornering or contiguous to a one hundred sixty-acre [64.75-hectare] tract having an existing gas well; provided, however, that for wells subject to a fieldwide spacing order, "offset" means any wells located on spacing units cornering or contiguous to the spacing unit or well which is the subject of an inquiry or a hearing.
37. "Oil well" means any well capable of producing oil or oil and casinghead gas from a common source of supply as determined by the commission.
38. "Operator" ~~means--any-person-or-persons-who,-duty-authorized,-is-in-charge-of-the-development-of-a-lease-or-the-operation-of-a--producing--property~~ is the principal on the bond covering a well and such person shall be responsible for drilling,

completion, and operation of the well, including plugging and reclamation of the well site.

39. "Overage or overproduction" means the amount of oil or the amount of natural gas produced during a proration period in excess of the amount authorized on the proration schedule.
40. "Potential" means the properly determined capacity of a well to produce oil, or gas, or both, under conditions prescribed by the commission.
41. "Pressure maintenance" means the injection of gas or other fluid into a reservoir, either to increase or maintain the existing pressure in such reservoir or to retard the natural decline in the reservoir pressure.
42. "Proration day" consists of twenty-four consecutive hours which shall begin at seven a.m. and end at seven a.m. on the following day.
43. "Proration month" means the calendar month which shall begin at seven a.m. on the first day of such month and end at seven a.m. on the first day of the next succeeding month.
44. "Proration period" means for oil the proration month and for gas six consecutive calendar months which shall begin at seven a.m. on the first day of a calendar month and end at seven a.m. on the first day of the seventh succeeding month.
45. "Proration schedule" means the periodic order of the commission authorizing the production, purchase, and transportation of oil or of natural gas from the various units of oil or of natural gas proration in allocated pools.
46. "Proration unit for gas" consists of such geographical area as may be prescribed by special pool rules issued by the commission.
47. "Proration unit for oil" consists of a tract of land containing forty acres [16.19 hectares] predominantly situated within the confines of a pool.
48. "Recomplete" means the subsequent completion of a well in a different pool from the pool in which it was originally completed.
49. "Reservoir" means pool or common source of supply.
50. "Saltwater handling facility" means and includes any container such as a pit, tank, or pool, whether covered or uncovered, used for the handling, storage, disposal of deleterious substances obtained, or used, in connection with the drilling or operation of wells.

51. "Shut-in pressure" means the pressure noted at the wellhead when the well is completely shut in. Not to be confused with bottom hole pressure.
52. "Spacing unit" is the area in each pool which is assigned to a well for drilling, producing, and proration purposes in accordance with the commission's rules or orders.
53. "Stratigraphic test well" means any well or hole, except a seismograph shot hole, drilled for the purpose of gathering information in connection with the oil and gas industry.
54. "Tank bottoms" means that accumulation of hydrocarbon material and other substances which settle naturally below crude oil in tanks and receptacles that are used in handling and storing of crude oil, and which accumulation contains basic sediment and water in an amount rendering it unsaleable to an ordinary crude oil purchaser; provided, that with respect to lease production and for lease storage tanks, a tank bottom shall be limited to that volume of the tank in which it is contained that lies below the bottom of the pipeline outlet thereto.
55. "Top unit allowable for gas" means the maximum number of cubic feet [cubic meters] of natural gas, for the proration period, allocated to a proration unit for gas in an allocated gas pool.
56. "Top unit allowable for oil" means the maximum number of barrels of oil daily for each calendar month allocated to a proration unit for oil in a pool to nonmarginal units.
57. "Treating plant" means any plant permanently constructed or portable used for the purpose of wholly or partially reclaiming, treating, processing, or in any manner making tank bottoms or any other waste oils marketable.
58. "Underage" means the amount of oil or the amount of natural gas during a proration period by which a given proration unit failed to produce in an amount equal to that authorized on the proration schedule.

History: Amended effective January 1, 1983; May 1, 1992; July 1, 1996; December 1, 1996.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

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

1. Bond requirements. Prior to commencing drilling operations, any person who proposes to drill a well for oil, gas, or injection shall submit to the commission, and obtain its approval, a surety bond or cash bond in a form approved by the

commission, conditioned as provided by law. The operator of such well shall be the principal on the bond covering the well. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota.

2. Bond amounts and limitations. The bond shall be in the amount of fifteen thousand dollars when applicable to one well only. Wells drilled to a total depth of less than two thousand feet [609.6 meters] may be bonded in a lesser amount if approved by the director. When the principal on the bond is drilling or operating a number of wells within the state or proposes to do so, the principal may submit a ~~blanket~~ bond conditioned as provided by law. A ~~blanket~~ bond covering ten wells or less shall be in the amount of fifty thousand dollars. A conditional blanket bond covering all more than ten wells, which--a--person--may--at--any--time--drill--or--operate--within--the--state--before--the--bond--is--released, shall be in the amount of one hundred thousand dollars, provided the bond shall be limited to ten dry holes,--and--abandoned--wells--pursuant--to--section--43-02-03-55--that--have--not--been--properly--plugged--and--the--sites--reclaimed. no more than ten of the following in aggregate:

- a. A well that is a dry hole and is not properly plugged and the site is not properly reclaimed; and
- b. A well that is abandoned pursuant to section 43-02-03-55 and is not properly plugged and the site is not properly reclaimed.

If this aggregate of ten dry holes and abandoned wells is reached, all well permits, for which drilling has not commenced, held by the principal of such bond are suspended. No rights may be exercised under the permits until the aggregate of dry holes and abandoned wells drops below ten, or the operator files the appropriate bond to cover the permits, at which time the rights given by the drilling permits are reinstated. A well with an approved temporary abandoned status shall have the same status as an oil, gas, or injection well. With regard to cash bonds, the commission may require higher amounts than those referred to in this section. Such additional amounts for cash bonds must be related to the expected cost of plugging and well site reclamation, as determined by the commission.

3. Bond terms. The bond herein required shall be conditioned upon full compliance with North Dakota Century Code chapter 38-08, and all administrative rules and orders of the commission. It shall be a plugging bond, as well as a drilling bond, and is to endure up to and including approved plugging of all oil, gas, and injection wells as well as dry holes. Approved plugging shall also include practical

reclamation of the well site, and appurtenances thereto. If the principal does not satisfy the bond's conditions, then the surety shall satisfy the conditions or forfeit to the commission the face value of the bond.

4. Adding wells to a blanket bond. The commission may refuse to add wells to a blanket bond if the operator or surety company has failed in the past to comply with statutes and rules relating to the operation of wells, or if a civil or administrative action brought by the commission is pending against the operator or surety company.

5. Transfer of wells under bond. Transfer of property does not release the bond. In case of transfer of property or other interest in the well and the principal desires to be released from the bond covering the well, such as producers, not ready for plugging, the principal should proceed as follows:

a. The principal must notify the director, in writing, of all proposed transfers of well at least thirty days before the closing date of the transfer. The director may, for good cause, waive the requirement of at least thirty days' notice prior to transfer.

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

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

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

- c. The transferee (new operator) of any oil, gas, or injection well shall be responsible for the plugging and site reclamation of any such well ~~and-for~~. For that purpose the transferee shall submit a new bond or, in the case of a surety bond, produce the written consent of the surety of the original or prior plugging bond that the latter's responsibility shall continue. This section shall apply to transfers of any such wells made prior to the effective date of this section as well as thereafter. The original or prior bond shall not be released as to the plugging and reclamation responsibility of any such transferor until the transferee shall submit to the commission an acceptable bond to cover such well. All liability on bonds shall continue until the plugging and site reclamation of such wells is completed and approved.
6. Treating plant bond. Prior to the commencement of operations, any person proposing to operate a treating plant must submit to the commission and obtain its approval, of a surety, or cash bond conditioned as provided by law. The person responsible for the operation of the plant shall be the principal on the bond. The amount of the bond must be as prescribed in section 43-02-03-51. It is to remain in force until the operations cease, all equipment is removed from the site, and the site reclaimed, or liability of the bond is transferred to another bond that provides the same degree of security.
7. Bond termination. The commission shall, in writing, advise the principal and any sureties on any bond as to whether the plugging and reclamation is approved. If approved, liability under such bond may be formally terminated upon receipt of a written request by the principal. The request must be signed by an officer of the principal or a person authorized to sign for the principal.
8. Director's authority. The director is vested with the power to act for the commission as to all matters within this section.

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

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-16.1. Designation and responsibilities of operator. The principal on the bond covering a well is the operator of the well. The operator is responsible for compliance with all laws relating to the well and well site. A dispute over designation of the operator of a well may be addressed by the commission. In doing so, the factors the

commission may consider include those set forth in subsection 1 of section 43-02-03-16.2.

History: Effective December 1, 1996.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-16.2. Revocation and limitation of drilling permits.

1. After notice and hearing, the commission may revoke a drilling permit or limit its duration. The commission may act upon its own motion or upon the application of an owner in the spacing or drilling unit. In deciding whether to revoke or limit a permit, the factors that the commission may consider include:
 - a. The technical ability of the permit holder and other owners to drill and complete the well.
 - b. The experience of the permit holder and other owners in drilling and completing similar wells.
 - c. The number of wells in the area operated by the permit holder and other owners.
 - d. Whether drainage of the spacing or drilling unit has occurred or is likely to occur in the immediate future and whether the permit holder has committed to drill a well in a timely fashion.
 - e. Contractual obligations such as an expiring lease.
 - f. The amount of ownership the permit holder and other owners hold in the spacing or drilling unit. If the permit holder is the majority owner in the unit or if its interest when combined with that of its supporters is a majority of the ownership, it is presumed that the permit holder should retain the permit. This presumption, even if not rebutted, does not prohibit the commission from limiting the duration of the permit to drill. However, if the amount of the interest owned by the owner seeking revocation or limitation and its supporters are a majority of the ownership, the commission will presume that the permit should be revoked.
2. The commission may suspend a permit that is the subject of a revocation or limitation proceeding. A permit will not be suspended or revoked after a well has spudded.
3. If the commission revokes a permit upon the application of an owner and issues a permit to drill to that owner or to another owner who supported revocation, the commission may limit the duration of such permit. The commission may also, if the

parties fail to agree, order the owner acquiring the permit to pay reasonable costs incurred by the former permitholder and the conditions under which payment is to be made. The costs for which reimbursement may be ordered may include those involving survey of the well site, title search of surface and mineral title, and preparation of an opinion of mineral ownership.

4. If the commission declines to revoke a permit or limit the time within which it must be exercised, it may include a term in its order restricting the ability of the permitholder to renew the permit or to acquire another permit within the same spacing or drilling unit.

History: Effective December 1, 1996.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

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

1. An owner may recover the risk penalty, provided the owner gives, to the owner from whom the penalty is sought, a written invitation to participate in the risk and cost of drilling.
2. The invitation to participate must contain the following:
 - a. The location of the proposed well and its proposed depth and objective zone.
 - b. An itemization of the estimated costs of drilling and completion.
 - c. The approximate date upon which the well will be spudded.
 - d. The time within which the invitation must be accepted. At least thirty days should be given, for it is presumed that at least thirty days is needed to adequately consider and respond to an invitation. In unusual circumstances, however, the owner seeking the risk penalty may allow less than thirty days in which to respond to the invitation, but in no circumstances may less than fifteen days be allowed.
3. A valid acceptance of the invitation to participate must be in writing.
4. An invitation to participate and an acceptance of the invitation must be served personally, by mail requiring a signed receipt, by facsimile transmission followed within one business day by mailing, or by overnight courier or delivery

service requiring a signed receipt. Failure to accept mail requiring a signed receipt constitutes service.

5. An election to participate is only binding upon an owner electing to participate if the well is spudded within ninety days after the date the owner extending the invitation to participate sets as the date upon which a response to the invitation is to be received. If an election to participate lapses, a risk penalty can only be collected if the owner seeking it again complies with the provisions of this section.
6. The right to a risk penalty expires if the owner seeking it does not spud the well within ninety days after the date set by the owner as the date upon which a response to the invitation is to be received. It also expires if the permit to drill expires without having been exercised.
7. Upon its own motion or the request of a party, the commission may include in a pooling order requirements relating to the invitation and election to participate, in which case the pooling order will control to the extent it is inconsistent with this section.

History: Effective December 1, 1996.

General Authority: NDCC 38-08-04

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

JANUARY 1997

CHAPTER 43-02-03

43-02-03-21. Casing and, tubing, and cementing requirements. All wells drilled for oil and natural gas shall be completed with strings of casing which shall be properly cemented at sufficient depths to adequately protect the water-bearing, oil-bearing, or natural gas-bearing strata.

Sufficient cement shall be used on surface casing to fill the annular space behind the casing to the bottom of the cellar, if any, or to the surface of the ground. All strings of surface casing shall stand cemented under pressure for at least twelve hours before drilling the plug or initiating tests. The term "under pressure" as used herein shall be complied with if one float valve is used or if pressure is otherwise held. Cementing shall be by the pump and plug method, or other methods approved by the director.

Surface casing strings must be allowed to stand under pressure until the tail cement has reached a compressive strength of at least five hundred pounds per square inch [3450 kilopascals]. All filler cements utilized must reach a compressive strength of at least two hundred fifty pounds per square inch [1725 kilopascals] within twenty-four hours and at least five three hundred fifty pounds per square inch [~~3450~~ 2415 kilopascals] within seventy-two hours. All compressive strengths on surface casing cement shall be calculated at a temperature of seventy eighty degrees Fahrenheit [~~21.11-degrees-Celsius~~ 26.67 degrees Celsius].

Production or intermediate casing strings must be allowed to stand under pressure until the tail cement has reached a compressive strength

of at least five hundred pounds per square inch [3450 kilopascals]. All filler cements utilized must reach a compressive strength of at least two hundred fifty pounds per square inch [1725 kilopascals] within twenty-four hours and at least five hundred pounds per square inch [3450 kilopascals] within seventy-two hours. All compressive strengths on production or intermediate casing cement shall be calculated at a temperature of ~~one hundred degrees Fahrenheit~~ ~~[37.78 degrees Celsius]~~ found in the Dakota formation using a gradient of 1.2 degrees Fahrenheit per one hundred feet [30.48 meters] of depth plus eighty degrees Fahrenheit [26.67 degrees Celsius].

All flowing wells must be equipped with tubing and a tubing packer. The packer must be set as near the producing interval as practicable, but in all cases must be above the perforations.

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

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

CHAPTER 43-02-05

43-02-05-03. Exempted aquifers. An aquifer or a portion thereof which meets the criteria for an underground source of drinking water may be determined by the commission, after notice and hearing, to be an exempted aquifer if it meets all of the following criteria:

1. It does not currently serve as a source of drinking water; and
2. It cannot now and will not in the future serve as a source of drinking water because:
 - a. It is mineral, hydrocarbon, or geothermal energy producing, or can be demonstrated by a permit applicant as part of a permit application for an underground injection permit to contain minerals or hydrocarbons that considering their quantity and location are expected to be commercially producible;
 - b. It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical; or
 - c. It is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption; or
3. The total dissolved solids content of the ground water is more than three thousand and less than ten thousand milligrams per liter and it is not reasonably expected to supply a public water system.

History: Effective November 1, 1982; amended effective January 1, 1997.

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

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

TITLE 45
Insurance, Commissioner of

MAY 1997

**CHAPTER 45-03-01
SOLICITATION OF PROXIES, CONSENTS, AND
AUTHORIZATIONS OF DOMESTIC STOCK INSURERS**

[Repealed effective May 1, 1997]

**CHAPTER 45-03-02
INSIDER TRADING OF EQUITY SECURITIES OF
DOMESTIC STOCK INSURERS**

[Repealed effective May 1, 1997]

**CHAPTER 45-03-04
REPORTING OF SALVAGE AND SUBROGATION BY
FIRE AND CASUALTY COMPANIES ON THE
ANNUAL STATEMENT**

[Repealed Effective May 1, 1997]

CHAPTER 45-03-06

45-03-06-03. Quarterly payments - Reconciliation.

1. ~~The initial payments on a quarterly basis are due on or before August 29, 1983, from all companies subject to the gross premium tax. That payment shall include 1982 for those companies which have not paid or filed the new tax for that year and the first two quarters of 1983. These companies who are required to pay the 1982 tax within sixty days after enactment of the new tax law are only required to file and pay the estimated tax on August 29, 1983.~~
2. ~~Thereafter every~~ Every company required to pay premium taxes in this state shall make and file a statement of estimated premium taxes for the period covered by the quarterly installment tax payment. The statement shall be on forms prescribed by the commissioner. The payments shall be made on an individual quarterly basis on or before May thirtieth, August twenty-ninth, November twenty-ninth, and March first.
3. 2. The tax imposed under North Dakota Century Code section 26.1-03-17 shall be an estimated tax of at least twenty-five percent of the premium tax on the prior calendar year's business or eighty percent of the premium tax on the current calendar year's business for each of the first three quarters and shall be reconciled for the entire calendar year on the insurance department form and filed on or before March first of the following calendar year.
4. 3. Any company with a certificate of authority to conduct business in this state must file a quarterly estimate form even when no tax is owed. No payment is required until the final quarter when the tax is reconciled if the estimated tax for the quarter is less than twenty-five dollars.

History: Effective September 1, 1983; amended effective May 1, 1997.

General Authority: NDCC 26.1-01-08

Law Implemented: NDCC 26.1-03-17

45-03-06-04. Credits.

1. The principal office ad valorem tax credit shall be used as a credit against the premium tax liability for the calendar year in which the ad valorem tax was paid. Any unused credit may be carried over as a credit against the premium tax liability for the following calendar years but not beyond 1985. North Dakota Century Code section 26.1-03-17 requires that the credit be prorated on a quarterly basis. Credit shall be used for each quarter and shall be fully reconciled, along with the

premium tax, as of the end of each calendar year, on or before March first of the subsequent year.

2. The examination credit shall be used as a credit against the premium tax liability for the quarter in which expense was paid and the succeeding three quarters. The credit is limited to expenses incurred and paid to the North Dakota department of insurance. North Dakota Century Code section 26.1-03-17 requires that the credit be prorated on a quarterly basis. The credit shall be reconciled along with the premium tax as of the end of each calendar year, on or before March first of the subsequent year.
3. ~~The credit for income tax or premium tax paid in 1983, on business done in 1982, shall first be taken as a credit against the tax liability under North Dakota Century Code section 26.1-03-17 for 1982, and the remaining credit against the tax liability for 1983 either on the quarterly estimates or at the time the tax is reconciled.~~
4. The credit taken for assessments paid to the comprehensive health association of North Dakota shall be taken in the calendar year in which paid and any remaining credit used as completely as possible in each succeeding year. Credit cannot be taken for any assessments paid prior to March 21, 1983.
5. 4. The credit for assessments paid to the North Dakota life and health insurance guaranty association shall be twenty percent of the amount of the assessment for each of the five calendar years following the year in which the assessment was paid.
6. 5. Credit may be taken in the following year for miscalculations resulting in an overpayment in a preceding reconciliation submitted with the March first payment.

History: Effective September 1, 1983; amended effective April 1, 1996; May 1, 1997.

General Authority: NDCC 26.1-01-08

Law Implemented: NDCC 26.1-03-17

CHAPTER 45-04-02

45-04-02-09. Qualification of insurer to issue variable life insurance. The following requirements are applicable to all insurers either seeking authority to issue variable life insurance in this state or which have authority to issue variable life insurance in this state:

1. Licensing and approval to do business in this state. An insurer shall not deliver or issue for delivery in this state any variable life insurance policy unless:

a. The insurer is licensed or organized to do a life insurance business in this state;

b. The state of domicile of such insurer requires that permissible investments be substantially the same as provided in subsection 3 of section 45-04-02-12 and that changes in the investment policy of the variable life insurance separate account be regulated in a manner substantially similar to that required under section 45-04-02-12 for such separate accounts operated by insurers domiciled in this state; and

c. The insurer has obtained the written approval of the commissioner for the issuance of variable life insurance policies in this state. The commissioner shall grant such written approval only after the commissioner has found all of the following:

(1) The plan of operation for the issuance of variable life insurance policies is not unsound;

(2) The general character, reputation, and experience of the management and those persons or firms proposed to supply consulting, investment, administrative, or custodial services to the insurer are such as to reasonably assure competent operation of the variable life insurance business of the insurer in this state;

(3) The present and foreseeable future financial condition of the insurer and its method of operation in connection with the issuance of such policies is not likely to render its operation hazardous to the public or its policyholders in this state. The commissioner shall consider, among other things:

(a) The history of operation and financial condition of the insurer;

(b) The qualifications, fitness, character, responsibility, reputation, and experience of

the officers and directors and other management of the insurer and those persons or firms proposed to supply consulting, investment, administrative, or custodial services to the insurer.

(c) The applicable law and regulations under which the insurer is authorized in its state of domicile to issue variable life insurance policies. The state of entry of an alien insurer shall be deemed its state of domicile for this purpose.

(d) If the insurer is a subsidiary of, or is affiliated by common management or ownership with another company, its relationship to such other company and the degree to which the requesting insurer, as well as the other company, meet these standards.

2. Filing for approval to do business in this state. Before any insurer shall deliver or issue for delivery any variable life insurance policy in this state, it must file with the department all of the following information for the consideration of the commissioner in making the determination required by subdivision c of subsection 1:

a. Copies of and a general description of the variable life insurance policies it intends to issue.

b. A general description of the methods of operation of the variable life insurance business of the insurer, including the names of those persons or firms proposed to supply consulting, investment, administrative, or custodial services to the insurer.

c. With respect to any separate account maintained by an insurer for any variable life insurance policy, a statement of the investment policy the company intends to follow for the investment of the assets held in such separate account. The statement shall include a description of the investment objective and orientation intended for the separate account.

d. A description of any investment advisory services contemplated as required by subsection 10 of section 45-04-02-12.

e. If requested by the commissioner, a copy of the statutes and regulations of the state of domicile of the insurer under which it is authorized to issue variable life insurance policies.

f. -- If -- requested -- by -- the -- commissioner, -- biographical -- data -- with respect -- to -- officers -- and -- directors -- of -- the -- insurer -- on -- the Uniform -- Biographical -- Data -- form -- of -- the -- national -- association of -- insurance -- commissioners.

3. -- Standards -- of -- suitability. -- Every -- insurer -- seeking -- approval -- to enter -- into -- the -- variable -- life -- insurance -- business -- in -- this -- state shall -- adopt -- by -- formal -- action -- of -- its -- board -- of -- directors -- and file -- with -- the -- commissioner -- a -- written -- statement -- specifying -- the standards -- of -- suitability -- to -- be -- used -- by -- the -- insurer -- and applicable -- to -- its -- officers, -- directors, -- employees, -- affiliates, and -- agents -- with -- respect -- to -- the -- suitability -- of -- variable -- life insurance -- for -- the -- applicant. -- The -- standards -- of -- suitability shall -- be -- binding -- on -- the -- insurer, -- and -- those -- to -- whom -- it -- refers, and -- shall -- specify:

a. -- That -- no -- recommendation -- shall -- be -- made -- to -- an -- applicant -- to purchase -- a -- variable -- life -- insurance -- policy -- and -- that -- no variable -- life -- insurance -- policy -- shall -- be -- issued -- in -- the absence -- of -- reasonable -- grounds -- to -- believe -- that -- the -- purchase of -- such -- policy -- is -- not -- unsuitable -- for -- such -- applicant -- on -- the basis -- of -- information -- furnished -- after -- reasonable -- inquiry -- of such -- applicant -- concerning -- the -- applicant's -- insurance -- and investment -- objectives, -- financial -- situation -- and -- needs, -- and any -- other -- information -- known -- to -- the -- insurer -- or -- to -- the -- agent making -- the -- recommendation.

b. -- That -- lapse -- rates -- for -- variable -- life -- insurance -- within -- the first -- two -- policy -- years -- which -- are -- significantly -- higher -- than both -- those -- experienced -- by -- the -- insurer -- or -- an -- affiliate thereof -- for -- corresponding -- fixed -- benefit -- life -- insurance policies -- and -- those -- experienced -- by -- other -- insurers -- for variable -- life -- insurance -- policies -- shall -- be -- considered -- in determining -- whether -- the -- guidelines -- adopted -- by -- the -- insurer are -- reasonable -- and -- also -- whether -- the -- insurer -- and -- its -- agents are -- engaging, -- as -- a -- general -- business -- practice, -- in -- the -- sale of -- variable -- life -- insurance -- to -- persons -- for -- whom -- it -- is unsuitable. -- For -- purposes -- of -- this -- subdivision, -- conversions from -- variable -- life -- insurance -- to -- fixed -- benefit -- life insurance -- policies -- pursuant -- to -- this -- regulation -- shall -- not be -- considered -- lapses.

4. -- Use -- of -- sales -- materials. -- An -- insurer -- authorized -- to -- transact variable -- life -- insurance -- business -- in -- this -- state -- shall -- not -- use any -- sales -- material, -- advertising -- material, -- or -- descriptive literature -- or -- other -- materials -- of -- any -- kind -- in -- connection -- with its -- variable -- life -- insurance -- business -- in -- this -- state -- which -- is false, -- misleading, -- deceptive, -- or -- inaccurate. -- For -- purposes -- of this -- subsection, -- variable -- life -- insurance -- sales -- material, advertising -- material, -- or -- descriptive -- literature -- includes -- but is -- not -- limited -- to:

- a.--Printed--and--published--material,--audiovisual--material,--and--descriptive--literature--of--an--insurer--used--in--direct--mail,--newspapers,--magazines,--radio--scripts,--television--and--film--scripts,--billboards,--and--similar--displays--for--variable--life--insurance.
- b.--Descriptive--literature--and--sales--aids--of--all--kinds--used--to--sell--variable--life--insurance--by--or--on--behalf--of--an--insurer--or--any--person--authorized--to--sell--variable--life--insurance--for--presentation--to--members--of--the--insurance--buying--public,--including--but--not--limited--to--circulars,--leaflets,--booklets,--depictions,--illustrations,--and--form--letters.
- c.--Prepared--sales--talks,--presentations,--and--material--for--use--in--the--sale--of--variable--life--insurance--by--any--person--authorized--to--sell--variable--life--insurance.

5.--Requirements--applicable--to--contractual--services.

- a.--Any--contract--between--an--insurer--and--suppliers--of--consulting,--investment,--administrative,--sales,--marketing,--custodial,--or--other--services--which--are--material--with--respect--to--variable--life--insurance--operations--shall--be--in--writing--and--provide--that--the--supplier--of--such--services--shall--furnish--the--commissioner--with--any--information--or--reports--in--connection--with--such--services--which--the--commissioner--may--request--in--order--to--ascertain--whether--the--variable--life--insurance--operations--of--the--insurer--are--being--conducted--in--a--manner--consistent--with--this--chapter--and--any--other--applicable--law--or--regulations.
- b.--The--contract--shall--be--fair--and--equitable--to--all--parties--and--not--endanger--any--policyholders--of--the--insurer--in--this--state.
- c.--The--contract--shall--not--relieve--the--insurer--from--any--responsibilities--or--obligations--imposed--upon--the--operations--of--its--variable--life--insurance--business--by--this--chapter--or--any--other--law--or--regulation.

6.--Report--to--the--commissioner.---Any--insurer--authorized--to--transact--the--business--of--variable--life--insurance--in--this--state--shall--submit--to--the--commissioner,--in--addition--to--any--other--materials--which--may--be--required--by--this--chapter--or--any--other--applicable--laws--or--regulations:

- a.--An--annual--statement--of--the--business--of--its--variable--life--insurance--separate--account--or--accounts--in--such--form--as--may--be--prescribed--by--the--national--association--of--insurance--commissioners.
- b.--Prior--to--the--use--in--this--state--any--information--furnished--to--applicants--as--provided--for--in--section--45-04-02-13.

c. Prior to the use in this state the form of any of the reports to policyholders as provided for in section 45-04-02-15.

d. Such additional information concerning its variable life insurance operations or its variable life insurance separate accounts as the commissioner shall deem necessary.

e. Any material submitted to the commissioner under this subsection shall be disapproved if it is found to be false, misleading, deceptive, or inaccurate in any material respect and, if previously distributed, the commissioner shall require the distribution of an amended report.

7. Authority of commissioner to disapprove material. Any material required to be filed with the commissioner, or approved by the commissioner, shall be subject to disapproval if at any time it is found by the commissioner not to comply with the standards established by this chapter. Repealed effective May 1, 1997.

General Authority: NDCG-26-1-33-17, -26-1-34-11

Law Implemented: NDCG-26-1-33-14, -26-1-34-11

45-04-02-10. Policy requirements for variable life insurance. The commissioner shall not approve any variable life insurance form filed pursuant to this chapter unless it conforms to the requirements of this section.

1. Filing of variable life insurance policies. All variable life insurance policies, riders, endorsements, applications, and other related documents which are to be attached to and made a part of the policy shall be filed with the commissioner and approved by the commissioner in writing prior to delivery or issuance for delivery in this state.

a. The procedures and requirements for such filing and approval shall be, to the extent appropriate and not inconsistent with this section, the same as those otherwise applicable to other life insurance policies.

b. The commissioner may approve variable life insurance policies and related forms with provisions the commissioner deems to be not less favorable to the policyholder and the beneficiary than those required by this section.

c. The requirements of subdivisions a and d of subsection 2 and subdivision q of subsection 3 of this section shall not apply to variable life insurance policies and related

forms issued in connection with corporate pension and profit-sharing plans and retirement income H.R. 10 pension plans which are exempt pursuant to section 3(c)(11) of the Investment Company Act of 1940 and where applicable other provisions of the federal securities laws because of their tax-qualified status.

2. Mandatory policy benefit and design requirements. Variable life insurance policies delivered or issued for delivery in this state shall comply with the following minimum requirements:

a. Coverage shall be provided for the lifetime of the insured with the mortality and expense risk borne by the insurer.

b. Gross premiums for death benefits shall be a level amount for the duration of the premium payment period, but this subdivision shall not be construed to prohibit temporary or permanent additional premiums for incidental insurance benefits or substandard risks. This subdivision shall not be deemed to prohibit the use of fixed benefit preliminary term insurance for a period not to exceed one hundred twenty days from the date of the application for a variable life insurance policy. The premium rate for such preliminary term insurance shall be stated separately in the application or receipt.

c. A minimum death benefit is provided in an amount at least equal to the initial face amount of the policy so long as premiums are paid when due (subject to the provisions of subdivision b of subsection 4).

d. The amount payable upon the death of the insured so long as premiums are paid when due (subject to the provisions of subdivision b of subsection 4) shall be not less than a minimum multiple of the gross premium payable in that year, exclusive of that portion allocable to any incidental insurance benefit, by a person who meets standard underwriting requirements, as shown in the following table:

Issue-Ages	Multiples
0-5	80
6-10	71
11-15	63
16-20	55
21-25	47
26-30	40
31-35	33
36-40	27
41-45	21
46-50	15

51---55-----	13
56---60-----	11
61---65-----	9
66---70-----	8
71-and-over-----	7

e. The policy shall provide that the variable death benefit shall reflect the investment experience of the variable life insurance separate account established and maintained by the insurer and that the excess, positive or negative, of the net investment return over the assumed investment rate, as applied to the benefit base of each variable life insurance policy, shall be used to provide either:

(1) Fully paid-up variable life insurance providing coverage for the same period as the basic insurance under the policy or fully paid-up fixed benefit term insurance amounts, positive or negative, as the case may be, or a combination thereof; or

(2) Variable life insurance amounts, positive or negative, as the case may be, so that the reserve maintains the same percentage relationship to the variable death benefit as it would have on a corresponding fixed benefit policy.

f. Each variable life insurance policy shall be credited with the full amount of the net investment return applied to the benefit base.

g. Changes in variable death benefits of each variable life insurance policy shall be determined at least annually.

h. The cash value of each variable life insurance policy shall be determined at least as frequently as monthly. The method of computation of cash values and other nonforfeiture benefits, as described either in the policy or in a statement filed with the commissioner of the state in which the policy is delivered or issued for delivery, shall be in accordance with actuarial procedures that recognize the variable nature of the policy. The method of computation must be such that if the net investment return credited to the policy at all times from the date of issue should be equal to the assumed investment rate, not to exceed three and one-half percent for this computation with premiums and benefits determined accordingly under the terms of the policy, then the resulting cash values and other nonforfeiture benefits must be at least equal to the minimum values required by North Dakota Century Code chapter 26.1-33 for a fixed benefit policy with such premiums and benefits. The method of computation may disregard incidental minimum guarantees as to dollar amounts payable. Incidental

minimum-guarantees-include,-for-example,-but-are-not-to-be limited-to,-a-guarantee-that-the-amount-payable--at--death or--maturity--shall--be--at-least-equal-to-the-amount-that otherwise-would-have-been-payable-if--the--net--investment return--credited--to-the-policy-at-all-times-from-the-date of-issue-had-been-equal-to-the-assumed-investment-rate.

i.--The--computation-of-values-required-for-each-variable-life insurance--policy--may--be--based--upon--such---reasonable approximations-as-are-acceptable-to-the-commissioner.

3.--Mandatory--policy--provisions.---Every-variable-life-insurance policy-filed-for-approval-in-this-state-shall-contain-at-least the-following:

a.--The-cover-page-or-pages-corresponding-to-the-cover-page-of each-such-policy-shall-contain-all-of-the-following:

{1}--A--prominent-statement-either-in-contrasting-color-or in-boldface-type-at-least-four-points-larger-than-the type-size-of-the-largest-type-used-in-the-text-of-any provision-on-that-page,-that-the-death-benefit-may-be variable-or-fixed-under-specified-conditions.

{2}--A--prominent-statement-either-in-contrasting-color-or in-boldface-type-at-least-four-points-larger-than-the type--size--of-the-largest-type-size-used-in-the-text of-any-provision-on-that-page,-that-cash--values--may increase---or---decrease---in---accordance--with--the experience-of-the-separate--account--subject--to--any specified-minimum-guarantees.

{3}--A-statement-that-the-minimum-death-benefit-will-be-at least-equal-to-the-initial-face-amount-at-the-date-of issue--if-premiums-are-paid-when-due-and-if-there-are no-outstanding-policy-loans,-partial-withdrawals,-or partial-surrenders.

{4}--The--rule,-or-a--reference-to-the-policy-provision, which--describes--the--method--for--determining---the variable-amount-of-insurance-payable-at-death.

{5}--A---captioned---provision--which--provides--that--the policyholder-may-return-the-variable--life--insurance policy--within--forty-five--days--of--the-date-of-the execution-of-the-application-or-within--ten--days--of receipt--of-the-policy-by-the-policyholder,-whichever is--later,-and--receive--a--refund--of--all--premium payments-for-such-policy.

{6}--Such--other-items-as-are-currently-required-for-fixed benefit-life-insurance-policies--and--which--are--not inconsistent-with-this-section.

b. -- A provision for a grace period of not less than thirty-one days from the premium due date which shall provide that where the premium is paid within the grace period, policy values will be the same, except for the deduction of any overdue premium, as if the premium were paid on or before the due date.

c. -- A provision that the policy will be reinstated at any time within years from the date of default upon the written application of the insured and evidence of insurability, including good health, satisfactory to the insurer, unless the cash surrender value has been paid or the period of extended insurance has expired, upon the payment of any outstanding indebtedness arising subsequent to the end of the grace period following the date of default together with accrued interest thereon to the date of reinstatement and payment of an amount not exceeding the greater of:

{1} -- All overdue premiums and any other indebtedness in effect at the end of the grace period following the date of default with interest at a rate not exceeding six percent per year compounded annually; or

{2} -- One hundred ten percent of the increase in cash surrender value resulting from reinstatement.

d. -- A full description of the benefit base and of the method of calculation and application of any factors used to adjust variable benefits under the policy.

e. -- A provision designating the separate account to be used and stating that:

{1} -- Such separate account shall be used to fund only variable life insurance benefits, except to the extent permitted by paragraph 6 of subdivision e of subsection 5;

{2} -- The assets of such separate account shall be available to cover the liabilities of the general account of the insurer only to the extent that the assets of the separate account exceed the liabilities of the separate account arising under the variable life insurance policies supported by the separate account; and

{3} -- The assets of such separate account shall be valued at least as often as any policy benefits vary but at least as frequently as monthly.

f. -- {1} -- If the gross premiums for any variable life insurance policy delivered or issued for delivery in this state

produce an excess of (A) over (B) as defined in paragraph 2, the present value as of the date of issue of the adjusted premiums used in determining the minimum cash values required by subdivision h of subsection 2 shall be decreased by such excess by decreasing each adjusted premium by a uniform percentage.

(2) The excess of (A) over (B) referred to in paragraph 1 shall be determined as of the date of issue on the basis of the mortality table and maximum rate of interest permitted by North Dakota Century Code chapter 26.1-33, where:

(a) (A) is the present value of the gross premiums for the policy, decreased by one dollar per thousand of equivalent uniform amount for policies with an equivalent uniform amount of less than ten thousand, payable on an annual basis (exclusive of those portions of the gross premiums allocable to any incidental insurance benefits) by a person who meets standard underwriting requirements; and

(b) (B) is the product of (1) times (2), where (1) is the present value of the maximum premium rates per one thousand of insurance shown below payable at the beginning of each policy year to attained age sixty-five of the insured for issue ages below age fifty-one, for fifteen years for issue ages fifty-one through seventy and for life for issue ages above age seventy; and (2) is the ratio of (a) the present value of the benefits under the policy to (b) the present value of an insurance of one thousand for the whole of life.

TABLE-OF-RATES

Age-at Issue	Premium Rate	Age-at Issue	Premium Rate
0	11.50	41	38.65
1	11.60	42	40.45
2	11.76	43	42.51
3	11.97	44	44.89
4	12.22	45	47.62
5	12.50	46	50.71
6	12.80	47	54.17
7	13.11	48	58.00
8	13.43	49	62.18
9	13.75	50	66.67
10	14.08	51	68.58
11	14.42	52	70.54
12	14.77	53	72.57
13	15.13	54	74.69
14	15.49	55	76.92
15	15.87	56	79.29
16	16.27	57	81.84
17	16.70	58	84.61
18	17.16	59	87.63
19	17.65	60	90.91
20	18.18	61	94.45
21	18.74	62	98.25
22	19.34	63	102.31
23	19.97	64	106.61
24	20.62	65	111.11
25	21.28	66	115.48
26	21.95	67	119.39
27	22.64	68	122.51
28	23.37	69	124.50
29	24.15	70	125.00
30	25.00	71	118.86
31	25.92	72	123.96
32	26.91	73	129.66
33	27.97	74	135.96
34	29.10	75	142.86
35	30.30	76	150.36
36	31.55	77	158.46
37	32.84	78	167.16
38	34.17	79	176.46
39	35.56	80	186.36
40	37.04		

(3) For purposes of this subdivision, any portion of the premium set aside to support a guarantee that any surrender value shall not be less than a specified amount or for any other benefit that the commissioner shall deem to be excludable shall not be included.

g. A provision that at any time during the first eighteen months of the variable life insurance policy the owner may exchange the policy for a policy of permanent fixed benefit life insurance for the same initial amount of insurance as the variable life insurance policy, provided the new policy:

(1) Bears the same date of issue and age at issue as the original variable life insurance policy;

(2) Is issued on any plan of permanent life insurance offered by the insurer or an affiliate on the date of issue of the variable life insurance policy and at premium rates in effect on that date for the same class of insurance;

(3) Includes such riders and incidental insurance benefits as were included in the original policy if such riders and incidental insurance benefits are issued with the fixed benefit policy; If the conversion results in an increase or decrease in cash value, such increase or decrease will be payable to the insurer or the insured as the case may be.

(4) The insurer must apply as an advance premium on the new policy any excess of the accrued premium on the original variable life insurance policy from the date of issue to the date of request for exchange over the corresponding accrued premium on the new fixed benefit policy, except that any portion of such excess which is less than a regular mode premium on the new policy may either be applied as an advance premium or refunded in cash at the option of the insurer.

(5) The insurer shall not require evidence of insurability for this exchange.

h. A provision that the policy and any papers attached thereto by the insurer, including the application if attached, constitute the entire insurance contract.

i. A designation of the officers of the insurer who are empowered to make an agreement or representation on behalf of the insurer and an indication that statements by the insured, or on the insured's behalf, shall be considered as representations and not warranties.

j. An identification of the owner of the insurance contract.

k. A provision setting forth conditions or requirements as to the designation, or change of designation, of a

beneficiary--and--a--provision--for--disbursement--of--benefits
in--the--absence--of--a--beneficiary--designation.

l.--A--statement--of--any--conditions--or--requirements--concerning
the--assignment--of--the--policy.

m.--A--description--of--any--adjustments--in--policy--values--to--be
made--in--the--event--of--misstatement--of--age--or--sex--of--the
insured.

n.--A--provision--that--the--policy--shall--be--incontestable--by--the
insurer--after--it--has--been--in--force--for--two--years--during
the--lifetime--of--the--insured.

o.--A--provision--stating--that--the--investment--policy--of--the
separate--account--shall--not--be--changed--without--the--approval
of--the--insurance--commissioner--of--the--state--of--domicile--of
the--insurer,--and--that--the--approval--process--is--on--file--with
the--commissioner--of--this--state;

p.--A--provision--that--payment--of--variable--death--benefits--in
excess--of--the--minimum--death--benefits,--cash--values,--policy
loans,--or--partial--withdrawals--(except--when--used--to--pay
premiums)--or--partial--surrenders--may--be--deferred:

{1}--For--up--to--six--months--from--the--date--of--request;--or

{2}--For--any--period--during--which--the--New--York--stock
exchange--is--closed--for--trading--(except--for--normal
holiday--closing)--or--when--the--securities--and--exchange
commission--has--determined--that--a--state--of--emergency
exists--which--may--make--such--payment--impractical.

q.--Settlement--options--shall--be--provided--on--a--fixed--basis
only.

r.--A--description--of--the--basis--for--computing--the--cash
surrender--value--under--the--policy--shall--be--included.---Such
surrender--value--may--be--expressed--as--either:

{1}--A--schedule--of--cash--value--amounts--per--one--thousand
dollars--of--variable--face--amount--at--each--attained--age
or--policy--year--for--at--least--twenty--years--from--issue,
or--for--the--premium--paying--period,--if--less--than--twenty
years;--or

{2}--One--cash--value--schedule--as--described--in--paragraph--1
for--the--death--benefit,--or--for--each--one--thousand
dollars--of--death--benefit,--which--would--be--in--effect--if
the--net--investment--return--is--always--equal--to--the
assumed--investment--rate--and--a--second--schedule
applicable--to--any--adjustments--to--the--death--benefit
(disregarding--the--minimum--death--benefit--guarantee--and

term insurance amounts) if the net investment return does not equal the assumed investment rate at each age for at least twenty years from issue, or for the premium paying period if it is less than twenty years.

s. Premiums for incidental insurance benefits shall be stated separately.

t. Any other policy provisions required by this chapter.

u. Such other items as are currently required for fixed benefit life insurance policies and are not inconsistent with this chapter.

4. Nonforfeiture, partial withdrawal, policy loan, and partial surrender provisions. Every variable life insurance policy delivered or issued for delivery in this state shall contain provisions which are not less favorable to the policyholder than the following:

a. A provision for nonforfeiture insurance benefits so that at least one such benefit is offered on a fixed basis from the due date of the premium in default.

(1) Variable extended term insurance may not be offered.

(2) A given nonforfeiture option need not be offered on both a fixed and a variable basis.

(3) The insurer may establish a reasonable minimum cash surrender value below which any such nonforfeiture insurance option will not be available.

b. A provision for policy loans (which may at the option of the insurer be entitled and referred to as a partial withdrawal provision) not less favorable to the policyholder than the following:

(1) Up to seventy-five percent but if the loan is made from the general account not more than ninety percent of the policy's cash value may be borrowed.

(2) The amount borrowed, or any repayment thereof, shall not affect the amount of the premium payable under the policy.

(3) The amount borrowed shall bear interest at a rate not to exceed _____ percent per year compounded annually.

(4) The proceeds payable on death after the exercise of the policy loan provision shall equal the greater of

the minimum death benefit or the variable death benefit, less the indebtedness outstanding.

- (5) Any indebtedness shall be deducted from the cash value upon surrender or in determining any nonforfeiture benefit.
- (6) Whenever the indebtedness exceeds the cash value, the insurer shall give notice of intent to cancel the policy if the excess indebtedness is not repaid within thirty-one days after the date of mailing of such notice.
- (7) The policy may provide that if, at any time, the variable death benefit is less than it would have been if no loan or withdrawal had ever been made, the policyholder may increase such variable death benefit up to what it would have been if there had been no loan or withdrawal by paying an amount not exceeding one hundred ten percent of the corresponding increase in cash value and by furnishing such evidence of insurability as the insurer may request.
- (8) The policy may specify a reasonable minimum amount which may be borrowed at any time but such minimum shall not apply to any automatic premium loan provision.
- (9) No policy loan provision is required if the policy is under the extended insurance nonforfeiture option.
- (10) In addition to the foregoing, the policy may contain a partial surrender provision; however, any such provision shall provide that the policyholder may request part of the cash value and both the variable and minimum death benefits will be reduced in proportion to the percentage of the cash value received by the policyholder and the premium for the remaining amount of insurance will also be reduced to the appropriate rates for the reduced amount of insurance. The policy may provide that a partial surrender provision shall not require the insurer to reduce the amount of the minimum death benefit to less than the lowest amount of minimum death benefit which would have been issued to the insured under the insurance plans of the insurer at the time the policy was issued. The policy must clearly provide that the policyholder has the option of electing to exercise the cash value privileges of the policy loan or partial withdrawal provision rather than the partial surrender provision.

{11}--All--policy--loan,--partial--withdrawal,--or--partial
surrender--provisions--shall--be--constructed--so--that
variable--life--insurance--policyholders--who--have--not
exercised--such--provision--are--not--disadvantaged--by--the
exercise--thereof.

{12}--Moneys--paid--to--the--policyholders--upon--the--exercise--of
any--policy--loan,--partial--withdrawal,--or--partial
surrender--provision--shall--be--withdrawn--from--the
separate--account--and--shall--be--returned--to--the
separate--account--upon--repayment--except--that--a--stock
insurer--may--provide--the--moneys--for--policy--loans--from
the--general--account.

5.--Other--policy--provisions.---The--following--provisions--may--in
substance--be--included--in--a--variable--life--insurance--policy--or
related--form--delivered--or--issued--for--delivery--in--this--state:

a.--An--exclusion--for--suicide--within--one--year--of--the--policy
issue--date.

b.--Incidental--insurance--benefits--may--be--offered--on--a--fixed
basis--only.

c.--Policies--issued--on--a--participating--basis--shall--offer--to
pay--dividend--amounts--in--cash.---In--addition,--such--policies
may--offer--the--following--dividend--options:

{1}--The--amount--of--the--dividend--may--be--credited--against
premium--payments.

{2}--The--amount--of--the--dividend--may--be--applied--to--provide
paid-up--amounts--of--additional--fixed--benefit--whole
life--insurance.

{3}--The--amount--of--the--dividend--may--be--applied--to--provide
paid-up--amounts--of--additional--variable--life
insurance.

{4}--The--amount--of--the--dividend--may--be--deposited--in--the
general--account--at--a--specified--minimum--rate--of
interest.

{5}--The--amount--of--the--dividend--may--be--applied--to--provide
paid-up--amounts--of--fixed--benefit--one-year--term
insurance.

{6}--The--amount--of--the--dividend--may--be--deposited--as--a
variable--deposit--in--the--separate--account--in--the--case
of--variable--life--insurance--policies--exempt--pursuant
to--section--3(e)(11)--of--the--Investment--Company--Act--of
1940--because--of--their--tax--qualified--status.

d. A provision allowing the policyholder to elect in writing in the application for the policy or thereafter an automatic premium loan on a basis not less favorable than that required of policy loans or partial withdrawals under subsection 4 except that a restriction may be imposed to the effect that no more than two consecutive premiums can be paid under this provision. Repealed effective May 1, 1997.

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

Law Implemented: NDCC-26.1-33-13, -26.1-34-11

45-04-02-11. Reserve liabilities for variable life insurance.

1. Reserve liabilities for variable life insurance policies shall be established under North Dakota Century Code chapter 26.1-35 in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

2. Reserve liabilities for the guaranteed minimum death benefit shall be the reserve needed to provide for the contingency of death occurring when the guaranteed minimum death benefit exceeds the death benefit that would be paid in the absence of the guarantee, and shall be maintained in the general account of the insurer and shall be not less than the greater of subdivision a or b, as follows:

a. The aggregate total of the term costs, if any, covering a period of one full year from the valuation date, of the guarantee on each variable life insurance contract, assuming an immediate one-third depreciation in the current value of the assets of the separate account followed by a net investment return equal to the assumed investment rate, or

b. The aggregate total of the "attained age level" reserve on each variable life insurance contract. The "attained age level" reserve on each variable life insurance contract shall not be less than zero and shall equal the "residue", as described in paragraph 1, of the prior year's "attained age level" reserve on the contract, with any such "residue" increased or decreased by a payment computed on an attained age basis as described in paragraph 2:

(1) The "residue" of the prior year's "attained age level" reserve on each variable life insurance contract shall not be less than zero and shall be determined by adding interest at the valuation interest rate to such prior year's reserve, deducting the tabular claims based on the "excess", if any, of the guaranteed minimum death benefit over the death

benefit that would be payable in the absence of such guarantee, and dividing the net result by the tabular probability of survival. The "excess" referred to in the preceding sentence shall be based on the actual level of death benefits that would have been in effect during the preceding year in the absence of the guarantee, taking appropriate account of the reserve assumptions regarding the distribution of death claim payments over the year.

(2) The payment referred to in subdivision b shall be computed so that the present value of a level payment of that amount each year over the future premium paying period of the contract is equal to $(A) - (B) - (C)$, where (A) is the present value of the future guaranteed minimum death benefits, (B) is the present value of the future death benefits that would be payable in the absence of such guarantee, and (C) is any "residue", as described in paragraph 1, of the prior year's "attained age level" reserve on such variable life insurance contract. If the contract is paid up, the payment shall equal $(A) - (B) - (C)$. The amounts of future death benefits referred to in (B) shall be computed assuming a net investment return of the separate account which may differ from the assumed investment rate or the valuation interest rate but in no event may exceed the maximum interest rate permitted for the valuation of life insurance contracts.

c. The valuation interest rate and mortality table used in computing the two minimum reserves described in paragraphs a and b of subdivision 2 shall conform to permissible standards for the valuation of life insurance contracts. In determining such minimum reserve, the company may employ suitable approximations and estimates, including but not limited to groupings and averages.

3. Reserve liabilities for all fixed incidental insurance benefits shall be maintained in the general account in amounts determined in accordance with actuarial procedures appropriate to such benefits. Repealed effective May 1, 1997.

General Authority: NDCC-26-1-33-17, -26-1-34-11

Law Implemented: NDCC-26-1-33-13, -26-1-33-14, -26-1-34-11

45-04-02-12. Separate accounts for variable life insurance. The following requirements apply to the establishment and administration of variable life insurance separate accounts:

1. Establishment and administration of separate accounts. An insurer issuing variable life insurance in this state shall

establish one or more separate accounts pursuant to North Dakota Century Code sections 26.1-33-13 and 26.1-34-11.

a. If no law or other regulation provides for the custody of separate account assets and if the insurer itself is not the custodian of such assets, all contracts for such custody shall be in writing and the commissioner of the insurer's state of domicile shall approve of both the terms of any such contract and the proposed custodian prior to the transfer of custody.

b. An insurer shall not, without the prior written approval of the commissioner, employ in any way material to the handling of separate account assets any person who:

(1) Within the last ten years has been convicted of any felony or a misdemeanor arising out of such person's conduct involving embezzlement, fraudulent conversion, or misappropriation of funds or securities or involving violation of sections 1341, 1342, or 1343 of title 18, United States Code; or

(2) Within the last ten years has been found by any state regulatory authority to have violated or has acknowledged violation of any provision of any state insurance law involving fraud, deceit, or knowing misrepresentation; or

(3) Within the last ten years has been found by federal or state regulatory authorities to have violated or has acknowledged violation of any provision of federal or state securities laws involving fraud, deceit, or knowing misrepresentation.

c. All persons with access to the cash, securities, or other assets of the separate account shall be under bond in an amount of not less than \$_____.

d. If an insurer establishes more than one separate account for variable life insurance, justification for the establishment of each additional separate account shall also be filed with the commissioner and shall be subject to the commissioner's approval. The creation of additional separate accounts to avoid lower maximum charges against the separate account is prohibited.

e. The assets of such separate accounts established for variable life insurance policies shall be valued at least as often as variable benefits are determined but in any event at least as frequently as monthly.

f. The same separate account shall not be used to fund both variable life insurance policies which are exempt pursuant

to section 3(c)(11) of the Investment Company Act of 1940 because of their tax-qualified status and other variable life insurance policies not so exempt.

g. Except as provided in paragraph 6 of subdivision c of subsection 5, variable life insurance separate accounts shall not be used for variable annuities or for the investment of funds corresponding to dividend accumulations or other policyholder liabilities not involving life contingencies.

2. Amounts in the separate account.

a. The insurer shall maintain in each variable life insurance separate account assets with a fair market value at least equal to the greater of the valuation reserves for the variable portion of the variable life insurance policies or the benefit base for such policies.

b. The benefit base of any variable life insurance policy as of the beginning of any valuation period shall not be less than the sum of the following amounts after deducting amounts of any indebtedness pursuant to paragraph b of subsection 4 of section 45-04-02-10:

(1) The valuation net premium for such period based upon the initial amount insured; and

(2) The valuation terminal reserve at the end of the immediately preceding valuation period based upon the amount insured at the end of such period less the discounted cost of term insurance for the next period based upon tabular mortality and the interest rate used for such valuation reserves.

c. In lieu of the minimum benefit base requirement specified in subdivision b, an insurer may otherwise qualify under this subsection if it can be demonstrated to the satisfaction of the commissioner, that the policy benefits obtained over a twenty-year period from the date of issue by the use of the insurer's benefit base are at least substantially equivalent in value to the benefits obtained by the use of the minimum benefit base specified in subdivision b. The commissioner may specify the range of net investment return to be used in this demonstration.

d. Notwithstanding the actual reserve basis used for policies that do not meet standard underwriting requirements, the benefit base for such policies may be the same as for corresponding policies which do meet standard underwriting requirements.

3. Investments by the separate account.

a. -- No sale, exchange, or other transfer of assets may be made by an insurer or any of its affiliates between any of its separate accounts or between any other investment account and one or more of its separate accounts unless:

(1) -- In case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the policies with respect to the separate account to which the transfer is made; and

(2) -- Such transfer, whether into or from a separate account, is made by a transfer of cash; but other assets may be transferred if approved by the commissioner in advance.

b. -- Assets allocated to a variable life insurance separate account shall be held in cash or investments having a reasonably ascertainable market price. For purposes of this subdivision, only the following shall be considered "investments having a reasonably ascertainable market price":

(1) -- Liens in favor of the insurer against separate account policy reserves resulting from use by policyholders of cash values.

(2) -- Securities listed and traded on the New York stock exchange, the American stock exchange, or regional stock exchanges or successors to such exchanges having the same or similar qualifications.

(3) -- Securities listed on the national association of securities dealers annual quotations system.

(4) -- Shares of an investment company registered pursuant to the Investment Company Act of 1940. Where such an investment company issues book shares in lieu of share certificates, such book shares shall be deemed to be adequate evidence of ownership.

(5) -- Obligations of or guaranteed by the United States government, the Canadian government, any state, or municipality or governmental subdivision of a state.

(6) -- Commercial paper issued by business corporations when the total of such paper issued by the corporation does not exceed in value a guaranteed short line of credit by a bank.

(7) -- Certificates of deposit issued by financial institutions the deposits of which are insured by the

federal deposit insurance corporation or the federal savings and loan insurance corporation.

(8) New bond or debt issues which may reasonably be expected to be listed on an exchange regulated by the Securities Exchange Act of 1934.

e. Notwithstanding any other provision of law or the provisions of subdivision b, assets allocated to a variable life insurance separate account shall not be invested in:

(1) Commodities or commodity contracts.

(2) Put and call options or combinations of such options.

(3) Short sales.

(4) Purchases on margins.

(5) Letter or restricted stock.

(6) Units or other evidences of ownership of a separate account of another insurer, except those registered under the Investment Company Act of 1940.

(7) Real estate other than shares of a real estate investment trust.

4. Limitations on ownership:

a. A variable life insurance separate account shall not purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal and interest by the United States, if immediately after such purchase or acquisition the value of such investment, together with prior investments of such separate account in such security valued as required by these regulations, would exceed ten percent of the value of the assets of the separate account. The commissioner may waive this limitation in writing if the commissioner believes such waiver will not render the operation of the separate account hazardous to the public or the policyholders in this state.

b. No separate account shall purchase or otherwise acquire the voting securities of any issuer if as a result of such acquisition the insurer and its separate accounts, in the aggregate, will own more than ten percent of the total issued and outstanding voting securities of such issuer. The commissioner may waive this limitation in writing if the commissioner believes such waiver will not render the operation of the separate account hazardous to the public.

or the policyholders in this state or jeopardize the independent operation of the issuer of such securities.

c. The percentage limitation specified in subdivision a shall not be construed to preclude the investment of the assets of separate accounts in shares of investment companies registered pursuant to the Investment Company Act of 1940 if the investments and investment policies of such investment companies comply substantially with the provisions of subsection 3 and other applicable portions of this section.

5. Valuation of assets of a variable-life insurance separate account.

a. Investments of the separate account shall be valued at their market value on the date of valuation.

(1) Market value for investments traded on the recognized exchanges means the last reported sale price on the date of valuation. If there has been no sale on that date, the market value means the last reported bid quotation on the date of valuation.

(2) Market value for investments listed on the national association of securities dealers annual quotations system means the last representative bid quotation on the valuation date. If an investment ceases to be listed but continues to be traded over the counter, it shall be valued at the lowest bid quotation as it appears on the national quotation bureau sheets.

(3) If the valuation date referred to in paragraphs 1 and 2 is a day when the exchange or the national association of securities dealers annual quotations system is not open for business, the valuation date shall be the last date when the exchange or the national association of securities dealers annual quotations system was open for business.

b. If an investment ceases to be traded, it shall be valued at fair value as determined in good faith by or at the direction of the board of directors of the insurer but not in excess of the last reported bid quotation. Within thirty days of notification of cessation of trading of any investment shall be reported by the insurer to the insurance commissioner of the state of domicile of the insurer. Such commissioner shall within a reasonable period of time determine the method of valuation or disposition of such investment.

6. Separate account investment policy.

a. -- The investment policy of a separate account operated by a domestic insurer filed under subdivision c of subsection 2 shall not be changed without the approval of the insurance commissioner.

b. -- With respect to changes of investment policy for which the commissioner must give the commissioner's approval, the following regulations shall apply:

(1) -- Such approval shall be deemed to be given sixty days after the date the request for approval was filed with the commissioner, unless the commissioner notifies the insurer before the end of such sixty-day period of the commissioner's determination that the proposed change is a material change in the investment policy.

(2) -- If the change is deemed material by the commissioner, the commissioner shall approve such change only if the commissioner determines, after a public hearing, that the change does not appear detrimental to the interest of the policyholders of the insurer.

(3) -- At least thirty days prior to any public hearing under paragraph 2, the insurer shall mail a notice to each policyholder and to the insurance commissioner of each state in which the affected variable life insurance policies are being sold. The notice shall describe the proposed change in investment policy, list the reasons therefor, designate the date and place of the public hearing, inform the policyholder of the procedures to be followed in commenting on the change, and describe the conduct of the meeting. Any such notice shall be in a form approved by the commissioner.

(4) -- Within sixty days after such public hearing, the commissioner must approve or deny the proposed change in investment policy.

(5) -- Should any policyholder object to the proposed change and the change is allowed by the commissioner, the objecting policyholder shall be given the option within sixty days of notification to the policyholder of the approval by the commissioner of such change, of converting, without evidence of insurability, under one of the following options, to a fixed benefit life insurance policy issued by the insurer or an affiliate:

(a) -- A conversion as of the original issue age to a permanent form of life insurance, based on the insurer's premium rates for fixed life insurance

at the original issue age, for an amount of insurance not exceeding the death benefit of the variable life insurance policy on the date of conversion. If the cash value of the variable life insurance policy exceeds the cash value of the fixed life insurance policy, the difference shall be paid to the policyholder. If the cash value of the fixed life insurance policy exceeds the cash value of the variable life insurance policy, the difference shall be paid by the policyholder.

(b) Surrender of the variable life insurance policy and conversion as of the attained age to a substantially comparable permanent form of life insurance for an amount of insurance not exceeding the excess of the death benefit of the variable life insurance policy over:

{1} Its cash value on the date of conversion if the withdrawing policyholder elects the cash surrender option; or

{2} The death benefit payable under any paid-up insurance option if the withdrawing policyholder elects such option.

7. Charges against a variable life insurance separate account:

a. The insurer may deduct only the following from the separate account:

{1} Taxes or reserves for taxes attributable to investment gains and income of the separate account;

{2} Actual cost of reasonable brokerage fees and similar direct acquisition and sales costs incurred in the purchase or sale of separate account assets;

{3} Actuarially determined costs of insurance (tabular costs) and the release of reserves on the termination or partial surrender of the variable life insurance policy;

{4} Charges for investment management expenses, including internal costs attributable to the investment management of assets of the separate account, not exceeding the following percentages, on an annual basis, of the average net asset value of the separate account as of the dates of valuation under subdivision e of subsection 1.

(a) -- Seventy-five hundredths percent of that portion of separate account assets valued at or under seventy-five million dollars; and

(b) -- One-half percent of that portion of separate account assets valued in excess of seventy-five million dollars but less than one hundred fifty million dollars; and

(c) -- Four-tenths percent of that portion of separate account assets valued in excess of one hundred fifty million dollars but less than four hundred million dollars; and

(d) -- Thirty-five hundredths percent of that portion of separate account assets valued in excess of four hundred million dollars but less than eight hundred million dollars; and

(e) -- Three-tenths percent of that portion of separate account assets valued in excess of eight hundred million dollars.

(5) -- A charge, at a rate specified in the policy not to exceed one-half percent per year for mortality and expense guarantees.

b. -- Any charges against the separate account made by either an affiliate of the insurer or an unaffiliated fund shall be considered part of the charges limited by paragraphs 4 and 5 of subdivision a. -- Any charge against the separate account, excluding taxes, shall not vary in accordance with the difference between the investment performance of the separate account and any index of securities prices or other measure of investment performance.

8. -- Standards of conduct. -- Every insurer seeking approval to enter into the variable-life insurance business in this state shall adopt by formal action of its board of directors and file with the commissioner a written statement specifying the standards of conduct of the insurer, its officers, directors, employees, and affiliates with respect to investments of variable-life insurance separate accounts and variable-life insurance operations. -- Such standards of conduct shall be binding on the insurer and those to whom it refers and must contain at a minimum the items contained in subdivision b of subsection 9.

9. -- Conflicts of interest.

a. -- Rules under any provision of the insurance laws of this state or any regulation applicable to the officers and directors of insurance companies with respect to conflicts of interest shall also apply to members of any separate

account's committee or other similar body. No officer or director of such company nor any member of any managing committee or body of a separate account shall receive directly or indirectly any commission or any other compensation with respect to the purchase or sale of assets of such separate account. The board of directors of the insurer shall be responsible for all acts concerning the separate account.

b. Unless otherwise approved in writing by the commissioner in advance of the transaction, with respect to variable life insurance separate accounts, an insurer or affiliate thereof shall not:

(1) Sell to or purchase from any such separate account established by the insurer any securities or other property, other than variable life insurance policies.

(2) Purchase or allow to be purchased for any such separate account any securities of which the insurer or an affiliate is the issuer.

(3) Accept any compensation, other than a regular salary or wages from such insurer or affiliate, for the sale or purchase of securities to or from any such separate account other than as provided in paragraph 3 of subdivision c.

(4) Engage in any joint transaction, participation, or common undertaking whereby such insurer or an affiliate participates with such a separate account in any transaction in which such insurer or an affiliate obtains an advantage in the price or quality of the item purchased, in the service received, or in the cost of such service and such separate account is disadvantaged in any of these respects by the same transaction.

(5) Borrow money or securities from any such separate account other than under a policy loan provision.

c. No provision of this section shall be construed to prohibit:

(1) The investment of separate account assets in securities issued by one or more investment companies registered pursuant to the Investment Company Act of 1940 which is sponsored or managed by the insurer or an affiliate, and the payment of investment management or advisory fees on such assets.

(2) -- The combination of orders for the purchase or sale of securities for the insurer, an affiliate thereof, any separate accounts, or any one or more of them, which is for their mutual benefit or convenience so long as any securities so purchased or the proceeds of any sale thereof are allocated among the participants on some predetermined basis expressed in writing which is designed to assure the equitable treatment of all participants.

(3) -- An insurer or an affiliate to act as a broker or dealer in connection with the sale of securities to or by such separate account. However, any commission, fee, or remuneration charged therefor shall not exceed the minimum broker's commission established for any such transaction by any national securities exchange through which such transaction could be effected or such charges prevailing in the ordinary course of business in the community where such transaction is effected.

(4) -- The rendering of investment management or investment advisory services by an insurer or affiliate, for a fee, subject to the provisions of this section.

d. -- The commissioner may, upon the written request of an insurer or an affiliate, approve a particular transaction or series of proposed transactions which would otherwise be prohibited under subdivision b if the commissioner determines such transaction is not unfair or inequitable to persons affected under the circumstances of such transactions.

10. -- Investment advisory services to a separate account.

a. -- An insurer shall not enter into a contract under which any person undertakes, for a fee, to regularly furnish investment advice to such insurer with respect to its separate accounts maintained for variable life insurance policies unless:

(1) -- The person providing such advice is registered as an investment adviser under the Investment Advisers Act of 1940; and

(2) -- The insurer has filed with the commissioner and continues to file annually the following information and statements concerning the proposed adviser:

(a) -- The name and form of organization, state organization, and its principal place of business.

(b) -- The --- names --- and --- addresses --- of --- its --- partners, officers, --- directors, --- and --- persons --- performing similar --- functions --- or, --- if --- such --- an investment adviser be an individual, of such individual.

(c) -- A --- written --- standard --- of --- conduct --- complying --- in substance with the requirements of subsection -- 8 which has been adopted by the investment adviser and is applicable to the investment adviser, its officers, directors, --- and --- affiliates.

(d) -- A --- statement --- provided --- by --- the --- proposed --- adviser --- as to whether the adviser or any person --- associated therewith:

[1] -- Has --- been --- convicted --- within --- ten --- years --- of --- any felony or misdemeanor arising out --- of --- such person's --- conduct --- as --- an --- employee, salesman, officer, --- or --- director --- of --- an --- insurance company, --- a --- bank, --- an --- insurance --- agent, --- a securities --- broker, --- or --- an --- investment adviser, involving embezzlement, fraudulent conversion, or misappropriation of funds or securities, --- or --- involving the violation of sections 1341, 1342, or 1343 of title 18 of the United States Code;

[2] -- Has --- been --- permanently --- or --- temporarily enjoined by order, judgment, or decree --- of --- any --- court --- of --- competent --- jurisdiction --- from acting --- as --- an --- investment --- adviser, underwriter, --- broker, --- or --- dealer, or as an affiliated person or as an employee of any investment --- company, --- bank, --- or --- insurance company, or from engaging in or continuing any --- conduct --- or --- practice --- in --- connection --- with any such activity;

[3] -- Has --- been --- found --- by --- federal --- or --- state regulatory authorities --- to --- have --- willfully violated --- or --- has --- acknowledged --- willful violation of any provision --- of --- federal --- or state --- securities --- laws --- or --- state --- insurance laws or of any rule or regulation under any such laws; or

[4] -- Has --- been --- censured, --- denied --- an investment adviser registration, had a registration as an investment adviser revoked or suspended, or been --- barred --- or --- suspended --- from --- being associated --- with --- an --- investment --- adviser --- by order --- of --- federal --- or --- state --- regulatory authorities; and

(3) Such investment advisory contract shall be in writing and provide that it may be terminated by the insurer without penalty to the insurer or the separate account upon no more than sixty days written notice to the investment adviser.

b. The commissioner may, after notice and opportunity for hearing, by order require such investment advisory contract to be terminated if the commissioner deems continued operation thereunder to be hazardous to the public or the insurance company's policyholders. Repealed effective May 1, 1997.

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

Law Implemented: NDCG-26.1-33, -26.1-34

45-04-02-13. Information furnished to applicants for variable life insurance. An insurer delivering or issuing for delivery in this state any variable life insurance policies shall deliver to the applicant for the policy, and obtain a written acknowledgment of receipt from such applicant coincident with or prior to the execution of the application, the information enumerated in the subsection to this section. The requirements of this section shall be deemed to have been satisfied by the delivery to the applicant of a prospectus included in a registration statement which satisfies the requirements of the Securities Act of 1933 and which was declared effective by the securities and exchange commission to the extent that the prospectus contains the information required by this section.

1. A summary explanation, in nontechnical terms, of the principal features of the policy, including a description of the manner in which the variable benefits will reflect the investment experience of the separate account and the factors which affect such variation.
2. A statement of the investment policy of the separate account, including:
 - a. A description of the investment objective and orientation intended for the separate account and the principal types of investments intended to be made.
 - b. Any restriction or limitations on the manner in which the operations of the separate account are intended to be conducted.
3. A statement of the net investment return of the separate account for each of the last ten years for which the separate account was in existence.
4. A statement describing, as an approximate percentage of an annual gross premium for each policy year and as an

approximate--equivalent--level--percentage--of--an--annual--gross premium--for--the--life--of--the--policy,--all--commission--or equivalent--payments--to--be--paid--to--all--agents--or--other--persons as--a--result--of--the--proposed--sale--for--the--policy--years--for which--such--payments--are--to--be--made.---As--used--in--this subsection,--"commissions"--means--all--moneys--and--other--valuable consideration,--including--but--not--limited--to--prizes--and--bonuses paid--directly--or--indirectly--to,--for,--or--on--behalf--of--the selling--agent--as--compensation--for--services--in--the--sale--of variable--life--insurance.

- 5.--A--statement--of--the--annual--taxes,--brokerage--fees,--and--similar costs,--and--the--charges,--expressed--as--an--annual--percentage, levied--against--the--separate--account--during--the--previous--year.
- 6.--A--summary--of--the--method--to--be--used--in--valuing--assets--held--by the--separate--account.
- 7.--A--summary--of--the--federal--income--tax--liabilities--of--the--policy applicable--to--the--insured,--the--policy--owner,--and--the beneficiary.
- 8.--If--the--applicant--is--furnished--illustrations--of--benefits payable--under--any--variable--life--insurance--contract,--such illustrations--shall--be--prepared--by--the--insurer--and--shall--not include--projections--of--past--investment--experience--into--the future---or---attempted---predictions---of--future--investment experience,--provided,--that--nothing--contained--herein--prohibits use--of--hypothetical--assumed--rates--of--return--to--illustrate possible--levels--of--benefits--if--it--is--made--clear--that--such assumed--rates--are--hypothetical--only.
- 9.--A--prominent--statement--either--in--contrasting--color--or--in boldface--type--at--least--four--points--larger--than--the--type--size of--the--largest--type--used--in--the--text--of--any--provision--on--the page,--providing--in--substance--the--following--information:

The--purpose--of--this--variable--life--insurance--policy--is--to provide--insurance--protection--for--the--beneficiary--named therein.---No--claim--is--made--that--this--variable--life insurance--policy--is--in--any--way--similar--or--comparable--to--a systematic--investment--plan--of--a--mutual--fund. Repealed effective May 1, 1997.

General Authority: NDCC-26-1-33-17,-26-1-34-11
Law Implemented: NDCC-26-1-33-15,-26-1-34-11

45-04-02-14. Applications for variable life insurance. The application for a variable life insurance policy shall contain:

- 1.--A--prominent--statement--that--the--death--benefit--may--be--variable or--fixed--under--specified--conditions.

2. A prominent statement that cash values may increase or decrease in accordance with the experience of the separate account (subject to any specified minimum guarantees).
3. Questions designed to elicit information which enables the insurer to determine the suitability of variable life insurance for the applicant. Repealed effective May 1, 1997.

General Authority: NDCC-26.1-33-17, -26.1-34-11
Law Implemented: NDCC-26.1-33-15, -26.1-34-11

45-04-02-15. Reports to variable life insurance policyholders.
Any insurer delivering or issuing for delivery in this state any variable life insurance policies shall mail to each variable life insurance policyholder at the policyholder's last known address the following reports:

1. Within thirty days after each anniversary of the policy, a statement or statements of the cash surrender value, death benefit, any partial withdrawal or policy loan, any interest charge, and any optional payments allowed pursuant to subsection 4 of section 45-04-02-10 under the policy computed as of the policy anniversary date. Provided, however, that such statement may be furnished within thirty days after a specified date in each policy year so long as the information contained therein is computed as of a date not more than forty-five days prior to the mailing of such notice. This statement shall state in contrasting color or distinctive type that, in accordance with the investment experience of the separate account, the cash values and the variable death benefit may increase or decrease, and shall prominently identify any value described therein which may be recomputed prior to the next statement required by this section. If the policy guarantees that the variable death benefit on the next policy anniversary date will not be less than the variable death benefit specified in such statement, the statement shall be modified to so indicate.
2. Annually, a statement or statements including:
 - a. A summary of the financial statement of the separate account based on the annual statement last filed with the commissioner.
 - b. The net investment return of the separate account for the last year and, for each year after the first, a comparison of the investment rate of the separate account during the last year with the investment rate during prior years, up to a total of five years when available.

c. A list of investments held by the separate account as of a date not earlier than the end of the last year for which an annual statement was filed with the commissioner.

d. Any charges, taxes, and brokerage fees determined on an accrual basis payable by the separate account during the previous year, each expressed as a dollar amount and a percentage and the total expressed as a dollar amount and as a percentage, of the assets of the separate account.

e. A statement of the portfolio turnover rate as defined herein during the preceding fiscal year of investments allocated to the separate account:

(1) The rate shall be calculated by dividing (a) the lesser of purchases or sales of portfolio securities for the particular fiscal year by (b) the monthly average of the value of the portfolio securities owned by the separate account during the particular fiscal year. Such monthly average shall be calculated by totaling the values of the portfolio securities as of the beginning and end of the first month of the particular fiscal year and as of the end of each of the succeeding eleven months, and dividing the sum by thirteen, except that the average value of securities for which market quotations are not available may be based upon the value of such securities as of the end of the preceding fiscal quarters.

(2) For the purposes of this item, there shall be excluded from both the numerator and the denominator all United States government securities (short-term and long-term) and all other securities whose maturities at the time of acquisition were one year or less. Purchases shall include any cash paid upon the conversion of one portfolio security into another. Purchases shall also include the cost of rights or warrants purchased. Sales shall include the net proceeds of the sale of rights or warrants. Sales shall also include the net proceeds of redemptions of portfolio securities by call or maturity.

(3) The insurer shall show, in addition to the calculated portfolio turnover rate, both the amount of the purchases and the amount of the sales (calculated as prescribed in paragraph 2) and the monthly average (but not the individual monthly figures) of the value of the portfolio securities owned by the separate account during the fiscal year.

(4) The insurer may, if it wishes, make any statement or explanation with respect to any significant variations in the portfolio turnover rate during the three fiscal years next preceding.

f. A statement of any change, since the last report, in the investment objective and orientation of the separate account, in any investment restriction or material quantitative or qualitative investment requirement applicable to the separate account, or in the investment adviser of the separate account.

g. The name of each broker or dealer handling portfolio transactions on behalf of the separate account in which the insurer or an affiliate has any material direct or indirect interest and the nature of such transactions and the amount of compensation received by each such broker or dealer from business originating with the separate account during the preceding fiscal year.

h. The names and principal occupations of each principal executive officer and each director of the insurer.

i. The names of all parents of the insurer and the basis of control of the insurer, and the name of any person who is known to own, of record or beneficially, ten percent or more of the outstanding voting securities of the company.
Repealed effective May 1, 1997.

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

Law Implemented: NDCC-26.1-33-15, -26.1-34-11

45-04-02-16. Qualification of agents for the sale of variable life insurance.

1. Qualification to sell variable life insurance.

a. No person may sell or offer for sale in this state any variable life insurance policy unless such person is an agent and has filed with the commissioner, in a form satisfactory to the commissioner, evidence that such person holds any license or authorization which may be required for the solicitation or sale of variable life insurance by any federal or state securities law.

b. Any examination administered by the department for the purpose of determining the eligibility of any person for licensing as an agent shall, after the effective date of this section, include such questions concerning the history, purpose, regulation, and sale of variable life insurance as the commissioner deems appropriate.

2. -- Reports of disciplinary actions. -- Any person qualified in this state under this section to sell or offer to sell variable life insurance shall immediately report to the commissioner:

a. -- Any suspension or revocation of the person's agent's license in any other state or territory of the United States;

b. -- The imposition of any disciplinary sanction, including suspension or expulsion from membership, suspension or revocation of or denial of registration, imposed upon the person by any national securities exchange, or national securities association, or any federal, state, or territorial agency with jurisdiction over securities or variable life insurance;

c. -- Any judgment or injunction entered against the person on the basis of conduct deemed to have involved fraud, deceit, misrepresentation, or violation of any insurance or securities law or regulation;

3. -- Refusal to qualify agent to sell variable life insurance -- suspension, revocation, or nonrenewal of qualification. -- The commissioner may reject any application or suspend or revoke or refuse to renew any agent's qualification under this section to sell or offer to sell variable life insurance upon any ground that would bar such applicant or such agent from being licensed to sell other life insurance contracts in this state. -- The rules governing any proceeding relating to the suspension or revocation of an agent's license shall also govern any proceeding for suspension or revocation of an agent's qualification to sell or offer to sell variable life insurance. Repealed effective May 1, 1997.

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

Law Implemented: NDCC-26.1-33-14, -26.1-34-11

CHAPTER 45-05-02

45-05-02-01. Policy term. A policy of crop/hail insurance in this state may not provide for a policy term in excess of one crop year. Repealed effective May 1, 1997.

History: Effective May 1, 1984.
General Authority: NDCC-28-32-02
Law Implemented: NDCC-26-1-25

45-05-02-02. Cash discounts.

1. Cash discounts of seven percent or less contained in any crop/hail policy issued in this state are presumed to be a proper discount and will be automatically approved by the insurance department. Cash discounts in excess of seven percent may be approved if documentary evidence is provided to the department, clearly demonstrating that the entire discount is justified.

2. All applications for crop/hail policies which provide a cash discount must contain on or attached to the application a clear indication of the availability of the discount to the policyholder. To receive the discount, the cash must be paid by June first or within thirty days of the date of application, whichever is later. Repealed effective May 1, 1997.

History: Effective May 1, 1984.
General Authority: NDCC-28-32-02
Law Implemented: NDCC-26-1-25

45-05-02-04. Rate for similar crop varieties. All varieties of a given crop should be written at the same rates. Such rates shall be the same as crop hail insurance actuarial association rates, unless actuarial justification is provided for a variance. Repealed effective May 1, 1997.

History: Effective May 1, 1984.
General Authority: NDCC-28-32-02
Law Implemented: NDCC-26-1-25

**CHAPTER 45-06-03
STANDARD HEALTH INSURANCE PROOF OF LOSS FORMS**

[Superseded by Chapter 45-06-03.1]

**CHAPTER 45-06-06
NORTH DAKOTA SMALL EMPLOYER HEALTH REINSURANCE PROGRAM**

[Repealed effective May 1, 1997]

**CHAPTER 45-08-03
GROUP SUBSTANCE ABUSE AND MENTAL CARE INSURANCE**

[Repealed effective May 1, 1997]

TITLE 46
Labor, Commissioner of

FEBRUARY 1997

CHAPTER 46-02-07

46-02-07-02. Standards that apply.

1. The North Dakota minimum wage is no less than four dollars and ~~twenty-five~~ seventy-five cents per hour and must be paid to all employees in every occupation in the state.
2. Overtime pay must be paid at one and one-half times the regular rate of pay to any employee for hours worked in excess of forty hours in any one week. Individuals employed as drivers by taxicab companies must be compensated at one and one-half times the regular rate of pay for all hours worked in excess of fifty hours in any one week. Hospitals and residential care establishments may adopt, by agreement with their employees, a fourteen-day overtime period in lieu of the usual seven-day workweek, if the employees are paid at least time and one-half their regular rate for hours worked over eight in a day or eighty in a fourteen-day work period, whichever is the greater number of overtime hours. The following types of employment are exempt from the overtime provisions of this subsection:
 - a. Any employee employed in a bona fide executive, administrative, or professional capacity.
 - b. Any employee engaged in an agricultural occupation.
 - c. Any employee of a shelter, foster care, or other such related establishment whose primary responsibilities are to provide temporary shelter, crisis intervention, prevention, education, and fellowship.

- d. Any employee employed in domestic service who resides in the household in which employed.
 - e. A straight commission salesperson in retail automobile, trailer, boat, aircraft, truck, or farm implement dealerships unless that salesperson is required to be on the premises for more than forty hours per week.
3. A minimum thirty-minute uninterrupted break must be provided to any employee desiring it in each shift exceeding five hours when there are two or more employees on duty. Collectively bargained agreements will prevail over this provision. Employees not allowed to leave the business location during the break period must be compensated at the regular rate of pay or provided with in-kind compensation (such as a meal) equal to or greater than the regular rate of pay.
4. Attendance at lectures, meetings, training programs, and similar activities need not be counted as working time if all the following four criteria are met:
- a. Attendance is outside of the employee's regular working hours.
 - b. Attendance is in fact voluntary.
 - c. The course, lecture, or meeting is not directly related to the employee's job.
 - d. The employee does not perform any productive work during such attendance.

Training or education mandated by the state, federal government, or any political subdivision for a specific occupation need not be counted as worktime.

5. Ordinary travel from home to work need not be counted as worktime. Special and unusual one-day assignments performed for the employer's benefit and at the employer's request is worktime for the employee regardless of driver or passenger status. Travel away from home is worktime when performed during the employee's regular working hours. Time spent traveling on nonworking days during regular working hours is worktime. The time spent as a passenger on an airplane, train, bus, or automobile after normal working hours is not worktime. The driver of a vehicle is working at anytime when required to travel by the employer. Traveltime from jobsite to jobsite, or from office to jobsite, is worktime to be compensated.
6. Standby time on the premises, or "on call" as in an engaged to wait manner is worktime to be compensated. Waiting to be engaged is not required to be compensated as worktime.

7. If an employer employee is required to be on duty for twenty-four hours or more, the employer and the employee may agree to exclude bona fide meal periods and bona fide regularly scheduled sleeping periods of not more than eight hours from hours worked, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted sleep. If the sleeping period is more than eight hours, only eight hours will be deducted from hours worked. If the sleeping period is interrupted by a call to duty, the interruption must be counted as hours worked. If the period is interrupted to such an extent that the employee cannot get a reasonable night's sleep, the entire period must be counted as worktime.
8. Every employer must furnish to an employee each pay period a check stub or pay voucher that indicates hours worked, the rate of pay, and required state and federal deductions.
9. An employer may require an employee to purchase uniforms if the cost of such uniforms does not bring that employee's wage below the hourly minimum wage for all hours worked during that pay period.
10. Vacation pay and paid time off must be treated the same as wages upon separation from employment if the employee has earned vacation or paid time off and has been employed for at least one year. Earned vacation pay or paid time off under collectively bargained agreements must be paid the same as wages when a labor dispute lasts more than fifteen days.
11. The commissioner may grant subminimum wages for students enrolled in vocational education or related programs as long as the wage is not below three dollars and sixty cents per hour.
12. Any employee working on a casual basis for less than twenty hours per week for less than three consecutive weeks in domestic service employment providing babysitting services is exempt from minimum wage and overtime provisions.
13. The reasonable value not exceeding the employer's actual cost of board, lodging, and other facilities customarily furnished by the employer for the employee's benefit may be treated as part of the wages, up to a maximum of fifteen dollars per day, if agreed to by a written agreement and if the employee's acceptance of facilities is in fact voluntary.
14. The common law test provided in subdivisions a and b of subsection 5 of section 27-02-14-01 will be used to determine whether or not an individual may be considered an employee or an independent contractor.

15. The entire employment relationship history existing between the employer and employee, including the employer's previous practices under similar circumstances, will be considered to determine when commissions should be paid to salespersons whose employment has ended.

History: Effective May 1, 1994; amended effective October 1, 1996.

General Authority: NDCC 28-32-02(1), 34-06-04

Law Implemented: NDCC 34-06-03, 34-06-09, 34-06-11, 34-06-12

46-02-07-03. Additional standards that apply to service and nonprofit industries.

1. A tip credit of thirty-three percent may be allowed for tipped employees. The employer may consider tips as part of wages, but such a tip credit must not exceed thirty-three percent of the minimum wage. The employer who elects to use the tip credit provision must inform the employee in advance and must maintain written records showing that the employee receives at least the minimum wage when direct wages and the tip credit allowance are combined. The minimum cash wage payable to tipped employees is ~~two-dollars-and-eighty-five-cents~~ three dollars and eighteen cents per hour.
2. Tip pooling is allowed only among the tipped employees. A vote of tipped employees to allow tip pooling must be taken, and it must be approved by fifty percent plus one of all tipped employees. A written record of each vote on tip pooling must be maintained by the employer, including names of employees voting and the vote totals.
3. Tipped employees employed in the nonprofit gaming industry means all employees with a gaming work permit issued by the North Dakota attorney general and who are employed as gaming attendants by a gaming organization licensed under North Dakota Century Code section 53-06.1-03.
 - a. Gaming sites that regularly have four or fewer tipped employees on duty can require tip pooling among all tipped employees at the site.
 - b. A gaming organization licensed under North Dakota Century Code section 53-06.1-03 may require tip pooling by blackjack (twenty-one) dealers at an authorized site as provided in North Dakota Century Code section 53-06.1-10. This tip pooling requirement only pertains to any employee, pit boss, or supervisor when actually dealing blackjack.
 - c. Pit bosses or supervisors at gaming sites are not tipped employees and cannot be part of the tip pool when

performing functions of those positions other than dealing blackjack (twenty-one).

4. Nonprofit camps that are directly youth related, and intended for educational purposes are exempt from minimum wage and overtime rules.

History: Effective May 1, 1994; amended effective October 1, 1996.

General Authority: NDCC 28-32-02(1), 34-06-04

Law Implemented: NDCC 34-06-03, 34-06-09, 34-06-11, 34-06-12

TITLE 50
Medical Examiners, Board of

DECEMBER 1996

CHAPTER 50-02-07

50-02-07-01. License fees. The fee for licensure in North Dakota whether it be by qualification, reciprocity, or endorsement, or special license is two hundred dollars. The fee for a locum tenens license is two hundred dollars; ~~and the~~ the annual registration fee for all licensed physicians is one hundred ~~ten~~ fifty dollars.

History: Amended effective February 1, 1985; December 1, 1988; July 1, 1994; December 1, 1996.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-17-17, 43-17-21, 43-17-25

CHAPTER 50-02-11

50-02-11-01. Eligibility for examination. To be eligible for parts I and II of NBME (national board of medical examiners licensing examination) or for steps 1 and 2 of USMLE (United States medical licensing examination), the applicant must be in one of the following categories:

1. A medical student officially enrolled in, or a graduate of, a United States or Canadian medical school accredited by the liaison committee on medical education (LCME).
2. A medical student officially enrolled in, or a graduate of, a United States osteopathic medical school accredited by the American osteopathic association (AOA).
3. A medical student officially enrolled in, or a graduate of, a foreign medical school and eligible for examination by the educational commission for foreign medical graduates (ECFMG) for its certificate.

To be eligible for NBME part III or USMLE step 3, the applicant must (a) have obtained the MD degree or the DO degree; (b) have completed successfully both parts I and II of the national board examination or steps 1 and 2 of the United States medical licensing examination or part I and step 2 or step 1 and part II or FLEX component 1; (c) if a graduate of a foreign medical school, be certified by the ECMFG or have successfully completed a fifth pathway program; and (d) have completed, or be near completion of, at least one postgraduate training year in a program of graduate medical education accredited by the accreditation council for graduate medical education or the American osteopathic association, or be enrolled in an approved postgraduate training program within the state of North Dakota.

History: Effective November 1, 1993; amended effective November 1, 1995; December 1, 1996.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-17-18

CHAPTER 50-03-01

50-03-01-13. Fees. The fee for initial registration of a physician assistant is fifty dollars. The annual renewal fee and is fifty dollars. The fee for approval of employment contract changes is twenty-five dollars.

History: Effective July 1, 1988; amended effective November 1, 1993; December 1, 1996.

General Authority: NDCC 43-17-13

Law Implemented: NDCC 43-17-02(10)

TITLE 51
Milk Marketing Board

DECEMBER 1996

CHAPTER 51-03-02

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

1. The provisions and prices contained in this marketing stabilization plan are promulgated pursuant to authority delegated to the North Dakota milk marketing board as set forth in North Dakota Century Code section 4-18.1-07.
2. If any provision of this marketing stabilization 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 marketing stabilization 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; September 1, 1996.

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 Marketing Stabilization 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; September 1, 1996.
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 marketing stabilization plan or on the new bid date, whichever is sooner.

History: Amended effective August 1, 1995; September 1, 1996.
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 marketing stabilization plan.

History: Amended effective April 14, 1980; November 1, 1980; November 1, 1983; August 1, 1995; September 1, 1996.
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 marketing stabilization 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 marketing stabilization plan.

History: Amended effective August 1, 1995; September 1, 1996.
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 marketing stabilization 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; September 1, 1996.
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

51-03-02-12.2. Minimum dock pickup provisions - Market area 1. Market area number 1 will have a minimum dock pickup price list of twenty-three percent off the respective market areas minimum established wholesale price list less an additional two percent prompt payment. Prices will change as per section 51-03-02-06. The following stipulations apply to receive this dock price:

1. "Dock" means dock at the plant of a processor where milk products are actually processed and packaged.
2. Hauling of milk products must be done with refrigerated truck equipment that is owned and operated or a lease purchase option that is operated by the same corporation or owner that owns the retail outlet. Refrigerated truck equipment must comply with regulations defined by federal and North Dakota state agencies.
3. This program shall only be available to a single retail ownership and no combination of retail ownerships or partnerships arrangements among several retailers will be permitted.
4. On all charge sales by retailer not paid for within two weeks from statement date, processor will charge retailer the difference between dock pickup price and wholesale price.
5. All orders preordered prior to dock pickup.
6. No in-store service, i.e., cleaning cases, stamping products, etc.
7. Personnel for store resets will be limited to dairy case setting only.
8. No returns on merchandise, except when product is found to be damaged or defective at time of pickup.
9. Delivery of product by processor due to incorrect ordering by customer or special orders, to be charged at wholesale price less appropriate volume discount.

History: Effective September 1, 1996.

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 marketing stabilization 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; September 1, 1996.

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 stabilization 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; amended effective September 1, 1996.

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~~ September 1, 1996, and all prior marketing stabilization plans for market area number 1 are hereby repealed.

History: Effective August 1, 1995; amended effective September 1, 1996.

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 marketing stabilization plan are promulgated pursuant to authority delegated to the North Dakota milk marketing board as set forth in North Dakota Century Code section 4-18.1-07.
2. If any provision of this marketing stabilization 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 marketing stabilization 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; September 1, 1996.

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 Marketing Stabilization 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; September 1, 1996.

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 marketing stabilization plan or on the new bid date, whichever is sooner.

History: Amended effective August 1, 1995; September 1, 1996.

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 marketing stabilization plan.

History: Amended effective April 14, 1980; November 1, 1980; November 1, 1983; August 1, 1995; September 1, 1996.
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 marketing stabilization 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 marketing stabilization plan.

History: Amended effective August 1, 1995; September 1, 1996.
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 marketing stabilization 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; September 1, 1996.
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~~ two 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; amended effective September 1, 1996.

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

51-03-03-13.1. Minimum dock pickup provisions - Market areas 2, 5, 7, and 8. Market areas numbers 2, 5, 7, and 8 will have a minimum dock pickup price list of twenty-three percent off the respective market areas minimum established wholesale price list less an additional two percent prompt payment. Prices will change as per section 51-03-03-06. The following stipulations apply to receive this dock price:

1. "Dock" means dock at the plant of a processor where milk products are actually processed and packaged.
2. Hauling of milk products must be done with refrigerated truck equipment that is owned and operated or a lease purchase option that is operated by the same corporation or owner that owns the retail outlet. Refrigerated truck equipment must comply with regulations defined by federal and North Dakota state agencies.
3. This program shall only be available to a single retail ownership and no combination of retail ownerships or partnerships arrangements among several retailers will be permitted.
4. On all charge sales by retailer not paid for within two weeks from statement date, processor will charge retailer the difference between dock pickup price and wholesale price.
5. All orders preordered prior to dock pickup.

6. No in-store service, i.e., cleaning cases, stamping products, etc.
7. Personnel for store resets will be limited to dairy case setting only.
8. No returns on merchandise, except when product is found to be damaged or defective at time of pickup.
9. Delivery of product by processor due to incorrect ordering by customer or special orders, to be charged at wholesale price less appropriate volume discount.

History: Effective September 1, 1996.

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 marketing stabilization 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; September 1, 1996.

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 stabilization 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; amended effective September 1, 1996.

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~~ September 1, 1996, and all prior marketing stabilization plans for market areas numbers 2, 5, 7, and 8 are hereby repealed.

History: Effective August 1, 1995; amended effective September 1, 1996.

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 marketing stabilization plan are promulgated pursuant to authority delegated to the North Dakota milk marketing board as set forth in North Dakota Century Code section 4-18.1-07.
2. If any provision of this marketing stabilization 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 marketing stabilization 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; September 1, 1996.

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 Marketing Stabilization 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; September 1, 1996.

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 marketing stabilization plan or on the new bid date, whichever is sooner.

History: Amended effective August 1, 1995; September 1, 1996.

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 marketing stabilization plan.

History: Amended effective April 14, 1980; November 1, 1980; November 1, 1983; August 1, 1995; September 1, 1996.
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 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 marketing stabilization plan.

History: Amended effective August 1, 1995; September 1, 1996.
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 marketing stabilization 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; September 1, 1996.
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

51-03-04-13.1. Minimum dock pickup provisions - Market areas 3, 4, and 6. Market areas numbers 3, 4, and 6 will have a minimum dock pickup price list of twenty-three percent off the respective market areas minimum established wholesale price list less an additional two percent prompt payment. Prices will change as per section 51-03-04-06. The following stipulations apply to receive this dock price:

1. "Dock" means dock at the plant of a processor where milk products are actually processed and packaged.
2. Hauling of milk products must be done with refrigerated truck equipment that is owned and operated or a lease purchase option that is operated by the same corporation or owner that owns the retail outlet. Refrigerated truck equipment must comply with regulations defined by federal and North Dakota state agencies.
3. This program shall only be available to a single retail ownership and no combination of retail ownerships or

partnerships arrangements among several retailers will be permitted.

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

History: Effective September 1, 1996.

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 marketing stabilization 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; September 1, 1996.

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~~ September 1, 1996, and all prior marketing stabilization plans for market areas numbers 3, 4, and 6 are hereby repealed.

History: Effective August 1, 1995; amended effective September 1, 1996.

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
Nursing, Board of

NOVEMBER 1996

ARTICLE 54-03.1

REQUIREMENTS FOR NURSING EDUCATION

[Repealed effective November 1, 1996]

STAFF COMMENT: Article 54-03.2 contains all new material but is not underscored so as to improve readability.

ARTICLE 54-03.2

STANDARDS FOR NURSING EDUCATION PROGRAMS

Chapter

54-03.2-01	General Provisions
54-03.2-02	Organization and Administration
54-03.2-03	Nurse Administrator
54-03.2-04	Faculty
54-03.2-05	Students
54-03.2-06	Curriculum
54-03.2-07	Nursing Education Program Approval
54-03.2-08	New Nursing Education Programs
54-03.2-09	Closure of a Nursing Education Program

CHAPTER 54-03.2-01 GENERAL PROVISIONS

Section

54-03.2-01-01	Statement of Intent
54-03.2-01-02	Definitions

54-03.2-01-01. Statement of intent. The legislative assembly enacted legislation to permit the board to periodically review and approve nursing education programs. The purpose of the review is to ensure that graduates of nursing education programs are prepared to provide safe and effective nursing care. The nursing education program standards established by the board serve as a guide for the development of new nursing education programs and the closure of programs. The standards also foster the continued improvement of established nursing education programs to meet the changing needs of society and the development of the profession. The standards provide criteria for the evaluation of new and established nursing education programs. The graduate of a program approved by the board is eligible to apply for admission to the licensure examination for nurses.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.2-01-02. Definitions. The terms used throughout this article have the same meaning as in North Dakota Century Code chapter 43-12.1, except:

1. "Approved" means board recognition of a nursing program that meets legal requirements for nursing education programs.
2. "Competency" means the ability of a graduate to integrate cognitive, affective, and psychomotor skills in a performance that meets a specific standard.
3. "Curriculum" means the courses required for graduation from an approved nursing education program.
4. "Practice site" means a facility that signs a written agreement with the program to provide practice experiences for students.
5. "Preceptor" means an individual who provides supervision of a nursing student's practice experience and who precepts at the direction of the faculty member responsible for the course in which the student is enrolled.
6. "Program" means the components of the school that relate to the organization and administration, nurse administrator, faculty, students, and curriculum preparing students for the practice of nursing.
7. "School" means the postsecondary educational institution offering transferable academic credit.
8. "Survey visit" means an onsite visit of a nursing program by the board of nursing.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

**CHAPTER 54-03.2-02
ORGANIZATION AND ADMINISTRATION**

Section

54-03.2-02-01	Accreditation Requirements
54-03.2-02-02	Organizational Design
54-03.2-02-03	Program Organizational Design
54-03.2-02-04	Program Consistency with School
54-03.2-02-05	Program Evaluation
54-03.2-02-06	Financial Support

54-03.2-02-01. Accreditation requirements. The school offering the program must be accredited by the north central association of colleges and schools commission on institutions of higher education.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.2-02-02. Organizational design. There must be a school organizational design that demonstrates the relationship of the program to the administration and to comparable programs within the institution, and that clearly delineates the lines of authority, responsibility, and channels of communication. The program faculty is given the opportunity to participate in the governance of the program and school.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.2-02-03. Program organizational design. The program must have an organizational design with clearly defined authority, responsibility, and channels of communication that assures both faculty and student involvement.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.2-02-04. Program consistency with school. The program must have a written purpose that is consistent with the mission of the school. The program must have written policies that are congruent with the school's policies and are periodically reviewed.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.2-02-05. Program evaluation. The program must have a plan for total program evaluation that includes the following: organization and administration, faculty, students, curriculum, and performance of graduates. Use of evaluation findings for relevant decisionmaking must be evident.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.2-02-06. Financial support. There must be evidence of financial support and resources adequate to achieve the purpose of the program. Resources include: facilities, equipment, supplies, and qualified administrative, instructional, and support personnel.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

**CHAPTER 54-03.2-03
NURSE ADMINISTRATOR**

Section

54-03.2-03-01	Administrator Responsibilities
54-03.2-03-02	Practical Nurse Program Qualifications
54-03.2-03-03	Registered Nurse Program Qualifications
54-03.2-03-04	Graduate Program Qualifications

54-03.2-03-01. Administrator responsibilities. The administrator of the program must be a registered nurse, with an unencumbered license issued by the board, and with the additional education and experience necessary to direct the program. The administrator provides the leadership and is accountable for the administration, planning, implementation, and evaluation of the program. The administrator responsibilities include:

1. Development and maintenance of an environment conducive to the teaching and learning processes;
2. Liaison and maintenance of the relationship with administrative and other units within the school;
3. Leadership within the faculty for the development and implementation of the curriculum;
4. Preparation and administration of the program budget;
5. Facilitation of faculty recruitment, development, performance review, promotion, and retention;
6. Liaison with and maintenance of the relationship with the board; and
7. Facilitation of cooperative agreements with practice sites.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.2-03-02. Practical nurse program qualifications. The qualifications for an administrator in a program preparing for practical nurse licensure are:

1. Minimum of a master's degree with a major in nursing; and
2. Evidence of experience in education, administration, and practice sufficient to administer the program.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-08(6)

54-03.2-03-03. Registered nurse program qualifications. The qualifications for an administrator in a program preparing for registered nurse licensure are:

1. A master's degree and an earned doctoral degree, one of which is in nursing; and
2. Evidence of experience in education, administration, and practice sufficient to administer the program.

History: Effective November 1, 1996.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-08(6)

54-03.2-03-04. Graduate program qualifications. The qualifications for an administrator in a program preparing for graduate education with a nursing focus are:

1. A master's degree and an earned doctoral degree, one of which is in nursing; and
2. Evidence of experience in education, administration, and practice sufficient to administer the program.

History: Effective November 1, 1996.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-08(6)

**CHAPTER 54-03.2-04
FACULTY**

Section

54-03.2-04-01	Faculty Responsibilities
54-03.2-04-02	Faculty Rights
54-03.2-04-03	Practical Nurse Program Faculty Qualifications
54-03.2-04-04	Registered Nurse Program Faculty Qualifications
54-03.2-04-05	Graduate Program Faculty Qualifications
54-03.2-04-06	Nonclinical Nursing Courses Faculty Qualifications
54-03.2-04-07	Preceptors
54-03.2-04-08	Unqualified Faculty

54-03.2-04-01. Faculty responsibilities. Nursing faculty responsibilities include the following:

1. Plan, implement, evaluate, and update the program;
2. Design, implement, evaluate, and update the curriculum using a written plan;
3. Develop, implement, evaluate, and update policies for student admission, progression, retention, and graduation in keeping with the policies of the school;
4. Participate in academic advisement and guidance of students;
5. Provide theoretical instruction and practice experiences;
6. Select, monitor, and evaluate preceptors and the student learning experience as defined in section 54-03.2-04-07.
7. Evaluate student achievement of curricular outcomes related to nursing knowledge and practice;
8. Evaluate teaching effectiveness; and
9. Participate in activities that facilitate maintaining the faculty members' own nursing competence and professional expertise in the area of teaching responsibility.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.2-04-02. Faculty rights. Faculty policies and procedures are available in writing and include:

1. Qualifications for the position;

2. Rights and responsibilities related to the position;
3. Criteria for evaluation of performance; and
4. Promotion, retention, and tenure policies.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.2-04-03. Practical nurse program faculty qualifications.

There must be sufficient faculty with graduate preparation and nursing expertise to achieve the purpose of the program.

1. Nursing faculty must be registered nurses, with an unencumbered license issued by the board. The nursing faculty who have primary responsibility for planning, implementing, and evaluating a nursing course in a program leading to licensure as a practical nurse must have:
 - a. A minimum of a master's degree in nursing or a master's degree in another discipline with evidence of acceptable graduate level coursework in nursing; and
 - b. Evidence of prior nursing practice experience.
2. Additional nurse faculty as needed must be registered nurses, with an unencumbered license issued by the board. These faculty must have:
 - a. A minimum of a baccalaureate degree in nursing; and
 - b. Evidence of prior nursing practice experience.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.2-04-04. Registered nurse program faculty qualifications.

There must be sufficient faculty with graduate preparation and nursing expertise to achieve the purpose of the program. Nurse faculty must be registered nurses, with an unencumbered license issued by the board. The nursing faculty who have responsibility for planning, implementing, and evaluating a nursing course in a program leading to licensure as a registered nurse must have:

1. A minimum of a master's degree in nursing or a master's degree in another discipline with evidence of acceptable graduate level coursework in nursing; and
2. Evidence of prior nursing practice experience.

History: Effective November 1, 1996.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-08(6)

54-03.2-04-05. Graduate program faculty qualifications. There must be sufficient faculty with graduate preparation and nursing expertise to achieve the purpose of the program. The majority of these faculty must hold an earned doctoral degree. Nursing faculty in a graduate program with a nursing focus must be registered nurses with an unencumbered license issued by the board. The nursing faculty must have:

1. A minimum of a master's degree in nursing or a master's degree in another discipline with evidence of acceptable graduate level coursework in nursing; and
2. Evidence of prior nursing practice experience.

History: Effective November 1, 1996.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-08(6)

54-03.2-04-06. Nonclinical nursing courses faculty qualifications. Faculty, who have primary responsibility for teaching supportive courses, must hold a master's degree or a comparable professional credential in their respective discipline.

History: Effective November 1, 1996.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-08(6)

54-03.2-04-07. Preceptors. Preceptors may be used to enhance practice experiences. The following are guidelines for utilizing preceptors:

1. If a nurse, the preceptor must be educated at preferably the same or higher level as the student or if a professional in another discipline, the preceptor must hold credentials that are appropriate for the student's learning experience;
2. Criteria for selecting preceptors must be in writing;
3. The functions and responsibilities of the preceptor must be delineated in writing and provided to the preceptor; and
4. The faculty member retains responsibility for the student's learning experiences and confers periodically with the preceptor and student for the purposes of monitoring and evaluating the learning experiences.

History: Effective November 1, 1996.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-08(6)

54-03.2-04-08. Unqualified faculty. Faculty members who do not meet the requirements of section 54-03.2-04-03, 54-03.2-04-04, or 54-03.2-04-05 shall provide the board with evidence of progression toward achievement of the required qualifications.

History: Effective November 1, 1996.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-08(6)

**CHAPTER 54-03.2-05
STUDENTS**

Section	
54-03.2-05-01	Student Policies
54-03.2-05-02	Practical Nurse Competencies
54-03.2-05-03	Registered Nurse Competencies
54-03.2-05-04	Performance of Graduates on Licensing Examination
54-03.2-05-05	Graduate Prepared Registered Nurse Competencies

54-03.2-05-01. Student policies. Student policies should facilitate mobility and articulation and be consistent with the governing school. Student policies in relation to the following must be in writing and available:

1. Admission, readmission, progression, retention, graduation, dismissal, and withdrawal;
2. Meeting the health and legal standards required by the affiliate agencies;
3. Student responsibilities;
4. Student rights and grievance procedures; and
5. Student opportunity to participate in program governance and evaluation.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.2-05-02. Practical nurse competencies. Students enrolled in a practical nurse program shall be provided the opportunity to acquire and demonstrate the knowledge, skills, and abilities for safe and effective nursing practice. The graduate from a practical nurse program is responsible and accountable to practice according to the standards of practice for the licensed practical nurse as defined in chapter 54-05-01.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.2-05-03. Registered nurse competencies. Students enrolled in a registered nurse program shall be provided the opportunity to acquire and demonstrate the knowledge, skills, and abilities for safe and effective nursing practice. The graduate from a registered nurse program is responsible and accountable to practice according to the

standards of practice for the registered nurse as defined in chapter 54-05-02.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.2-05-04. Performance of graduates on licensing examination.

Acceptable performance on the licensing examination for each program is a pass rate of eighty percent for its first-time writers in any given calendar year. A program with a pass rate that falls below eighty percent for first-time writers in any two consecutive calendar years shall:

1. Present to the board a plan for identifying possible contributing factors and for correcting any identified deficiencies; and
2. Submit a periodic progress report to the board on a schedule determined by the board.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.2-05-05. Graduate prepared registered nurse competencies.

Students enrolled in a graduate program with a nursing focus shall be provided the opportunity to acquire and demonstrate the knowledge, skills, and abilities for safe and effective advanced nursing practice. The graduate prepared registered nurse is responsible and accountable to practice according to the standards of practice for the specialized nursing role for which the nurse is prepared.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

**CHAPTER 54-03.2-06
CURRICULUM**

Section

54-03.2-06-01	General Curriculum
54-03.2-06-02	Curriculum Changes
54-03.2-06-03	Practice Sites
54-03.2-06-04	Practical Nurse Curriculum
54-03.2-06-05	Registered Nurse Curriculum
54-03.2-06-06	Graduate Program Curriculum

54-03.2-06-01. General curriculum. The curriculum must:

1. Be planned, implemented, and evaluated by the faculty with provisions for student input;
2. Reflect the mission and purpose of the nursing education program;
3. Be organized logically and sequenced appropriately;
4. Facilitate articulation for upward mobility;
5. Have a syllabus for each nursing course; and
6. Have written, measurable terminal outcomes that reflect the role of the graduate.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.2-06-02. Curriculum changes. Major curriculum changes must be submitted to the board for approval prior to implementation.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.2-06-03. Practice sites. The program must have sufficient correlated practice experiences to assure development of nursing competencies:

1. Sites used to provide practice experiences must be evaluated periodically by faculty;
2. There must be sufficient practice experiences to assure the development of nursing competencies consistent with the level of preparation;

3. There must be written agreements with cooperating sites that are reviewed and revised periodically; and
4. Sufficient faculty must be employed to supervise student practice experiences. The ratio of students to faculty at any one time may not exceed eight to one for beginning nursing students or a ratio acceptable to the board for advanced practice experiences. The student to faculty ratio must be maintained to provide for safety of patients, students, and faculty members.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.2-06-04. Practical nurse curriculum. The curriculum includes content that includes the following skill and knowledge areas necessary to meet requirements for an associate degree with a major in practical nursing:

1. Communication and information concepts;
2. Behavioral and social science concepts that serve as a framework for understanding growth and development throughout the life cycle, human behavior, interpersonal relationships, and cultural diversity;
3. Physical and biological sciences concepts that help the students gain an understanding of the principles of scientific theory and computation;
4. Nursing concepts that provide the basis for understanding the principles of nursing care and appropriate and sufficient correlated nursing practice experiences to assure development of competencies;
5. Concepts regarding legal and ethical issues and professional responsibilities; and
6. Courses to meet the school's general education requirements for the associate degree.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.2-06-05. Registered nurse curriculum. The curriculum includes content that includes the following skill and knowledge areas necessary to meet requirements for a baccalaureate degree in nursing:

1. Concepts in written and oral communication, values clarification, scientific inquiry, computation, and technical and therapeutic information management;
2. Behavioral and social sciences concepts that serve as a framework for the understanding of growth and development throughout the life cycle, human behavior, interpersonal relationships, cultural diversity, and the social and economic context of health care;
3. Physical and biological sciences concepts that help the students gain an understanding of the principles of scientific theory;
4. Arts and humanities concepts that develop the aesthetic and intellectual capabilities of the student;
5. Nursing didactic content and practice experience that provide the basis for understanding:
 - a. The nursing process; and
 - b. The promotion and restoration of optimal health in clients across the lifespan in a variety of settings;
6. Concepts regarding research, legal and ethical issues, trends in nursing, principles of education and learning, and professional responsibilities;
7. Experiences that promote the development of leadership and management skills and professional socialization; and
8. Courses to meet the school's general education requirements for the baccalaureate degree.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.2-06-06. Graduate program curriculum. The curriculum must include content from nursing and related academic disciplines and meet requirements for a graduate degree with a nursing focus:

1. Advanced theory and research appropriate to the area of nursing specialization;
2. Advanced nursing practice experience relevant to the focus of nursing specialization;
3. Adequate role preparation for advanced nursing practice; and

4. Courses to meet the school's requirements for the master's degree.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

CHAPTER 54-03.2-07
NURSING EDUCATION PROGRAM APPROVAL

Section	
54-03.2-07-01	Evaluation of Compliance with the Standards for Nursing Education Programs
54-03.2-07-02	Initial Approval
54-03.2-07-03	Full Approval
54-03.2-07-04	Conditional Approval
54-03.2-07-05	Withdrawal of Approval
54-03.2-07-06	Reinstatement of Approval Status
54-03.2-07-07	Certificate of Approval
54-03.2-07-08	Publishing Approval Status
54-03.2-07-09	Continuing Compliance

54-03.2-07-01. Evaluation of compliance with the standards for nursing education programs. Evaluation of continuing compliance with the standards of nursing education involves the submission of a self-study report by the nursing education program and a site visit by a board representative. This process includes the following elements:

1. One month prior to a survey visit, a program must submit a narrative self-evaluation report that provides evidence of compliance with the standards of nursing education;
2. The survey visit will be made by a representative of the board on dates mutually acceptable to the board and the program;
3. Announcement of a survey visit will be sent to the program at least two months in advance of the visit;
4. The program will be asked to schedule survey visit activities;
5. The surveyor will make a verbal report to the program at the end of the visit;
6. The surveyor's written report will be sent to the program prior to the review by the board;
7. The board's fee for each program surveyed is two hundred dollars;
8. Following the board's review and decision, written notification regarding the approval of the program and, if necessary, the board's recommendations will be sent to the administrator of the program; and
9. Survey visits of individual programs may be conducted at shorter intervals upon the request of the board or from the school.

History: Effective November 1, 1996.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-08(6)

54-03.2-07-02. Initial approval. The board may grant initial approval to a proposed nursing education program that complies with chapter 54-03.2-08.

1. Initial approval is required prior to the enrollment of students in the first nursing course.
2. The board may continue initial approval:
 - a. Prior to the graduation of the first class, when review of materials specified in article 54-03.2, the most recent annual report, and the most recent site visit report reveals compliance with the rules; or
 - b. After graduation of the first class, when review of the criteria for full approval reveals time is needed to fully comply with the rules.

History: Effective November 1, 1996.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-08(6)

54-03.2-07-03. Full approval. The board may grant full approval under the following circumstances to:

1. A program with initial approval that demonstrates compliance with the rules after:
 - a. The most recent annual report;
 - b. The most recent site visit report;
 - c. The first class graduates; and
 - d. The program pass rate for first-time writers of the licensing examination is eighty percent or greater in the first calendar year.
2. A program with full approval that demonstrates continued compliance with the rules by:
 - a. The most recent annual report;
 - b. The most recent site visit report; and
 - c. The program pass rate for first-time writers of the licensing examination do not fall below an average of

eighty percent pass rate for two consecutive calendar years.

3. A program with conditional approval that demonstrates compliance with the rules by:
 - a. The most recent annual report;
 - b. The most recent site visit report; and
 - c. The program pass rate for first-time writers of the licensing examination do not fall below an average of eighty percent pass rate for two consecutive calendar years.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.2-07-04. Conditional approval. If the board determines that a program does not meet board rules, the school must be notified in writing detailing the deficiencies requiring correction within a given time period set by the board. The board may impose conditional approval for a length of time to be determined by the board but not to exceed two years following the date of written notification. The deficiencies not fully meeting the standards of nursing education are demonstrated by:

1. The most recent annual report;
2. The most recent site visit report; or
3. The program pass rate for first-time writers of the licensing examination fall below an average of eighty percent pass rate for three consecutive calendar years.

Conditional approval allows the program to continue to operate while the program corrects the deficiencies and works toward full approval. If at the end of that time period established by the board, the deficiencies have not been corrected, board approval shall be withdrawn and a date to discontinue the program shall be set by the board.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.2-07-05. Withdrawal of approval.

1. The board may withdraw initial approval when a new program fails to qualify for full approval within eighteen months following the graduation date of the first class.

2. The board may withdraw any approval when a program fails to correct documented deficiencies within a period of time specified by the board but not to exceed two years following the date of written notification.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.2-07-06. Reinstatement of approval status.

1. Upon receipt of notice of intent to withdraw approval, the administrator of the program may request a hearing pursuant to North Dakota Century Code chapter 28-32.
2. After demonstration of compliance with rules, a program may petition the board in writing for reinstatement of approval status.
3. Upon written request, representatives of the program may appear before the board to review board findings regarding program deficiencies or the adequacy of corrective actions taken by the program.
4. If denied reinstatement, the school must comply with all rules for the development and implementation of a new nursing education program.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.2-07-07. Certificate of approval. Following the board's review and action regarding the site visit report, a certificate shall be issued by the board to the program indicating the level of board approval.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.2-07-08. Publishing approval status. The board shall annually publish a list of programs and the level of approval for each program.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.2-07-09. Continuing compliance.

1. Annually by October thirty-first each program shall submit a report to the board providing requested information pertaining to the time period between July first of the previous year and June thirtieth.
2. Each program must submit to the board a report and may have an onsite survey visit by the board every four years.
3. The board may survey a program at any time at its discretion.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

**CHAPTER 54-03.2-08
NEW NURSING EDUCATION PROGRAMS**

Section	
54-03.2-08-01	Development of a New Program
54-03.2-08-02	Initial Requirements of a Program
54-03.2-08-03	First Survey Visit
54-03.2-08-04	Board Review and Initial Approval
54-03.2-08-05	Admission of Students
54-03.2-08-06	Progress Reports
54-03.2-08-07	Annual Survey

54-03.2-08-01. Development of a new program. A school considering establishing a nursing education program may submit to the board a statement of intent at least eighteen months in advance of the expected opening date. The school shall:

1. Conduct a feasibility study which includes information relative to:
 - a. The type of nursing program to be established;
 - b. The availability of health care agencies with sufficient practice experiences to support the program;
 - c. Projection of adequate enrollment;
 - d. Assurance of adequate educational facilities and practice sites;
 - e. Assurance of adequate financial resources for the program;
 - f. Assurance of qualified faculty for teaching and supervision;
 - g. Proposed starting date; and
 - h. Need for entry level nurses in the state and that region of the state.
2. Present the feasibility study to the board in a written report.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.2-08-02. Initial requirements of a program. The school shall employ a qualified nurse administrator to develop the program and submit a written application for approval to the board at least six

months before the proposed starting date or at such earlier time as the board and the school may agree. The written application must include:

1. Evidence that the school either has or is progressing toward full accreditation by the north central association of colleges and schools commission on institutions of higher education;
2. Mission and purpose of the school;
3. Proposed purpose and outcomes of the program;
4. Organizational design of school and program;
5. Curriculum organization with rationale and course descriptions;
6. Projected number of faculty with proposed employment dates;
7. Faculty qualifications, responsibilities, and personnel policies of the school;
8. Admission criteria and projected number of students to be admitted;
9. Description of practice sites;
10. Signed agreements with sites to be used for practice experiences;
11. Financial resources adequate for planning, implementation, and continuation of the program;
12. Description of academic facilities and staff to support the program; and
13. Description of support services for students.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.2-08-03. First survey visit. After the application has been received, a survey visit of the school proposing the nursing education program must be made by the board's designee. A written copy of the surveyor's report must be submitted to the school and the nurse administrator.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.2-08-04. Board review and initial approval. The board shall act on the application and the surveyor's report within three months of the site visit. The school must be notified in writing of the board's decision whether to grant or deny initial approval.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.2-08-05. Admission of students. Students may be admitted to the program only after initial approval has been granted by the board. The number of students admitted to a program must be determined by:

1. Number of qualified faculty;
2. Adequate educational facilities and resources; and
3. Availability of appropriate practice sites.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.2-08-06. Progress reports. Following initial approval progress reports that demonstrate implementation of approved plans under section 54-03.2-08-03 shall be submitted by the program administrator upon the board's request.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.2-08-07. Annual survey. The board's designee shall survey the program annually until the first class has graduated. Following graduation of the first class, a self-evaluation report of compliance with the rules shall be submitted by the program. The board's designee shall conduct a survey visit for consideration of full approval.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

**CHAPTER 54-03.2-09
CLOSURE OF A NURSING EDUCATION PROGRAM**

Section

54-03.2-09-01	Closure of Nursing Education Program
54-03.2-09-02	Voluntary Closing
54-03.2-09-03	Closing as a Result of Withdrawal of Approval
54-03.2-09-04	Storage of Records

54-03.2-09-01. Closure of a nursing education program. A program may close voluntarily or must be closed due to withdrawal of board approval. During the transition to closure, provision must be made for maintenance of the standards for nursing education; placement for students who have not completed the program; and for the storage of academic records and transcripts.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.2-09-02. Voluntary closing. When the school decides to close a program, the school shall notify the board in writing, the plan for discontinuation and the intended date of closing.

1. The school may choose one of the following closing procedures:
 - a. Continue the program until the last class enrolled is graduated; or
 - b. Transfer currently enrolled students to other board-approved programs.
2. The program shall continue to meet the standards for nursing education until closed.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-03.2-09-03. Closing as a result of withdrawal of approval. When the board withdraws approval of a program:

1. The board shall establish a date of closure.
2. The school shall present a plan for the transfer of students to other board-approved programs within a timeframe established by the board.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-08(6)

54-03.2-09-04. Storage of records. When a program closes, the board must be advised of the arrangements for maintenance of academic transcripts. If the school ceases to exist, the academic transcripts of each student and graduate must be transferred to the board.

History: Effective November 1, 1996.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-08(6)

CHAPTER 54-04.1-02

54-04.1-02-01. Qualifications. To qualify for a nursing education loan, the applicant must:

1. ~~Be a United States citizen and a North Dakota resident;~~
 2. Demonstrate financial need; satisfactory to the board;
 3. ~~Have been accepted into a board-approved nursing education program or be enrolled in a board-approved nursing education program for practical nurses or registered nurses;~~
 4. ~~Have been accepted into or be enrolled in an educational program for graduate nurses that is acceptable to the board;~~
 5. ~~Have all necessary application forms completed and on file in the board office by July first of the year in which they wish to be considered for a nursing education loan. Applications for nurse refresher course nursing education loans will be considered at any board meeting;~~
2. Have all necessary application forms completed and on file in the board office by July first of the year in which they wish to be considered for a nursing education loan. Applicants for nurse refresher course nursing education loans will be considered at any board meeting; and
 3. Demonstrate one of the following:
 - a. Be enrolled in a North Dakota board-approved or recognized undergraduate nursing education program for practical nurses or registered nurses;
 - b. Have a current North Dakota license and have been accepted into or be enrolled in an educational program that is acceptable to the board; or
 - c. Be a resident of North Dakota for refresher courses and accepted into a refresher course that meets board requirements.

History: Effective October 1, 1987; amended effective October 1, 1989; March 1, 1992; November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(14)

CHAPTER 54-05-03.1

54-05-03.1-01. Statement of intent. The 1977 legislative assembly enacted legislation that recognized the performance of additional acts to be performed by registered nurses practicing in expanded roles and gave the board of nursing the power to set standards for nurses practicing in specialized roles. From 1980 to 1991, the board has licensed advanced practitioners in nursing as nurse clinicians, nurse practitioners, clinical nurse specialists, certified nurse midwives, and certified registered nurse anesthetists. ~~The board recognizes in these rules that these titles may continue to be used by nurses with the required credentials. Other titles may be recognized by the board upon application.~~ The 1991 legislative assembly added prescriptive practices to the acts an advanced practice registered nurse may perform, if qualified. The 1995 legislative assembly further defined the educational requirements for the advanced practice registered nurse.

~~The 1991 legislative assembly added prescriptive practices under the supervision of a licensed physician to the additional acts and authorized a prescriptive authority committee consisting of two members of the board of nursing, one physician appointed by the board of medical examiners, and one pharmacist appointed by the board of pharmacy to recommend rules regarding prescriptive authority for adoption by the board of nursing.~~

The scope of practice for a registered nurse with advanced licensure is based upon an understanding that a broad range of health care services can be appropriately and competently provided by a registered nurse with validated knowledge, skills, and abilities in specific practice areas. The health care needs of citizens in North Dakota require that nurses in advanced practice roles provide care to the fullest extent of their ~~knowledge, skills, and abilities~~ scope of practice. The advanced practice registered nurse practitioner retains the responsibility and accountability for that scope of practice and is ultimately accountable to the patient within the Nurse Practices Act.

History: Effective March 1, 1992; amended effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-02(6) 43-12.1-02(1)(7)

54-05-03.1-02. Board authority - Title - Abbreviation. The board shall authorize the advanced nursing practice of nursing and use of the title "advanced registered nurse practitioner" and the abbreviation "a.r.n.p." to a registered nurse who has submitted evidence of advanced knowledge, skills, and abilities in a defined area of nursing practice. ~~Registered nurses who meet the qualifications of the "advanced registered nurse practitioner" and have been issued the advanced license may use other titles in announcing their practice to the public.~~ Since 1991 individuals have been licensed as advanced practice registered nurses in the categories of certified nurse midwife, certified

registered nurse anesthetist, clinical nurse specialist, or nurse practitioner. Each advanced practice registered nurse shall use the applicable category designation for purposes of identification and documentation. The title to be used must be submitted to the board for approval prior to usage in lieu of the designated "advanced registered nurse practitioner" title. No person may use the an advanced practice registered nurse practitioner title or the initials "a.r.n.p." or any other title denoting advanced nurse practice without the express authority of the board of nursing to do so.

History: Effective March 1, 1992; amended effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC ~~43-12.1-08(16)~~ 43-12.1-08(6)

54-05-03.1-03. Definitions. The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 43-12.1, except:

1. "Advanced practice registered nurse license" means the document issued to the registered nurse who has met the qualifications outlined in these rules.
2. "Certification" means a process of voluntary recognition by a national nursing organization of the applicant's advanced knowledge, skills, and abilities in a defined area of nursing practice. The certification process measures the theoretical and clinical content denoted in the advanced scope of practice, and is developed in accordance with generally accepted standards of validity and reliability. The certification examination is open only to registered nurses who have successfully completed an advanced nursing education program.
3. "Health care team" means any health care professional licensed under North Dakota Century Code title 43.
- 2- 4. "Scope of practice" means the delineation of the applicant's practice; ~~including dimension and boundary and focus.~~ The scope of practice statement which identifies the nature and extent of the applicant's practice and includes focus of care, elements of care, type of client, location of practice, and collaboration or consultation or both; patterns with members of the health care team.

History: Effective March 1, 1992; amended effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC ~~43-12.1-08(16)~~ 43-12.1-08(6)

54-05-03.1-03.1. Standards of practice for the advanced practice registered nurse.

1. The standards of practice for the registered nurse found in chapter 54-05-02 are the core standards of practice for all categories of advanced practice registered nurses.
2. In addition to the core registered nurse standards of practice, each advanced practice registered nurse shall practice according to national standards acceptable to the board for advanced practice registered nurses.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-05-03.1-04. Initial requirements for advanced practice registered nurse licensure. Applicants for advanced practice registered nurse licensure must:

1. Possess a current license to practice as a registered nurse in North Dakota;
2. Submit evidence of completion of an advanced nursing education program prior to July 31, 1995, or submit evidence of completion of the requirements for a graduate education program with a nursing focus after August 1, 1995;
3. Submit evidence of current certification by a national nursing organization certifying body in the specific area of nursing practice;
4. Submit a completed notarized application and pay the fee of one hundred dollars; and
5. Submit a scope of practice statement according to established board guidelines for review and approval by the board of nursing.

Applicants who have been issued a registered nurse temporary permit and meet all of the qualifications for advanced licensure may be issued a temporary advanced practice registered nurse ~~practitioner~~ license with the same date of expiration. The advanced practice registered nurse license will be issued to coincide with the renewal date of the initial registered nurse license.

History: Effective March 1, 1992; amended effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: ~~NDCC 43-12.1-08(16)~~ 43-12.1-09(4)(5)

54-05-03.1-05. Temporary permit. Applicants An applicant for advanced licensure who meet-all-other-qualifications possesses a current registered nurse license, and has submitted a complete application, the required fee, and evidence of meeting all educational requirements, may

be issued a temporary advanced practice registered nurse license until the results of the first national nursing certification examination, for which the candidate is eligible after completion of the program, have been received. Verification of eligibility for the examination may be required. permit for practice in an advanced practice registered nurse category if the applicant:

1. Is applying for licensure under section 54-05-03.1-04;
2. Is completing practice requirements for national nursing certification for the advanced practice registered nurse category;
3. Has applied as a first-time candidate to the next national nursing certification examination for the advanced practice registered nurse category; or
4. Is awaiting certification results based upon initial application.

Temporary permit will not include prescriptive authority. If the applicant fails the first certification examination for which the applicant is eligible, the applicant may continue to practice if supervised by a licensed provider of ~~that~~ an appropriately related specialty or practice and the board is notified. If the applicant fails the second certification examination for which the applicant is eligible, the individual may no longer practice in the advanced practice registered nurse role.

History: Effective March 1, 1992; amended effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12-1-08(16), 43-12.1-09(4)

54-05-03.1-06. Requirements for advanced practice registered nurse licensure renewal. The advanced practice registered nurse license is valid for the same period of time as the applicant's registered nurse license. Applicants for renewal of the advanced practice registered nurse license must ~~renew~~:

1. Renew their registered nurse license, ~~and pay~~;
2. Complete the advanced practice registered nurse license renewal application;
3. Pay an advanced practice registered nurse licensure renewal fee of forty dollars, ~~submit~~;
4. Submit evidence of current certification, ~~and submit~~
5. Submit a scope of practice statement for review and approval by the board.

History: Effective March 1, 1992; amended effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC ~~43-12-1-08(16)~~ 43-12.1-10(1)

54-05-03.1-07. Termination of advanced practice registered nurse licensure. The advanced practice registered nurse license may be terminated by the board when the licensee has:

1. Been found in violation of any provision of North Dakota Century Code section 43-12.1-14.
2. Failed to maintain national nursing certification.

History: Effective March 1, 1992; amended effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC ~~43-12-1-08(16)~~ 43-12.1-08(6)

54-05-03.1-08. Prescriptive authority committee. Prior to the first regular meeting after July first of each year, the board will request an appointment to the prescriptive authority committee from the board of medical examiners and the board of pharmacy. The board shall appoint two board committee members, at least one of whom must be a registered nurse board member and one must be an advanced practice registered nurse with prescriptive authority, at the July board meeting. The committee will meet at least once each year to review rules for prescriptive authority; oversee the process of granting prescriptive authority; and recommend changes to the board. Reimbursement for the costs associated with attending the meetings will be the responsibility of the respective boards appointing the members.

History: Effective March 1, 1992; amended effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08.1

54-05-03.1-09. Requirements for prescriptive authority. Applicants for prescriptive authority shall:

1. Be currently licensed as an advanced practice registered nurse ~~practitioner~~ in North Dakota.
2. Have completed an advanced nursing education program prior to July 31, 1995, or submit evidence of completion of the requirements for a graduate education program with a nursing focus after August 1, 1995.
3. Submit a complete, notarized prescriptive authority application and pay the fee of fifty dollars.

4. Provide evidence of completion of thirty contact hours of education in pharmacotherapy related to the applicant's scope of advanced practice ~~within the past three years~~ that:

a. Include pharmacokinetic principles and their clinical application and the use of pharmacological agents in the prevention of illness, restoration, and maintenance of health.

b. Have been obtained within a three-year period of time immediately prior to the date of application for prescriptive authority.

c. Have been obtained from ~~study within the advanced formal education program or accredited continuing education programs, or both~~ one or more of the following methods:

(1) Two academic semester hour credits in pharmacotherapy related to scope of practice is the equivalent of thirty contact hours;

(2) Evidence of attendance at an approved pharmacotherapy seminar, lecture, workshop, class, or course either in person or via a telecommunication network may be submitted for part or all of the thirty contact hours;

(3) Evidence of participation in an approved pharmacotherapy correspondence or home study continuing education course may be submitted for no more than one-half of the thirty contact hours;

(4) Evidence of publication of one article related to pharmacotherapy in a refereed journal, one book chapter, or research project published in the license renewal timeframe may be submitted for a case-by-case review. Credit may be submitted for no more than one-sixth of the thirty contact hours;

(5) Evidence of participation as a presenter or lecturer for content related to pharmacotherapy is allowable, but credits may not total more than one-sixth of the requirement. A presentation or lecture of fifty minutes or more may not be used more than once in the three years. The presentation or lecture must be approved for contact hours or be offered as part of an academic course; and

(6) Other methods that may be approved by the board.

~~4.~~ 5. Include in the scope of practice statement required under subsection 5 of section 54-05-03.1-04 the nature and extent of the collaboration ~~and consultation~~ for prescriptive practices

with a licensed physician who is lawfully practicing medicine in North Dakota. The statement must include the frequency of the collaboration and consultation, the methods of collaboration and consultation, the arrangements for initiation of contact from both parties, and the methods of documentation of the collaboration or consultation process. address all of the following areas:

- a. Broad classifications of drugs or devices to be commonly prescribed by the advanced practice registered nurse;
- b. Methods and frequency of the collaboration for prescriptive practices, which must occur as client needs dictate, but are no less than once every two months;
- c. Methods of documentation of the collaboration process regarding prescriptive practices; and
- d. Alternative arrangements for collaboration regarding prescriptive practices in the temporary or extended absence of the physician.

- 5- 6. Submit an affidavit from the licensed physician who will be participating in the collaborative prescriptive agreement acknowledging the manner of review and approval of the planned prescriptive practices. Information in the affidavit must also indicate that the advanced practice registered nurse's scope of prescriptive practice is appropriately related to the collaborating physician's medical specialty or practice.

History: Effective March 1, 1992; amended effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC ~~43-12.1-08.1~~ 43-12.1-02(7)

~~54-05-03.1-10. Authority to prescribe. A registered nurse licensed under this chapter when authorized by the board of nursing may prescribe drugs as defined by chapter 43-15-01 pursuant to applicable state and federal laws. Notice of the prescriptive authority granted will be forwarded to the board of pharmacy.~~

1. A permanent advanced practice registered nurse license with the addition of prescriptive authority shall be issued following review and approval of the completed application by the board.
2. Between meetings of the board, board staff may review the prescriptive authority application and grant a temporary permit to prescribe if all the requirements are met.
3. The advanced practice registered nurse with prescriptive authority may prescribe drugs as defined by chapter 43-15-01 pursuant to applicable state and federal laws. Notice of the

prescriptive authority granted will be forwarded to the board of pharmacy.

4. A prescriptive authority license does not include drug enforcement administration authority for prescribing controlled substances. Each licensee must apply for and receive a drug enforcement administration number before writing prescriptions for scheduled drugs.
5. The licensee may dispense pharmaceutical samples following state and federal regulations.
6. The signature on documents related to prescriptive practices must clearly indicate that the licensee is an advanced practice registered nurse.
7. The advanced practice registered nurse with prescriptive authority may not prescribe, sell, administer, distribute, or give to oneself or to one's spouse or child any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug.

History: Effective March 1, 1992; amended effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12-1-02(6) 43-12.1-08(19)

54-05-03.1-11. Prescriptive authority renewal. ~~To--renew--the--prescriptive--authorization--the--~~ Prescriptive authority is valid for the same period of time as the applicant's advanced practice registered nurse and registered nurse license. The applicant for renewal must:

1. ~~Comply--with--the--requirements--of--section--54-05-03.1-06--and--include--in--the--scope--of--practice--statement--the--nature--and--extent--of--the--collaboration--and--consultation--with--a--licensed--physician;--and--submit--an--affidavit--from--the--licensed--physician--acknowledging--the--manner--of--review--and--approval--of--the--planned--prescriptive--practices.---Evidence--of--the--collaboration--and--consultation--with--the--licensed--physician--may--be--requested--by--the--board~~ Renew the applicant's registered nurse license.
2. ~~Provide--documentation--of--fifteen--contact--hours--of--continuing--education--during--the--previous--two--years---that---includes--pharmacotherapy--related--to--the--scope--of--practice.~~ Submit evidence of current certification by a national nursing certification body in the specific area of nursing practice.
3. Submit a completed and notarized advanced practice registered nurse with prescriptive practice authority renewal application.
4. Pay the advanced practice registered nurse renewal fee of forty dollars.

5. Submit a scope of practice statement that complies with requirements of section 54-05-03.1-06 and addresses all of the following areas:
 - a. Broad classifications of drugs or devices to be commonly prescribed by the advanced practice registered nurse;
 - b. Methods and frequency of the collaboration for prescriptive practices, which must occur as client needs dictate, but no less than once every two months;
 - c. Methods of documentation of the collaboration process regarding prescriptive practices; and
 - d. Alternative arrangements for collaboration regarding prescriptive practices in the temporary or extended absence of the physician.

6. Provide evidence of completion of fifteen contact hours of education during the previous two years in pharmacotherapy related to the scope of practice. The education may be obtained from one or more of the following methods:
 - a. One academic semester hour credit in pharmacotherapy related to scope of practice is the equivalent of fifteen contact hours;
 - b. Evidence of attendance at an approved pharmacotherapy seminar, lecture, workshop, class, or course either in person or via a telecommunication network may be submitted for part or all of the fifteen contact hours;
 - c. Evidence of participation in an approved pharmacotherapy correspondence or home study continuing education course may be submitted for no more than one-half of the fifteen contact hours;
 - d. Evidence of publication of one article related to pharmacotherapy in a refereed journal, one book chapter, or research project published within the license renewal timeframe may be submitted for a case-by-case review. Credit may be submitted for no more than one-sixth of the fifteen contact hours;
 - e. Evidence of participation as a presenter or lecturer for content related to pharmacotherapy is allowable, but credits may not total more than one-sixth of the requirement. A presentation or lecture of fifty minutes or more may not be used more than once in the two years. The presentation or lecture must be approved for contact hours or be offered as part of an academic course; and
 - f. Other methods that may be approved by the board.

7. Submit an affidavit from the licensed physician who will be participating in the collaborative prescriptive agreement acknowledging the manner of review and approval of the planned prescriptive practices. Information in the affidavit must also indicate that the advanced practice registered nurse's scope of prescriptive practice is appropriately related to the collaborating physician's medical specialty or practice.

History: Effective March 1, 1992; amended effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC ~~43-12.1-02(6)~~ 43-12.1-10(1)

54-05-03.1-12. Change in physician collaboration and consultation regarding prescriptive authority. Evidence of documentation The advanced practice registered nurse or the collaborating physician may terminate the relationship at any time. The advanced practice registered nurse must notify the board in writing within five working days of the termination. An affidavit of the collaboration and consultation with the another licensed physician must be submitted if when there is a change in the licensed physician providing the collaboration and consultation. The documentation affidavit and a revised scope of practice statement must be submitted within ninety sixty days of the change in the collaboration with a licensed physician.

History: Effective March 1, 1992; amended effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC ~~43-12.1-02(6)~~ 43-12.1-02(7)

54-05-03.1-13. Suspension or enjoining of prescriptive authority. The prescriptive authority granted to an advanced practice registered nurse practitioner may be temporarily suspended or enjoined according to provisions of North Dakota Century Code chapters 28-32 and 32-06, when the advanced practice registered nurse practitioner has:

1. Not--maintained Failed to maintain current licensure as an advanced practice registered nurse practitioner or failed to meet prescriptive authority requirements;
2. Prescribed outside the scope of practice or for other than therapeutic purposes; or
3. Violated any state or federal law or regulations regulation applicable to prescriptions. or

Notice Following final board action notice of suspension or injunctive action regarding prescriptive authority will be forwarded to the board of pharmacy and the board of medical examiners collaborating physician.

History: Effective March 1, 1992; amended effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC ~~43-12.1-02(6)~~ 43-12.1-02(7)

54-05-03.1-14. Encumbered license. Encumbrances placed on the advanced practice registered nurse license will also be placed on the registered nurse license.

History: Effective March 1, 1992; amended effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC ~~43-12-1-02(6)~~ 43-12.1-08(13)

54-05-03.1-15. Recognition at effective date. Any registered nurse with an advanced license as a nurse clinician, nurse practitioner, clinical nurse specialist, nurse midwife, or certified registered nurse anesthetist on ~~March 1, 1992~~ November 1, 1996, must continue to be recognized as an advanced practice registered nurse ~~practitioner~~, and is eligible for renewal of the advanced practice registered nurse ~~practitioner~~ license under the provision of this title. These rules may not be construed to limit or restrict an ~~advanced registered nurse's~~ scope-of-practice-as-defined-by the advanced practice registered nurse's scope of practice statement previously approved by the board.

History: Effective March 1, 1992; amended effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC ~~43-12-1-08(16)~~ 43-12.1-08(6)

STAFF COMMENT: Article 54-08 contains all new material but is not underscored so as to improve readability. The article previously designated as Article 54-08 has been redesignated as Article 54-09.

ARTICLE 54-08

STANDARD FOR LICENSED NURSE DELEGATION OF NURSING TASKS IN SETTINGS WHERE LICENSED NURSES ARE NOT REGULARLY SCHEDULED

Chapter	
54-08-01	General Provisions
54-08-02	Standards for Delegating Nursing Care Tasks in Specific Settings

CHAPTER 54-08-01 GENERAL PROVISIONS

Section	
54-08-01-01	Statement of Intent
54-08-01-02	Definitions

54-08-01-01. Statement of intent.

1. These rules apply only:
 - a. Where a licensed nurse is not regularly scheduled to practice; and
 - b. A licensed nurse is not available to provide direct supervision; but
 - c. Serves in a consultative nursing role.
2. The rules have no application in:
 - a. Acute care;
 - b. Nursing facilities; or
 - c. Any other setting where the regularly scheduled presence of a licensed nurse is required.

3. These rules govern licensed nurses who practice in settings where delegation may occur and are not intended to govern the setting itself.
4. It is solely the board's responsibility by law to regulate and define how and under what circumstances licensed nurses may delegate or assign nursing tasks to unlicensed persons, and to further define the level of preparation and supervision that unlicensed persons must have in order to receive nurse delegation and assignment.
5. The board believes that unlicensed personnel can be utilized to provide nursing care services only under the delegation and supervision of a licensed nurse. However, the board recognizes that basic activities of daily living can be provided in some settings without the assignment, delegation, or supervision of a licensed nurse.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-08-01-02. Definitions. The terms used in this article have the same meaning as in North Dakota Century Code chapter 43-12.1, except:

1. "Assisting with the administration of routine, regularly scheduled medications" means helping the client with one or more steps in the process of taking medications. Examples of "assisting" include:
 - a. Opening the medication container;
 - b. Reminding the client of the proper time to take the medication;
 - c. Removal of an individual dose from a previously dispensed, properly labeled container, including a unit dose container;
 - d. Verifying the right patient, medication, dosage, route, and time of administration with the physician's order;
 - e. Giving the individual dose to the proper client at the proper time by the proper route;
 - f. Promptly recording the time and dose given.
2. "Basic nursing tasks" means procedures that do not require the education of a licensed nurse, but that cannot be performed by the client independently. Basic nursing tasks may be

procedures that are directed by the client. These basic tasks include activities of daily living.

3. "Consultative nursing in specific settings" means that the licensed nurse provides guidance and information as a participant of the interdisciplinary team but is not individually responsible to direct the plan of care for the client.
4. "Delegation" means the process for licensed nurses to authorize an unlicensed person to perform nursing tasks in selected situations.
5. "Initial direction" means explicit instructions regarding the provision of the nursing task including the:
 - a. Reasons why the nursing task is necessary;
 - b. Methods used to perform the nursing task;
 - c. Documentation of the nursing task; and
 - d. Observation of the client's responses.
6. "Licensed nurse" means a person licensed pursuant to North Dakota Century Code chapter 43-12.1 and this title.
7. "Periodic inspection and evaluation" means the licensed nurse's assessments and evaluations of the client's condition and the review of the procedures and directions established for the provision of nursing tasks or for the administration of routine, regularly scheduled medications by unlicensed persons at intervals determined by the licensed nurse based on the condition of the client.
8. "Pro re nata medications" means those medications which have been ordered to be given as needed.
9. "Procedural guidance" means a written plan for the provision of a nursing task or the administration of routine, regularly scheduled medications.
10. "Regularly scheduled presence of a licensed nurse" means that a licensed nurse is present a minimum of eight hours in a twenty-four-hour period of time in a setting where client care is being continuously delivered.
11. "Routine, regularly scheduled medications" means the components of a legally identified medication regimen for an individual or groups of individuals with stable, predictable conditions which are administered on a routine basis and do not require drug calculations, determination of need, or dosage conversion.

- a. Medications included in this definition may include those administered orally, topically, nasally, or instilled within the eye or ear.
 - b. Medications excluded from this definition include any medications to be administered by injection, through a tube, or inserted in another body cavity, except when specifically delegated by a licensed nurse to a specific unlicensed person for a specific client.
 - c. The licensed nurse may make the determination to exclude any medication from this definition.
- 12. "Stable and predictable condition" means a situation in which the client's clinical and behavioral status is known and does not require the regularly scheduled presence and evaluation of a licensed nurse.
 - 13. "Specific delegation" means the assignment by a licensed nurse to an unlicensed person the performance of the selected nursing task for only the assigned client.
 - 14. "Unlicensed person" means an individual who is not licensed to practice nursing in North Dakota but who provides delegated nursing care.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

**CHAPTER 54-08-02
STANDARDS FOR DELEGATING NURSING CARE TASKS
IN SPECIFIC SETTINGS**

Section	
54-08-02-01	Delegation of Nursing Tasks in Specific Facilities Where a Licensed Nurse is not Regularly Scheduled but May Delegate Nursing Care
54-08-02-02	Basic Nursing Tasks in Various Settings
54-08-02-03	Delegation of Nursing Tasks in Settings Where a Licensed Nurse is Not Regularly Scheduled and Not Available to Provide Direct Supervision
54-08-02-04	Delegation of Medication Administration to Unlicensed Person in Specific Settings
54-08-02-05	Pro Re Nata Medications
54-08-02-06	Variance

54-08-02-01. Delegation of nursing tasks in specific facilities where a licensed nurse is not regularly scheduled but may delegate nursing care. A licensed nurse may delegate nursing tasks, which may include assisting in the administration of routine, regularly scheduled medications, to unlicensed persons even if they are not registered as a nurse assistant or as a medication assistant with the board, in the following specific facilities:

1. Adult foster care facilities licensed under North Dakota Century Code section 50-11-01.4 and North Dakota Administrative Code chapter 75-03-21;
2. Basic care facilities licensed under North Dakota Century Code chapter 23-09.3;
3. Developmental disabilities provider agencies licensed under North Dakota Century Code chapter 25-16;
4. Group homes and residential child care facilities licensed under North Dakota Century Code section 50-11-01 and North Dakota Administrative Code chapter 75-03-16;
5. Human service centers licensed under North Dakota Century Code chapter 50-06;
6. Jails, facilities subject to jail contracts, and regional correction centers licensed under North Dakota Century Code chapter 12-44.1;
7. Qualified service providers licensed under North Dakota Century Code chapter 50-06.2 and North Dakota Administrative Code chapter 75-03-23;

8. Residential treatment centers for children licensed under North Dakota Century Code chapter 25-03.2 and North Dakota Administrative Code chapter 75-03-17;
9. Schools approved under North Dakota Century Code title 15; and
10. Youth correctional facilities approved under North Dakota Century Code chapter 12-46.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-08-02-02. Basic nursing tasks in various settings.

1. Basic nursing tasks vary from setting to setting depending on the client population served and the acuity and complexity of the client's care needs.
2. Basic nursing tasks may require the delegation and supervision of a licensed nurse.
3. The need for supervision is at the discretion of the licensed nurse providing supervision under specific delegation.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-08-02-03. Delegation of nursing tasks in settings where a licensed nurse is not regularly scheduled and not available to provide direct supervision. The licensed nurse may delegate nursing tasks to unlicensed persons, specific to individual clients, even if unlicensed persons have not been registered on the board's registry, under the following conditions:

1. The setting where the nursing task is to be performed is one where laws or administrative rules which license the setting do not require the regularly scheduled presence of a licensed nurse. Settings where the practice of nursing is continuously performed, such as in nursing facilities or acute care facilities are excluded from this article.
2. In those health care settings where the regularly scheduled presence of a licensed nurse is not required, the licensed nurse may delegate nursing tasks only for clients who have a stable, predictable condition and for which minimal nursing supervision is required for that nursing task.
3. The supervising licensed nurse:

- a. Considers the nature of the nursing task to be provided, its complexity, the risks involved and the necessary skill needed to perform the task;
 - b. Assesses the client's condition and determines if the unlicensed person is capable to perform the nursing task in the absence of direct licensed nurse supervision;
 - c. Determines how frequently the client's condition shall be reassessed to determine the appropriateness of the continued delegation of the nursing task to an unlicensed person;
 - d. Determines that the unlicensed person is prepared to effectively deal with the outcomes of performing the nursing task;
 - e. Assesses the ability of the unlicensed person to perform the nursing task; and
 - f. Determines the frequency of supervision of the unlicensed person.
4. Prior to delegating the nursing task, the licensed nurse shall:
- a. Teach the unlicensed person the nursing task;
 - b. Observe the unlicensed person performing the nursing task to ensure that the unlicensed person performs the task safely and accurately;
 - c. Document the unlicensed person's competency to perform the task; and
 - d. Leave written instructions for performance of the nursing task for the unlicensed person to use as a reference.
5. The licensed nurse is responsible for delegating the task to an unlicensed person and ensuring that supervision will occur as needed.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-08-02-04. Delegation of medication administration to unlicensed person in specific settings. A licensed nurse may teach and delegate assistance with the administration of routine, regularly scheduled medications. The licensed nurse shall:

1. Assess the client's condition and determine if the unlicensed person is capable to administer the medication in the absence of direct licensed nurse supervision.
2. Determine how frequently the client's condition shall be reassessed to determine the appropriateness of the continued delegation of the medication administration to an unlicensed person.
3. Supply procedural guidance and initial direction for the assisting with the administration of routine, regularly scheduled medications, including:
 - a. A specific list of the common side effects;
 - b. A specific list of the signs and symptoms of those side effects; and
 - c. A specific plan of action including under what circumstances the licensed nurse must be contacted.
4. Observe and evaluate the administration of medications by unlicensed persons periodically.
5. Assume the responsibility and accountability to determine the appropriateness of the delegation related to the administration of routine, regularly scheduled medications.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-08-02-05. Pro re nata medications.

1. The decision to administer pro re nata medications cannot be delegated in situations where an onsite assessment of the client is required prior to administration.
2. Some situations allow the administering of pro re nata medications without directly involving the licensed nurse prior to each administration.
 - a. The decision regarding whether an onsite assessment is required is at the discretion of the licensed nurse.
 - b. Written parameters specific to an individual client's care must be written by the licensed nurse for use by the unlicensed person when an onsite assessment is not required prior to administration of a medication. These written parameters:
 - (1) Supplement the physician's pro re nata order; and

- (2) Provide the unlicensed person with guidelines that are so specific regarding the pro re nata medication that the unlicensed person uses no discretion in administering the medication.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(6)

54-08-02-06. Variance. Upon written application, and good cause shown to the satisfaction of the board, the board may include additional specific types of facilities under section 54-08-02-01.

History: Effective November 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08

TITLE 59.5
State Personnel Board

NOVEMBER 1996

CHAPTER 59.5-03-02

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

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

General Authority: NDCC 54-42-03; ~~54-44.3-07~~ 54-44.3-07(1)

Law Implemented: NDCC 54-42-03; ~~54-44.3-07; 54-44.3-12~~ 54-44.3-07(3)

59.5-03-02-01.1. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 54-44.3, except that "working--days"--means--Monday--through--Friday exclusive-of-holidays.;

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

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

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

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

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

1. A nonprobationary regular employee in the classified service or an appointing authority may appeal a classification decision made by the director, central personnel division, concerning the class title assigned to a position to the state personnel board. if one of the following is alleged:

a. The central personnel division did not give due consideration to information presented.

b. The central personnel division did not follow chapter 4-07-03.

c. The decision of the central personnel division was made in a discriminatory manner as defined in North Dakota Century Code section 14-02.4-01.

The appeal to the state personnel board must be submitted in writing within received by central personnel division staff by the close of business fifteen working days from the date of the written decision of the director division. The appeal must be in writing and state the reason for the appeal. The appeal to the state personnel board must be mailed to the director, central personnel division.

2. Upon receipt of a written appeal, the director, central personnel division, as secretary to the board, shall schedule the appeal for hearing before the board. The director, on behalf of the state personnel board, shall notify the employee and appointing authority in writing of the board hearing date at least ten working days prior to the board hearing date.

3. The central personnel division shall provide each member of the state personnel board, the employee, and the agency appointing authority with a copy of each document to become a part of the appeal file. The appeal file must consist of, but is not limited to, copies of the following:

a. The original classification/reclassification request under appeal and all attachments and responses.

b. The appeal form and all attachments.

c. All written correspondence relating to the original classification request and appeal, including written requests for extension and notices of extensions granted or denied.

d. The written appeal commencing the appeal before the state personnel board.

- e. Other directly relevant and significant documents submitted by the employee, appointing authority, or the central personnel division.
4. The central personnel division shall disseminate the appeal file to all participating parties at least ten working days prior to the board hearing date. Documents submitted by any participant after the appeal file is disseminated may cause the board to delay the hearing, generally to the next scheduled board meeting date.
 5. The employee, appointing authority, and their representatives may appear at the board meeting for the hearing of their classification appeal. The central personnel division employee, appointing authority, or their representatives shall first make an oral presentation relative to the matter under appeal followed by the employee, appointing authority, or their representatives central personnel division. Such presentations should be limited to ten minutes and directly relate to the issues of the appeal. The board may ask questions of those making oral presentations. The employee's agency shall reimburse the appealing employee for the required time, travel, meals, and lodging expenses to appear before the board. The reimbursement may not exceed the amounts allowed state employees The board chairperson shall ensure that all parties have ample opportunity to present their views relating to the classification appeal. New information presented at the hearing may delay the decision of the board.
 6. If the board determines by a preponderance of the evidence that the appeal has merit based on reasons stated in subsection 1, the board shall:
 - a. Remand the appeal to the central personnel division for further review;
 - b. Uphold the decision of the central personnel division; or
 - c. Change the classification of the subject position based on the record and information before it.
 7. The central personnel division shall notify the employee and appointing authority in writing of the board's decision within five working days following the date the board makes its decision regarding the appeal. Decisions which result in a classification either higher or lower than that previously established by the central personnel division are effective on the first day of the month in which the hearing is held date specified by the appointing authority.
 7. ~~An employee or appointing authority who is dissatisfied with the decision of the state personnel board may petition the board for reconsideration. The petition must be commenced~~

with a written request to the board postmarked no later than fifteen days from the date the board's decision was mailed. The request must specify the reason for the reconsideration. The state personnel board may grant or deny the request based on the board's determination whether the reason specified has significant merit.

8. The employee's agency shall reimburse the appealing employee for the required time, travel, meals, and lodging expenses to appear before the board. The reimbursement may not exceed the amounts allowed state employees.

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

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

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

59.5-03-02-03. Pay grade appeals.

1. A nonprobationary employee in the classified service or an appointing authority may appeal the pay grade assigned to a class by the director, central personnel division, to the state personnel board. The appeal must be submitted in writing within fifteen working days from the date of the written decision of the director. The appeal to the state personnel board must be mailed to the director, central personnel division.
2. Upon receipt of a written appeal, the director, central personnel division, as secretary to the board, shall schedule the appeal for hearing before the board. The director, on behalf of the state personnel board, shall notify the employee and the appointing authority in writing of the board hearing date at least ten working days prior to the board hearing date.
3. The central personnel division shall provide each member of the state personnel board, the employee, and the agency appointing authority with a copy of each document to become a part of the appeal file. The appeal file must consist of, but is not limited to, copies of the following:
 - a. The original pay grade review request under appeal and all attachments and responses.
 - b. The written appeal and all attachments.
 - c. All written correspondence relating to the original request and appeal, including written requests for extension and notices of extensions granted.

- d. The written appeal commencing the appeal before the state personnel board.
- e. Other directly relevant and significant documents submitted by the employee, by the appointing authority, or the central personnel division.
4. The central personnel division shall disseminate the appeal file to all participating parties at least ten working days prior to the board hearing date. Documents submitted by any participant after the appeal file is disseminated may cause the board to delay the hearing, generally to the next scheduled board meeting date.
5. The appointing authority, the employee, and their representatives may appear at the board meeting for the hearing of the pay grade appeal. The central personnel division shall first make an oral presentation relative to the matter under appeal followed by the employee, the appointing authority, or their representatives. Such presentations should be limited to ten minutes and directly relate to the issues of the appeal. The board may ask questions of those making oral presentations. The employee's agency shall reimburse the appealing employee for the required time, travel, meals, and lodging expenses to appear before the board. The reimbursement may not exceed the amounts allowed state employees.
6. The central personnel division shall notify the employee and the appointing authority in writing of the board's decision within five working days following the date the board makes its decision regarding the appeal. Decisions that result in a pay grade either higher or lower than that previously established by the central personnel division are effective on the first day of the month in which the hearing is held.
7. An employee or appointing authority who is dissatisfied with the decision of the state personnel board may petition the board for reconsideration. The petition must be commenced with a written request to the board postmarked no later than fifteen days from the date the board's decision was mailed. The request must specify the reason for the reconsideration. The state personnel board may grant or deny the request based on the board's determination whether the reason specified has significant merit. Repealed effective November 1, 1996.

History: Effective December 1, 1985; amended effective May 1, 1994.

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

Law Implemented: NDCC-54-44.3-07(3); 54-44.3-12

STAFF COMMENT: Chapter 59.5-03-02.1 contains all new material but is not underscored so as to improve readability.

**CHAPTER 59.5-03-02.1
PAY GRADE APPEALS**

Section

59.5-03-02.1-01	Scope of Chapter
59.5-03-02.1-02	Definitions
59.5-03-02.1-03	Pay Grade Appeal Procedure

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

History: Effective November 1, 1996.
General Authority: NDCC 54-44.3-07(1)
Law Implemented: NDCC 54-44.3-07(3)

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

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

History: Effective November 1, 1996.
General Authority: NDCC 54-44.3-07(1)
Law Implemented: NDCC 54-44.3-07(3)

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

1. A regular employee or an appointing authority may appeal to the state personnel board the pay grade assigned to a class by the central personnel division if one of the following is alleged:

- a. The central personnel division did not give due consideration to information presented.
- b. The central personnel division did not follow chapter 4-07-03.
- c. The decision of the central personnel division was made in a discriminatory manner as defined in North Dakota Century Code section 14-02.4-01.

The appeal to the state personnel board must be received by central personnel division staff by the close of business fifteen working days from the date of the written decision of the division. The appeal must be in writing and state the reason for the appeal.

2. Upon receipt of a written appeal, the director, central personnel division, as secretary to the board, shall schedule the appeal for hearing before the board. The director, on behalf of the state personnel board, shall notify the employee and appointing authority in writing of the board hearing date at least ten working days prior to the board hearing date.
3. The central personnel division shall provide each member of the state personnel board, the employee, and the agency appointing authority a copy of each document to become a part of the appeal file. The appeal file must include copies of the following:
 - a. The original pay grade review request under appeal and all attachments and responses.
 - b. The written appeal and all attachments.
 - c. All written correspondence relating to the original request and appeal, including written requests for extension and notices of extensions granted or denied.
 - d. The written appeal commencing the appeal before the state personnel board.
 - e. Other directly relevant and significant documents submitted by the employee, appointing authority or the central personnel division.
4. The central personnel division shall disseminate the appeal file to all participating parties at least ten working days prior to the board hearing date. Documents submitted by any participant after the appeal file is disseminated may cause the board to delay the hearing, generally to the next scheduled board meeting date.

5. The employee, appointing authority, and their representatives may appear at the board meeting for the hearing of the pay grade appeal. The employee, appointing authority, or their representatives shall first make an oral presentation relative to the matter under appeal, followed by the central personnel division. The board chairperson shall ensure that all parties have ample opportunity to present their views relating to the pay grade appeal. New information presented at the hearing may delay the decision of the board.
6. If the board determines by a preponderance of the evidence that the appeal has merit based on reasons stated in subsection 1, the board shall:
 - a. Remand the appeal to the central personnel division for further review;
 - b. Uphold the decision of the central personnel division; or
 - c. Change the pay grade of the subject class based on the record and information before it.
7. The central personnel division shall notify the employee and appointing authority in writing of the board's decision within five working days following the date the board makes its decision regarding the appeal. A decision that results in a pay grade either higher or lower than that previously established by the central personnel division is effective on the date specified by the appointing authority.
8. The employee's agency shall reimburse the appealing employee for the required time, travel, meals, and lodging expenses to appear before the board. The reimbursement may not exceed the amounts allowed state employees.

History: Effective November 1, 1996.

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

Law Implemented: NDCC 54-44.3-07(3), 54-44.3-12

CHAPTER 59.5-03-03

APPEALS OF EMPLOYER ACTIONS

[Repealed effective November 1, 1996, as the result of
S.L. 1995, ch. 524, § 3]

CHAPTER 59.5-03-04

APPEALS OF DISCRIMINATION

[Repealed effective November 1, 1996, as the result of
S.L. 1995, ch. 524, § 3]

TITLE 60
Pesticide Control Board

JANUARY 1997

CHAPTER 60-03-01

60-03-01-10. Registration, packaging, repackaging, storage, and transportation of bulk pesticides for each business location.

1. Registration - Establishment number requirements.

- a. Any person that repackages bulk pesticides must have an environmental protection agency establishment number.
- b. Any person that makes a mix of any quantity of pesticide, to be applied by another person, and holds the mix in inventory, must have an environmental protection agency establishment number.

The person making the mix must supply the person applying the mix with end-use labeling for each pesticide in the mix. The end-use labeling must have the facilities establishment number printed on it.

- c. The environmental protection agency establishment number and end-use labeling must be attached to bulk pesticide storage tanks.
- d. The environmental protection agency establishment number and end-use labeling must accompany or be attached to the mobile bulk pesticide container.
- e. Any person that custom blends any quantity of pesticide to be applied by another person must ensure that end-use labeling for all pesticides in the blend accompanies the

blend to the point of end use. No establishment number is required for the blending facilities.

2. Storage and transportation.

- a. The transportation and storage of all bulk pesticides must be in compliance with the manufacturer's label requirements.
- b. The transportation of bulk pesticides must meet all applicable standards of state and United States department of transportation rules and regulations.
- c. Bulk pesticide storage containers must be made of materials and so constructed to be compatible with the pesticide stored and the conditions of storage, including any specifications that may appear on the pesticide labels and labeling.
- d. Bulk storage containers and loading areas must be constructed and located on a site in a manner so that pesticides will not contaminate streams and water supplies.
- e. All permanent bulk storage containers must be equipped with a locking withdrawal valve or must be stored in a secure locked area. The valves or storage area must be locked during nonbusiness hours.
- f. Bulk pesticide storage containers that are going to be refilled with a different pesticide must be cleaned and rinsed according to both the repackager's and manufacturer's agreed upon written instructions and all former labeling must be removed.

3. Liquid bulk pesticides.

a. Outdoor storage:

- (1) Liquid bulk pesticide storage containers must be on a site which has an additional containment structure. The structure must be constructed of sufficient size and material, approved by the pesticide registrant, so as to contain any spilled or discharged materials. Any outdoor liquid bulk pesticide storage facility constructed after June 5, 1992, must have a containment capacity of a minimum of one hundred twenty-five percent of the single largest bulk pesticide storage container.
- (2) Contaminated rainwater must be collected within this structure. Rainwater and contaminated rainwater cannot accumulate beyond twenty-five percent of the

secondary containment's capacity or seven days, whichever comes first.

- b. Indoor storage. Liquid bulk pesticide storage facilities located within an enclosed structure must be on a site which has an additional containment structure. The structure must be constructed of sufficient size and material, approved by the pesticide registrant, so as to contain any spilled or discharged materials. Any indoor liquid bulk pesticide storage facility must have a capacity of a minimum of one hundred ten percent of the single largest bulk pesticide storage container.

4. Dry bulk pesticides.

- a. Outdoor storage facilities:

- (1) Bulk dry pesticide storage facilities must have a six-inch [15.24-centimeter] high curb as an additional containment structure. No storage container may be placed closer than three feet [91.44 centimeters] from the curb. Except during loading, stored dry bulk pesticide must be covered by a roof or tarpaulin that will exclude precipitation from the pesticide. Storage containers must be placed on a concrete or other impervious surfaced floor, on pallets or on a raised platform to prevent water from contacting the pesticide.

- (2) Contaminated rainwater must be collected within this structure. Rainwater and contaminated rainwater cannot accumulate beyond twenty-five percent of the secondary containment's capacity or seven days, whichever comes first.

- b. Indoor storage facilities. Storage facilities located in an enclosed structure must have a minimum of a six-inch [15.24-centimeter] curb as an additional containment structure. No storage container may be placed closer than three feet [91.44 centimeters] from the curb, except where the curb is adjacent to a facility wall.

5. Prohibitions.

- a. The transfer of bulk pesticides must be under the control of the repackager. Filling or refilling of containers is prohibited unless they are capable of holding, in undivided quantities, the capacity as specified by the environmental protection agency.
- b. Bulk pesticide storage tanks containers may not be placed underground.

- c. Repackaging at any location that does not have an environmental protection agency producer establishment number is prohibited except as provided in this subdivision. Repackaging bulk pesticides at an end-use site, such as a farm or field, which does not have an environmental protection agency producer establishment number can only be performed by a bulk pesticide retailer.
- d. Repackaging of pesticides without the written agreement of the manufacturing company is prohibited.
- e. ~~Repackaging--at--any--location--other--than--at--a--loading--site--is--prohibited.~~
- f. Repackaging into improperly labeled containers is prohibited.
- g. f. Repackaging into containers not designated as reusable by the chemical and container manufacturer is prohibited.
- h. g. Containers used for repackaging must have a capacity as specified by the environmental protection agency or repackaging is prohibited.
- i. h. Repackaging for resale from a nonpermanent bulk storage tank container is prohibited except as provided in this subdivision. Bulk pesticides can be repackaged at an end-use site, such as a farm or field, from a nonpermanent bulk storage container provided it is filled from a permanent bulk storage container at a bulk pesticide retailer's establishment or the pesticide registrant's establishment.

History: Effective April 15, 1985; amended effective October 1, 1990; July 1, 1992; May 1, 1994; January 1, 1997.

General Authority: NDCC 4-35-06

Law Implemented: NDCC 4-35-06, 4-35-15, 4-35-20

TITLE 61
Pharmacy, Board of

DECEMBER 1996

CHAPTER 61-02-06

61-02-06-02. Requirements for storage and retrieval of prescription information. Electronic data processing equipment or media, when used to store or process prescription information, shall meet the following requirements:

1. ~~Guarantee~~ Must guarantee the confidentiality of the information contained in the data bank base. Must require that the transmission of electronic prescriptions from prescriber to pharmacist not be compromised by interventions, control, or manipulation of said prescriptions by any other party.
2. ~~A--computerized~~ An electronic system must provide on line retrieval via catho ray tube or hard-copy printout of original prescription order information for those prescription orders which are currently authorized for refilling. If more refills are authorized, it must be noted on the catho ray tube screen or on the hard copy of prescription or a new prescription must be produced.
3. ~~Be-capable-of-producing~~ Must produce a hard-copy daily summary of controlled substance transactions. ~~This--should--be--done~~ Monthly summaries must be produced and filed with the ~~monthly~~ biennial inventory.
4. Be capable of recording and carrying in the record all dates of refills of any prescription and the initials of the pharmacist.

5. Be capable of producing a patient profile indicating all drugs being taken and the date of refills of these prescriptions, as required by North Dakota Century Code section 43-15-31.1.
6. ~~Be capable of being reconstructed in the event of a computer malfunction or accident resulting in destruction of the data bank.~~
7. Be capable of reconstructing information, by daily backups in the event of a computer malfunction or accident resulting in destruction of the data bank base.

History: Effective August 1, 1983; amended effective July 1, 1990; December 1, 1996.

General Authority: NDCC 28-32-02, 43-15-10(9), 43-15-10(12), 43-15-10(14)

Law Implemented: NDCC 43-15-10(9), 43-15-10(12), 43-15-10(14)

61-02-06-03. Original prescription shall be retained on file. In all cases where electronic data processing equipment is used, the original prescription (hard copy or saved in an unalterable electronic data filing system that has been approved by the board) shall be retained on file according to law to assure access to the information contained on the prescription in the event of a computer breakdown malfunction.

History: Effective August 1, 1983; amended effective July 1, 1990; December 1, 1996.

General Authority: NDCC 28-32-02, 43-15-10(9), 43-15-10(12), 43-15-10(14)

Law Implemented: NDCC 43-15-10(9), 43-15-10(12), 43-15-10(14)

STAFF COMMENT: Chapter 61-04-08 contains all new material but is not underscored so as to improve readability.

**CHAPTER 61-04-08
LIMITED PRESCRIPTIVE PRACTICES**

Section	Purpose
61-04-08-01	Purpose
61-04-08-02	Definitions
61-04-08-03	Eligibility and Approval
61-04-08-04	Procedures
61-04-08-05	Initiation of Drug Therapy
61-04-08-06	Modification of Drug Therapy
61-04-08-07	Form

61-04-08-01. Purpose. The purpose of these rules is to implement limited prescriptive practices provisions of the North Dakota Century Code.

History: Effective December 1, 1996.

General Authority: NDCC 28-32-02, 43-15-10(9)(12)(14), 43-15-31.4

Law Implemented: NDCC 28-32-02, 43-15-10(9)(12)(14), 43-15-31.4

61-04-08-02. Definitions. For purposes of this chapter:

1. "Collaborative agreement" means the written document signed by a physician and a pharmacist which describes the limited prescribing authority granted the pharmacist under North Dakota Century Code section 43-15-31.4.
2. "Immediate notification" means interactive two-way communication between the pharmacist and physician within twenty-four hours of the initiation or modification of drug therapy, unless specific reference is made in the collaborative agreement to situations in which a notification time limit of up to seventy-two hours is appropriate.
3. "Initiate drug therapy" means to begin administering for the first time a prescribed drug therapy for treating a patient with an existing diagnosis. A licensed physician shall make any diagnosis required.
4. "Medical record" means a written record of clinical care developed and maintained by a patient's physician which contains information and data about a patient's condition sufficient to justify the diagnosis and subsequent treatment. The record must contain further appropriate information as described in section 33-07-01.1-20.

5. "Modify drug therapy" means to change, within the same therapeutic class of drugs, a specific drug, the dosage, or route of delivery of a drug currently being administered for an existing diagnosis.
6. "Pharmacist in an institutional setting" means a pharmacist who:
 - a. Has a written agreement to provide daily or regular pharmaceutical services within a hospital, swing bed facility, or long-term care facility; and
 - b. Is physically present in the facility when exercising prescriptive practices under the terms of a collaborative agreement.
7. "Supervision" means the active role taken by the physician to oversee the pharmacist throughout the provision of drug therapy to patients under the terms of a collaborative agreement.

History: Effective December 1, 1996.

General Authority: NDCC 28-32-02, 43-15-10(9)(12)(14), 43-15-31.4

Law Implemented: NDCC 28-32-02, 43-15-10(9)(12)(14), 43-15-31.4

61-04-08-03. Eligibility and approval.

1. A physician and a pharmacist who are licensed and practicing their respective professions in this state are eligible, provided the conditions of this section and any applicable statutes are met, to enter into the collaborative agreement allowing the pharmacist to provide prescription drug therapy to patients in an institutional setting on a limited basis.
2. A physician may have a collaborative agreement with no more than three eligible pharmacists unless the physician's licensing board specifies otherwise based on individual circumstances. A pharmacist may have a collaborative agreement with one or more physicians, the number of which may be limited by the board based on individual circumstances.
3. The collaborative agreement serves as a formal arrangement between an individual pharmacist and an individual collaborative supervising physician and is operative only within the institutional setting identified on the collaborative agreement form.
4. Each individual collaborative agreement must be reviewed by the board of medical examiners and the board of pharmacy, and will not become effective until both boards grant approval and notify the parties. Each agreement must be reviewed at least every two years or when modifications are proposed by the

parties, and must receive continued approval from both boards in order to remain in effect.

5. A collaborative agreement may be terminated by either board for good cause, including adverse action taken against either licensee. Noncompliance with the terms of these rules or of a collaborative agreement may be considered evidence of unprofessional conduct by either board.
6. Either party of a collaborative agreement may terminate the agreement at will by notifying either board of their desire to do so.
7. Neither party to a collaborative agreement may seek to gain personal financial benefit by participating in any incentive-based program that influences or encourages therapeutic or product changes.

History: Effective December 1, 1996.

General Authority: NDCC 28-32-02, 43-15-10(9)(12)(14), 43-15-31.4

Law Implemented: NDCC 28-32-02, 43-15-10(9)(12)(14), 43-15-31.4

61-04-08-04. Procedures. A physician who has signed an approved collaborative agreement with a pharmacist shall remain responsible for the care of the patient following initial diagnosis and assessment, and for the supervision of the pharmacist as prescriptive authority is exercised. The physician shall remain available to receive immediate notification from the pharmacist regarding prescriptive drug therapy being provided. The parties may modify as necessary, within the practice guidelines described in the collaborative agreement, their relationship in the joint provision of care to each patient as the requirements of the patient or drug therapy change.

History: Effective December 1, 1996.

General Authority: NDCC 28-32-02, 43-15-10(9)(12)(14), 43-15-31.4

Law Implemented: NDCC 28-32-02, 43-15-10(9)(12)(14), 43-15-31.4

61-04-08-05. Initiation of drug therapy. To initiate drug therapy, a pharmacist must hold a valid North Dakota pharmacist license and have a collaborative agreement with the treating physician. A pharmacist may initiate drug therapy only if the pharmacist has obtained a doctor of science, doctor of philosophy in clinical pharmacy, master of science, or doctor of pharmacy degree, has been certified a fellow by the board of pharmaceutical specialties, or has completed an accredited pharmacy fellowship or residency, and has been authorized to do so within the collaborative agreement. Verification of these credentials must be provided by the pharmacist. The pharmacist must provide

immediate notification to the physician when the pharmacist initiates drug therapy.

History: Effective December 1, 1996.

General Authority: NDCC 28-32-02, 43-15-10(9)(12)(14), 43-15-31.4

Law Implemented: NDCC 28-32-02, 43-15-10(9)(12)(14), 43-15-31.4

61-04-08-06. Modification of drug therapy.

1. To modify drug therapy, a pharmacist must hold a valid North Dakota pharmacist license and have a collaborative agreement with the treating physician. A pharmacist may modify drug therapy as warranted to assure an appropriate course of treatment for the patient. The pharmacist must provide immediate notification to the physician when the pharmacist modifies drug therapy.
2. The physician and pharmacist entering into a collaborative agreement must have indicated on the form the scope and authority to be exercised by the pharmacist and the type or class of drugs or drug therapy to be utilized or prohibited under the agreement. Authority to prescribe schedule II drugs may not be delegated to a pharmacist. The parties may also indicate the type of medical diagnoses to be included or excluded within the collaborative relationship.
3. The current medical record of each patient receiving drug therapy must be readily accessible to the pharmacist and physician within the facility setting. The pharmacist, unless physician or facility policy directs otherwise, shall provide timely documentation and indications for all drug therapies initiated or modified by the pharmacist as part of the medical record.
4. Contingency treatment should be addressed for treating allergic or acute adverse drug reactions.

History: Effective December 1, 1996.

General Authority: NDCC 28-32-02, 43-15-10(9)(12)(14), 43-15-31.4

Law Implemented: NDCC 28-32-02, 43-15-10(9)(12)(14), 43-15-31.4

61-04-08-07. Form.

1. The collaborative agreement form utilized under this section is attached as an appendix to these rules as approved by the board of medical examiners and board of pharmacy. Upon request, either board shall supply a copy of the rules and form to any interested party.
2. A copy of each collaborative agreement and subsequent amendments approved by the boards shall remain on file with

the boards. Each party shall retain the original or a copy of the agreement and amendments, and either party shall provide a copy to the facility within which the agreement is operative.

3. Either board may disseminate a current listing of the individual parties who are practicing under an approved collaborative agreement.
4. More details may be provided. Further stipulations or details shall be supplied on a separate page.

History: Effective December 1, 1996.

General Authority: NDCC 28-32-02, 43-15-10(9)(12)(14), 43-15-31.4

Law Implemented: NDCC 28-32-02, 43-15-10(9)(12)(14), 43-15-31.4

APPENDIX

COLLABORATIVE AGREEMENT FORM

The pharmacist and physician listed below are parties to this collaborative agreement, through which the pharmacist receives limited prescriptive authority under the supervision of the physician in accordance with North Dakota Century Code section 43-15-31.4 and administrative rules.

_____	_____
Pharmacist Name	Institution
_____	_____
Address	Physician Name
_____	_____
Phone	Address
License Number	_____
	Phone
	License Number

[Please review the administrative rules governing collaborative agreements which accompany this form before proceeding.]

1. Describe the scope and authority to be exercised by the pharmacist. (If requesting authority to initiate drug therapy, pharmacist must include credential verification.)
2. Indicate any restrictions placed on the use of certain types or classes of drugs or drug therapies under this agreement. (Note: Schedule II drugs are excluded by these rules.)
3. If appropriate, indicate any diagnoses which are specifically included or excluded under this agreement.
4. Attach any protocols or guidelines to be used in decisionmaking or other activities contemplated under this agreement. This must include a protocol for treating acute allergic or other adverse reactions related to drug therapy.
5. Describe approved situations, if any, in which the notification time limit may be extended beyond twenty-four hours (not to exceed seventy-two hours).

TITLE 69
Public Service Commission

JUNE 1997

CHAPTER 69-05.2-01

69-05.2-01-02. Definitions. The definitions in North Dakota Century Code section 38-14.1-02 apply to this article and the following terms have the specified meaning except where otherwise indicated:

1. "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or ground water, fish, wildlife, vegetation, alluvial valley floors, or other resources may be adversely impacted by surface coal mining and reclamation operations.
2. "Affected area" means any land or water upon or in which surface coal mining and reclamation operations are conducted or located.
3. "Agricultural activities" means, with respect to alluvial valley floors, the use of any tract of land for the production of animal or vegetable life, where the use is enhanced or facilitated by subirrigation or flood irrigation associated with alluvial valley floors. These uses include the pasturing, grazing, or watering of livestock, and the cropping, cultivation, or harvesting of plants whose production is aided by the availability of water from subirrigation or flood irrigation. Those uses do not include agricultural practices which do not benefit from the availability of water from subirrigation or flood irrigation.
4. "Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include the

pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

5. "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.
6. "Best technology currently available" means equipment or techniques which will:
 - a. Prevent, to the extent possible, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable state law.
 - b. Minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values and achieve enhancement of those resources where practicable.
 - c. The term includes equipment or techniques which are currently available anywhere as determined by the commission, even if they are not in routine use.
 - d. The term includes construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities, and sedimentation pond design.
 - e. The commission has the discretion to determine the best technology currently available on a case-by-case basis.
7. "Blaster" means a person directly responsible for the use of explosives in surface coal mining operations who is certified under chapter 69-05.2-31.
8. "Cemetery" means any area of land where human bodies are interred.
9. "Coal mining operation" means, for purposes of restrictions on financial interests of employees, the business of developing, producing, preparing, or loading bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the areas upon which such activities occur.
10. "Coal preparation" means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal.
11. "Coal preparation plant" means a facility where coal is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. It

includes facilities associated with coal preparation activities, including, but not limited to, the following: loading facilities, storage and stockpile facilities, sheds, shops and other buildings, water treatment and water storage facilities, settling basins and impoundments, and coal processing and other waste disposal areas.

12. "Coal processing waste" means earth materials which are wasted and separated from product coal during cleaning, concentrating, or other processing or preparation of coal.
13. "Collateral bond" means an indemnity agreement in a sum certain payable to the state of North Dakota executed by the permittee and which is supported by the deposit with the commission of cash, negotiable bonds of the United States or of North Dakota, or negotiable certificates of deposit of any bank authorized to do business in North Dakota.
14. "Combustible material" means organic material that is capable of burning, either by fire or through a chemical process (oxidation), accompanied by the evolution of heat and a significant temperature rise.
15. "Community or institutional building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings, or functions of local civic organizations, or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health, or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation, or sewage treatment.
16. "Compaction" means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.
17. "Complete inspection" means an onsite review of a permittee's or operator's compliance with all permit conditions and requirements imposed under North Dakota Century Code chapter 38-14.1 and this article, within the entire area disturbed or affected by surface coal mining and reclamation operations and includes the collection of evidence with respect to every violation of those conditions or requirements.
18. "Complete permit application" means an application for a surface coal mining and reclamation operations permit, which contains all information required by North Dakota Century Code chapter 38-14.1 and this article, to allow the commission to initiate the notice requirements of North Dakota Century Code section 38-14.1-18 and a technical review for the purpose of

complying with the permit approval or denial standards of North Dakota Century Code section 38-14.1-21 and of this article.

19. "Cooperative soil survey" means a field or other investigation that locates, describes, classifies, and interprets for use the soils in a given area. The survey must meet the national cooperative soil survey standards and is the type of survey that is made for operational conservation planning by the United States department of agriculture ~~soil~~ natural resource conservation service in cooperation with agencies of the state and, in some cases, other federal agencies. If the survey is not available and a permit applicant is required to have a survey made, the map scale must be 1:20,000.
20. "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included.
21. "Cumulative impact area" means the surface and ground water systems which may be affected until final bond release by:
 - a. The proposed operation and all existing surface coal mining and reclamation operations;
 - b. Any operations for which a permit application has been submitted to the regulatory authority; and
 - c. All operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.
22. "Developed water resources" means, for land use purposes, land used for storing water for beneficial uses such as stockponds, irrigation, wildlife habitat, fire protection, flood control, and water supply.
23. "Direct financial interest" means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings, and also means any other arrangement where the employee may benefit from the employee's holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property, and other financial relationships.
24. "Disturbed area" means those areas that have been affected by surface coal mining and reclamation operations. Areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance

required by North Dakota Century Code chapter 38-14.1 and this article is released.

25. "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one area to another.
26. "Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.
27. "Emergency spillway" means the spillway designed to convey excess water through, over, or around a dam.
28. "Employee" means, for purposes of restrictions on financial interests of employees: any person employed by the commission as a state employee who performs any function or duty under North Dakota Century Code chapter 38-14.1; advisory board, commission members, or consultants who perform any decisionmaking functions for the commission under authority of state law or regulations; and any other state employee who performs any decisionmaking function or duty under a cooperative agreement with the commission. This definition does not include: the public service commissioners, who file annually with the director of the office of surface mining reclamation and enforcement, United States department of the interior; and members of advisory boards or commissions established in accordance with state laws or regulations to represent multiple interests, such as the North Dakota reclamation advisory committee.
29. "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.
30. "Essential hydrologic functions" means with respect to alluvial valley floors, the role of the valley floor in collecting, storing, regulating, and making the natural flow of surface or ground water, usefully available for agricultural activities, by reason of its position in the landscape and the characteristics of its underlying material. A combination of those functions provides a water supply during extended periods of low precipitation.
 - a. The role of the valley floor in collecting water includes accumulating runoff and discharge from aquifers in sufficient amounts to make the water available at the alluvial valley floor greater than the amount available from direct precipitation.

- b. The role of the alluvial valley floor in storing water involves limiting the rate of discharge of surface water, holding moisture in soils, and holding ground water in porous materials.
 - c. The role of the alluvial valley floor in regulating the natural flow of surface water results from the characteristic configuration of the channel floodplain and adjacent low terraces.
 - d. The role of the alluvial valley floor in regulating the natural flow of ground water results from the properties of the aquifers which control inflow and outflow.
 - e. The role of the alluvial valley floor in making water usefully available for agricultural activities results from the existence of floodplains and terraces where surface and ground water can be provided in sufficient quantities to support the growth of agriculturally useful plants, from the presence of earth materials suitable for the growth of agriculturally useful plants, from the temporal and physical distribution of water making it accessible to plants throughout the critical phases of the growth cycle either by flood irrigation or by subirrigation, from the natural control of alluvial valley floors in limiting destructive extremes of stream discharge, and from the erosional stability of earth materials suitable for growth of agriculturally useful plants.
31. "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction began prior to August 1, 1980.
32. "Extraction of coal as an incidental part" means the extraction of coal which is necessary to enable government-financed construction to be accomplished. Only that coal extracted from within the right of way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right of way or boundary of the area directly affected by the construction shall be subject to the requirements of North Dakota Century Code chapter 38-14.1 and this article.
33. "Fish and wildlife habitat" means lands or waters used partially or wholly for the maintenance, production, protection, or management of species of fish or wildlife.

34. "Flood irrigation" means, with respect to alluvial valley floors, supplying water to plants by natural overflow, or the diversion of flows in which the surface of the soil is largely covered by a sheet of water.
35. "Fragile lands" means geographic areas containing natural, ecologic, scientific, paleontologic, or esthetic resources that could be damaged or destroyed by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, state and national natural landmark sites, areas where mining may cause flooding, environmental corridors containing a concentration of ecologic and esthetic features, areas of recreational value due to high environmental quality, and buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under North Dakota Century Code section 38-14.1-07.
36. "Fugitive dust" means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and reclamation operations it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported, or redistributed.
37. "Government-financed construction" means construction funded fifty percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or other equivalent, or in-kind payments.
38. "Government financing agency" means a federal, state, county, municipal, or local unit of government, or a department, bureau, agency, or office of the unit which, directly or through another unit of government, finances construction.
39. "Ground cover" means the area of ground covered by vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of measurement.
40. "Ground water" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.
41. "Half-shrub" means a perennial plant with a woody base whose annually produced stems die back each year.

42. "Historic lands" means areas containing historic, cultural, or scientific resources. Examples include archaeological sites, national historic landmarks, places listed on or eligible for listing on the state historic sites registry or the national register of historic places, places having religious or cultural significance to native Americans or religious groups or places for which historic designation is pending.
43. "Historically used for cropland" means:
- a. Lands that have been used for cropland for any five years or more out of the ten years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease, or option the conduct of surface coal mining and reclamation operations;
 - b. Lands that the commission determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific five-years-in-ten criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or
 - c. Lands that would likely have been used as cropland for any five out of the last ten years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.
44. "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the quantity and quality relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.
45. "Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.
46. "Impounding structure" means a dam, embankment, or other structure used to impound water, slurry, or other liquid or semiliquid materials.

47. "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.
48. "Indirect financial interest" means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by the employee's spouse, minor child, and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor children, or other resident relatives hold a financial interest.
49. "Industrial and commercial" means, for land use purposes, land used for:
 - a. Extraction or transformation of materials for fabrication of products, wholesaling of products, or for long-term storage of products. This includes all heavy and light manufacturing facilities such as chemical manufacturing, petroleum refining, and fabricated metal products manufacture. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included. Support facilities include, but are not limited to, all rail, road, and other transportation facilities.
 - b. Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Land used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, parking, storage, or shipping facilities.
50. "Intermittent stream" means a stream or part of a stream that flows continuously for at least one month of the calendar year as a result of ground water discharge or surface runoff.
51. "Irreparable damage to the environment" means any damage to the environment that cannot be corrected by action of the permit applicant or the operator.
52. "Knowingly" means, with respect to individual civil penalties, that an individual knew or had reason to know in authorizing, ordering, or carrying out an act or omission on the part of a corporate permittee that the act or omission constituted a violation, failure, or refusal.
53. "Land use" means specific uses or management-related activities, rather than the vegetation or cover of the land.

Land uses may be identified in combination when joint or seasonal uses occur.

54. "Leachate" means a liquid that has percolated through soil, rock, or waste and has extracted dissolved or suspended materials.
55. "Materially damage the quantity or quality of water" means, with respect to alluvial valley floors, changes in the quality or quantity of the water supply to any portion of an alluvial valley floor where such changes are caused by surface coal mining and reclamation operations and result in changes that significantly and adversely affect the composition, diversity, or productivity of vegetation dependent on subirrigation, or which result in changes that would limit the adequacy of the water for flood irrigation of the irrigable land acreage existing prior to mining.
56. "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.
57. "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for the germination and growth of plants.
58. "Native grassland" means land on which the natural potential plant cover is principally composed of native grasses, grasslike plants, forbs, and shrubs valuable for forage and is used for grazing, browsing, or occasional hay production. Land used for facilities in support of ranching operations which is adjacent to or an integral part of these operations is also included.
59. "Natural hazard lands" means geographic areas in which natural conditions exist which pose or, as a result of surface coal mining operations, may pose a threat to the health, safety, or welfare of people, property, or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches, and areas of unstable geology.
60. "Noxious plants" means species as defined in North Dakota Century Code section 63-01.1-02 that have been included on the official state list of noxious weeds.
61. "Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.
62. "Operation plan" means a plan submitted by a permit applicant which sets forth a detailed description of the surface coal mining operations proposed to be conducted during the term of the permit within the proposed permit area.

63. "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.
64. "Owned or controlled" and "owns or controls" means any one or a combination of the relationships specified in subdivisions a and b:
- a. Being a permittee of a surface coal mining operation; based on instrument of ownership or voting securities, owning of record in excess of fifty percent of an entity; or having any other relationship which gives one person authority, directly or indirectly, to determine the manner in which an applicant, operator, or other entity conducts surface coal mining operations.
 - b. The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority, directly or indirectly, to determine the manner in which the relevant surface coal mining operation is conducted:
 - (1) Being an officer or director of an entity;
 - (2) Being the operator of a surface coal mining operation;
 - (3) Having the ability to commit the financial or real property assets or working resources of an entity;
 - (4) Being a general partner in a partnership;
 - (5) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record ten through fifty percent of the entity; or
 - (6) Owning or controlling coal to be mined by another person under a lease, sublease, or other contract and having the right to receive the coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.
65. "Partial inspection" means an onsite review of a permittee's or operator's compliance with some of the permit conditions and requirements imposed under North Dakota Century Code chapter 38-14.1 and this article and includes the collection of evidence of any violation of those conditions or requirements.
66. "Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface runoff.

67. "Performing any function or duty" means those decisions or actions which, if performed or not performed by an employee, affect surface coal mining and reclamation operations under North Dakota Century Code chapter 38-14.1.
68. "Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations which has been approved for retention by the commission and other appropriate state agencies.
69. "Permanent impoundment" means an impoundment requested for retention as part of the postmining land use by the surface owner and approved by the commission and, if required, by other state and federal agencies.
70. "Person having an interest which is or may be adversely affected or person with a valid legal interest" includes:
- a. Any person who uses any resource of economic, recreational, esthetic, or environmental value that may be adversely affected by surface coal mining and reclamation operations or any related action of the commission.
 - b. Any person whose property is or may be adversely affected by surface coal mining and reclamation operations or any related action of the commission.
 - c. Any federal, state, or local governmental agency.
71. "Precipitation event" means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. "Precipitation event" also includes that quantity of water emanating from snow cover as snowmelt in a limited period of time.
72. "Prime farmland" means those lands defined by the secretary of agriculture in 7 CFR 657 and historically used for cropland. Prime farmlands are identified based on cooperative soil surveys and soil mapping units designated as prime farmland by the ~~United States soil~~ natural resource conservation service.
73. "Principal shareholder" means any person who is the record or beneficial owner of ten percent or more of any class of voting stock.
74. "Principal spillway" means an ungated pipe conduit with minimum diameter of twelve inches [30.48 centimeters] constructed for the purpose of conducting water through the embankment back to streambed elevation without erosion.

75. "Probable cumulative impacts" means the expected total qualitative and quantitative, direct and indirect effects of mining and reclamation activities on the hydrologic regime.
76. "Probable hydrologic consequence" means the projected result of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and ground water; the surface or ground water flow, timing, and pattern; the stream channel conditions; and the aquatic habitat on the permit area and adjacent areas.
77. "Productivity" means the vegetative yield produced by a unit area for a unit of time.
78. "Prohibited financial interest" means any direct or indirect financial interest in any coal mining operation.
79. "Public building" means any structure that is owned by a public agency or used principally for public business, meetings, or other group gatherings.
80. "Public office" means a facility under the direction and control of a governmental entity which is open to the public on a regular basis during reasonable business hours.
81. "Public park" means an area dedicated or designated by any federal, state, or local agency for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved, or held open to the public because of that use.
82. "Public road" means a public way for purposes of vehicular travel, including the entire area within the right of way, all public ways acquired by prescription as provided by statute, and all land located within two rods [10.06 meters] on each side of all section lines. This definition does not include those public ways or section lines which have been vacated as permitted by statute or abandoned as provided by statute.
83. "Qualified laboratory" means a designated public agency, private consulting firm, institution, or analytical laboratory which can provide the required determination or statement under the small operator assistance program.
84. "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.
85. "Recreation" means, for land use purposes, land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement

areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

86. "Recurrence interval" means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the ten-year, twenty-four-hour precipitation event would be that twenty-four-hour precipitation event expected to occur on the average once in ten years. Magnitude of such events are as defined by the national weather service technical paper no. 40, Rainfall Frequency Atlas of the United States, May 1961, and subsequent amendments or equivalent regional or rainfall probability information developed therefrom.
87. "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the commission. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.
88. "Refuse pile" means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semiliquid material.
89. "Renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.
90. "Residential" means, for land use purposes, single-family and multiple-family housing, mobile home parks, and other residential lodgings. Land used for facilities in support of residential operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, vehicle parking and open space that directly relate to the residential use.
91. "Return on investment" means the relation of net profit for the last yearly period to ending net worth.
92. "Road" means a surface right of way used, constructed, reconstructed, improved, or maintained for travel by land vehicles for use in surface coal mining and reclamation operations. The term includes access and haul roads used in surface coal mining and reclamation operations, including use by coal hauling vehicles to and from transfer, processing, or storage areas. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

93. "Safety factor" means the ratio of the available shear strength to the developed shear stress on a potential surface of sliding, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.
94. "Sedimentation pond" means a primary sediment control structure designed, constructed, and maintained in accordance with this article and including, but not limited to, a barrier, dam, or excavated depression which slows down water runoff to allow sediment to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment, to the extent that such secondary sedimentation structures drain to a sedimentation pond.
95. "Shelterbelt" means a strip or belt of trees or shrubs planted by man in or adjacent to a field or next to a farmstead, feedlot, or road. Shelterbelt is synonymous with windbreak.
96. "Significant, imminent environmental harm to land, air, or water resources" is determined as follows:
- a. An environmental harm is any adverse impact on land, air, or water resources, including, but not limited to, plant and animal life.
 - b. An environmental harm is imminent if a condition, practice, or violation exists which is causing such harm or may reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under North Dakota Century Code section 38-14.1-28.
 - c. An environmental harm is significant if that harm is appreciable and not immediately reparable.
97. "Significant recreational, economic, or other values incompatible with surface coal mining operations" means those significant values which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on offsite areas which could be affected by mining. Those values to be evaluated for their importance include:
- a. Recreation, including hiking, boating, camping, skiing, or other related outdoor activities.

- b. Agriculture, aquaculture, or production of other natural, processed, or manufactured products which enter commerce.
 - c. Scenic, historic, archaeologic, esthetic, fish, wildlife, plants, or cultural interests.
98. "Slope" means average inclination of a surface, measured from the horizontal. Normally expressed as a unit of vertical distance to a given number of units of horizontal distance, e.g., 1v to 5h = 20 percent = 11.3 degrees.
99. "Soil horizons" means contrasting layers of soil lying one below the other, parallel, or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three major soil horizons are:
- a. A horizon. The uppermost layer in the soil profile, often called the surface soil. It is the part of the soil in which organic matter is most abundant and where leaching of soluble or suspended particles is the greatest.
 - b. B horizon. The layer immediately beneath the A horizon. This middle layer commonly contains more clay, iron, or aluminum than the A or C horizons.
 - c. C horizon. The deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.
100. "Spoil" means overburden that has been disturbed during surface coal mining operations.
101. "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties such as by providing a protective surface coating.
102. "Subirrigation" means, with respect to alluvial valley floors, the supplying of water to plants from a semisaturated or saturated subsurface zone where water is available for use by vegetation. Subirrigation may be identified by:
- a. Diurnal fluctuation of the water table, due to the differences in nighttime and daytime evapotranspiration rates;
 - b. Increasing soil moisture from a portion of the root zone down to the saturated zone, due to capillary action;
 - c. Mottling of the soils in the root zones;

- d. Existence of an important part of the root zone within the capillary fringe or water table of an alluvial aquifer; or
 - e. An increase in streamflow or a rise in ground water levels, shortly after the first killing frost on the valley floor.
- 103. "Substantial legal and financial commitments in a surface coal mining operation" means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities, and other capital-intensive activities.
 - 104. "Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.
 - 105. "Surety bond" means an indemnity agreement in a sum certain payable to the state of North Dakota executed by the permittee or permit applicant which is supported by the performance guarantee of a corporate surety licensed to do business in the state of North Dakota.
 - 106. "Surface coal mining operations which exist on the date of enactment" means all surface coal mining operations which were being conducted on July 1, 1979.
 - 107. "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, or by recovery of coal from a deposit that is not in its original geologic location.
 - 108. "Suspended solids" means organic or inorganic materials carried or held in suspension in water that will remain on a forty-five hundredths micron filter.
 - 109. "Tame pastureland" means land used for the long-term production of predominantly adapted, domesticated species of forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland which is adjacent to or an integral part of these operations is also included.
 - 110. "Temporary diversion" means a diversion of a stream or overland flow which is used during surface coal mining and reclamation operations and not approved by the commission to remain after reclamation as part of the approved postmining land use.
 - 111. "Temporary impoundment" means an impoundment used during surface coal mining and reclamation operations, but not

approved by the commission to remain as part of the postmining land use.

112. "Ton" means two thousand pounds avoirdupois [0.90718 metric ton].
113. "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.
114. "Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.
115. "Transfer, assignment, or sale of rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the commission.
116. "Unconsolidated streamlaid deposits holding streams" means, with respect to alluvial valley floors, all floodplains and terraces located in the lower portions of topographic valleys which contain perennial or other streams with channels that are greater than three feet [0.91 meters] in bankfull width and greater than six inches [15.24 centimeters] in bankfull depth.
117. "Undeveloped rangeland" means, for purposes of alluvial valley floors, lands generally used for livestock grazing where such use is not specifically controlled and managed.
118. "Upland areas" means, with respect to alluvial valley floors, those geomorphic features located outside the floodplain and terrace complex, such as isolated higher terraces, alluvial fans, pediment surfaces, landslide deposits, and surfaces covered with residuum, mud flows or debris flows, as well as highland areas underlain by bedrock and covered by residual weathered material or debris deposited by sheetwash, rillwash, or windblown material.
119. "Valid existing rights" means:
 - a. Except for roads:
 - (1) Those property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, deed, contract, or other document which

authorizes the permit applicant to produce coal by a surface coal mining operation; and

(2) The person proposing to conduct surface coal mining operations on such lands either:

(a) Had been validly issued or had made a good faith attempt to obtain, on or before August 3, 1977, all state and federal permits necessary to conduct such operations on those lands; or

(b) Can demonstrate to the commission that the coal is both needed for, and is immediately adjacent to, an ongoing surface coal mining operation for which all permits were obtained prior to August 3, 1977.

b. For roads:

(1) A recorded right of way, recorded easement, or a permit for a road recorded as of August 3, 1977; or

(2) Any other road in existence as of August 3, 1977.

c. Interpretation of the terms of the document relied upon to establish valid existing rights shall be based either upon applicable North Dakota case law concerning interpretation of documents conveying mineral rights or, where no applicable North Dakota case law exists, upon the usage and custom at the time and place where it came into existence, and upon a showing by the applicant that the parties to the document actually contemplated a right to conduct the same surface mining activities for which the applicant claims a valid existing right.

d. "Valid existing rights" does not mean mere expectation of a right to conduct surface coal mining operations.

120. "Viable economic unit" means, with respect to prime farmland, any tract of land identified as prime farmland by the state conservationist of the ~~soil~~ natural resource conservation service that has been historically used for cropland.

121. "Violation, failure, or refusal" means, with respect to individual civil penalties:

a. A violation of a condition of a permit issued by the commission; or

b. A failure or refusal to comply with any order issued under North Dakota Century Code section 38-14.1-28, or any order incorporated in a final decision issued by the commission under North Dakota Century Code chapter 38-14.1, except an

order incorporated in a decision issued under subsection 1 of North Dakota Century Code section 38-14.1-29.

122. "Violation notice" means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.
123. "Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.
124. "Willful violation" means an act or omission which violates North Dakota Century Code chapter 38-14.1, this article, or individual permit conditions committed by a person who intends the result which actually occurs.
125. "Willfully" means, with respect to individual civil penalties, that an individual acted:
 - a. Either intentionally, voluntarily, or consciously; and
 - b. With intentional disregard or plain indifference to legal requirements in authorizing, ordering, or carrying out a corporate permittee's action or omission that constituted a violation, failure, or refusal.
126. "Woodland" means land where the primary premining natural vegetation is trees or shrubs.
127. "Woody plants" means trees, shrubs, half-shrubs, and woody vines.

History: Effective August 1, 1980; amended effective June 1, 1983; April 1, 1985; June 1, 1986; January 1, 1987; May 1, 1990; May 1, 1992; June 1, 1997.

General Authority: NDCC 38-14.1-03, 38-14.1-38

Law Implemented: NDCC 38-14.1-02, 38-14.1-03, 38-14.1-21, 38-14.1-38

CHAPTER 69-05.2-08

69-05.2-08-08. Permit applications - Permit area - Vegetation and land use information.

1. The application must contain the following premining vegetation information:
 - a. A map or aerial photograph at a scale of 1:4,800 that delineates the existing mapping units within each premining land use. The mapping units for different land use categories are:
 - (1) For cropland, each soil mapping unit.
 - (2) For tame pastureland, each soil mapping unit.
 - (3) For native grasslands, each range site. The soil mapping unit in each range site must also be delineated.
 - (4) For woodland, each woodland type, i.e., trees, tall shrubs, and low shrubs.
 - (5) For fish and wildlife habitat, each vegetation type as further specified in subparagraphs a, b, and c.
 - (a) For woodland, each woodland type, i.e., trees, tall shrubs, and low shrubs;
 - (b) For wetlands, wetland classes based on ecological differentiation as set forth in Classification of Natural Ponds and Lakes in the Glaciated Prairie Region (United States department of the interior (1971)) or other approved classification system.
 - (c) For grasslands (native or introduced), each soil mapping unit.
 - (6) For shelterbelts, the entire planting.
 - b. For each land use, a comprehensive species list of higher plants and identification of any species of rare, endangered, poisonous, or noxious plants, developed by a thorough reconnaissance of all mapping units.
 - c. A description of each mapping unit delineated under subdivision a. This description must include:

- (1) The acreage [hectarage] of each mapping unit for each surface owner within the permit area.
 - (2) An assessment of the productivity of cropland, tame pastureland, and native grassland based on published data, historic data, or quantitative data.
 - (3) ~~United--States-department-of-agriculture-soil~~ Natural resource conservation service range condition in percent for native grassland.
 - (4) A detailed description of number and arrangement of trees and shrubs, probable age of trees, height of trees, and characteristics of understory vegetation for woodland and fish and wildlife habitat where woodland is the vegetation type.
 - (5) A detailed description of community structure, assemblages of plant species, water conditions, and size for fish and wildlife habitat where wetlands are the vegetation type.
 - (6) A description of number and arrangement of trees and shrubs, length and number of rows, and associated plant species for shelterbelts.
 - (7) When required for the proposed success standard, a quantitative assessment of applicable vegetation parameters using methods approved by the commission.
- d. A detailed narrative describing the nature and variability of the vegetation in each mapping unit and land use category, based on a thorough reconnaissance and qualitative assessment.
2. When the methods selected for subdivision g of subsection 6 of section 69-05.2-09-11 require the use of reference areas:
- a. The number of reference areas proposed must be sufficient to adequately represent the permit area.
 - b. The location, approximate size, and boundaries of all proposed reference areas must be located on a map of sufficient scale to accurately show the field location of each. The boundaries of the mapping unit in which the reference area is located must also be delineated.
 - c. The permittee shall demonstrate that the proposed reference areas adequately characterize the relevant mapping units which they propose to represent. This demonstration must be done according to methods approved by the commission.

3. The application must contain, in addition to materials satisfying subdivision a of subsection 2 of North Dakota Century Code section 38-14.1-14:
 - a. A map and supporting narrative of the uses of the land existing at the time the application is filed. If the premining use of the land was changed within five years before the anticipated date of beginning the proposed operations, the historic use must also be described.
 - b. A narrative of land capability and productivity, which analyzes the land use description under subdivision a in conjunction with other environmental resources information required under this chapter.
4. The application must contain a narrative description which includes information adequate to predict the potential for reestablishing vegetation on all areas to be disturbed.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1997.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14, 38-14.1-24

69-05.2-08-09. Permit applications - Permit area - Prime farmland - Reconnaissance investigation.

1. All applications must include the results of a reconnaissance investigation of the proposed permit area to indicate whether prime farmland exists. The commission in consultation with the ~~United States soil~~ natural resource conservation service will determine the nature and extent of the required reconnaissance investigation.
2. If the reconnaissance investigation establishes that no land within the proposed permit area is prime farmland historically used for cropland, the applicant shall submit a statement that no prime farmland is present. The statement must identify how the conclusion was reached.
3. If the reconnaissance investigation indicates that land within the proposed permit area may be prime farmland historically used for cropland, the applicant shall determine if a cooperative soil survey exists for those lands and whether soil mapping units in the permit area have been designated as prime farmland. If no cooperative soil survey exists, the applicant shall have one made of the lands which the reconnaissance investigation indicates could be prime farmland.

- a. If the cooperative soil survey indicates that no prime farmland soil mapping units are present within the permit area, subsection 2 applies.
 - b. If the cooperative soil survey indicates that prime farmland soil mapping units are present within the permit area, section 69-05.2-09-15 applies, unless the applicant presents other information which demonstrates to the satisfaction of the state conservationist of the United States-soil natural resource conservation service that no prime farmland mapping units are present.
4. This section does not apply to lands which qualify for the exemption in section 69-05.2-26-06. However, the application must show that all exemption criteria are met.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992; June 1, 1997.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

CHAPTER 69-05.2-09

69-05.2-09-02. Permit applications - Operation plans - Maps and plans. Each application must contain an appropriate combination of 1:4,800 scale topographic maps, planimetric maps, and plans of the proposed permit and adjacent areas showing:

1. Scale, date, permit boundaries, company name, legal subdivision boundaries, and legend.
2. Lands to be affected throughout the operation and any change in a facility or feature caused by the operations, if the existing facility or feature was shown under chapter 69-05.2-08.
3. The boundaries of areas to be affected during the permit term according to the sequence of mining and reclamation operations and a description of size and timing of operations for each coal removal subarea.
4. Pit layout and proposed sequence of mining operations, crop line, spoil placement areas, final graded spoil line, highwall areas to be backsloped, and areas for stockpiling suitable plant growth material or other suitable strata.
5. Location of proposed surface water management structures and identification of permanent water impoundments or stream channel alignments.
6. Location of coal processing waste dams and embankments under section 69-05.2-09-09, and fill areas for the disposal of initial cut and other excess spoil under section 69-05.2-09-14 and North Dakota Century Code section 38-14.1-24.
7. Buildings, utility corridors, proposed and existing haul roads, mine railways, and other support facilities.
8. Each coal storage, cleaning and loading area, and each coal waste and noncoal waste storage area. For noncoal wastes that will be disposed of in the proposed permit area, the applicant must provide a description of any wastes listed under subdivision i of subsection 2 of section 33-20-02.1-01 and any other wastes requiring a permit from the state department of health. The location of any such disposal areas must be shown on a map of the permit area.
9. Each explosive storage and handling facility.
10. Each air pollution collection and control facility.

11. Each habitat area to be used to protect and enhance fish and wildlife and related environmental values.
12. Each source of waste and each waste disposal facility relating to coal processing or pollution control.
13. Each bond area, scheduled according to the proposed sequence of operations. Include the bond or guarantee amount for each area.
14. Maps and plans required under subsections 5, 6, and 12 must be prepared by, or under the direction of, and certified by a qualified registered professional engineer, a qualified registered land surveyor, or qualified professional geologist with assistance from experts in related fields. However, maps, plans, and cross sections submitted according to section 69-05.2-09-09 may only be prepared by, or under the direction of, and certified by a qualified registered professional engineer or qualified registered land surveyor.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990; June 1, 1997.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-09-05. Permit applications - Operation plans - Air pollution control. The applicant shall specify the measures to comply with the air pollution control requirements of the state department of health and ~~consolidated laboratories~~ and any other measures necessary to effectively control wind erosion and attendant air pollution.

History: Effective August 1, 1980; amended effective May 1, 1990; June 1, 1997.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

CHAPTER 69-05.2-10

69-05.2-10-01. Permit applications - Public notices of filing.

1. The advertisement required by North Dakota Century Code section 38-14.1-18 must also include:
 - a. The applicant's name and business address.
 - b. A map or description which must:
 - (1) Clearly show or describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the permit area.
 - (2) Clearly show or describe the exact location and boundaries of the permit area.
 - (3) Name the United States geological survey 7.5-minute quadrangle map which contains the area shown or described.
 - (4) Show the north point (if a map).
 - (5) State the name of each owner of record of surface rights and coal rights within the permit boundaries.
 - c. The address of the commission, to whom written comments, objections, or requests for informal conferences on the application may be submitted.
 - d. If an applicant seeks a permit to conduct operations within one hundred feet [30.48 meters] of the outside right of way of a public road or to relocate a public road, a concise statement describing the road, the particular part to be relocated, where the relocation is to occur, and its duration.
2. The commission will distribute appropriate portions of the application to the state advisory committee specified in subsection 2 of North Dakota Century Code section 38-14.1-21 formed to aid the commission in evaluating the operations and reclamation plan. Members of the committee shall forward their evaluation to the commission within forty-five days of receipt.
3. If the application contains prime farmlands to be mined, the commission will furnish the state conservationist of the ~~United--States--soil~~ natural resource conservation service with

the prime farmland reclamation plan submitted under section 69-05.2-09-15. The state conservationist shall provide review and comment on the proposed method of soil reconstruction and suggest remedial revisions if the plan is considered inadequate.

4. The applicant shall make a copy of the complete application available for the public to inspect and copy by filing it with the county auditor in the county where the mining is proposed. The applicant shall file the copy by the first date of the newspaper advertisement and any subsequent changes at the same time they are submitted to the commission.
5. In addition to the requirements of subsection 3 of section 38-14.1-18 of the North Dakota Century Code, the commission will notify all federal or state government agencies with authority to issue permits and licenses applicable to the proposed operations as part of the permit coordinating process and those with an interest in the proposed operations. These agencies include the United States soil conservation service district office, the local United States army corps of engineers district engineer, the national park service, and the United States fish and wildlife service.
6. The commission will provide notice and opportunity for hearing for persons seeking and opposing disclosure prior to declaring any permit information confidential. Notice will be published in the official county newspaper of the county where the proposed operations will be located at least fifteen days prior to the hearing. Information requested to be held confidential must be clearly identified by the applicant and submitted separately. Confidential information is limited to:
 - a. Analysis of the chemical and physical properties of the coal to be mined, except information on coal components potentially toxic in the environment.
 - b. The nature and location of archaeological resources on public land and Indian land as required by the Archaeological Resources Protection Act of 1979.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1997.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-18

69-05.2-10-03. Permit applications - Criteria for permit approval or denial.

1. The commission will not issue the permit if any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the

applicant is currently in violation of any law or rule of this state, the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201, et seq.], or any law or rule in any state enacted under federal law or regulation pertaining to air or water environmental protection, incurred in connection with any surface coal mining and reclamation operation, or if any of the following are outstanding:

- a. Delinquent civil penalties under North Dakota Century Code sections 38-12.1-08 and 38-14.1-32, the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201, et seq.], or any law or rule in any state enacted under federal law or regulation pertaining to air or water environmental protection, incurred in connection with any surface coal mining and reclamation operation.
 - b. Bond forfeitures where violations upon which the forfeitures were based have not been corrected.
 - c. Delinquent abandoned mine reclamation fees.
 - d. Unabated violations of federal and state laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining and reclamation operation.
 - e. Unresolved federal and state failure-to-abate cessation orders.
 - f. Unresolved imminent harm cessation orders.
2. If a current violation exists, the commission will require the applicant or person who owns or controls the applicant, before the permit is issued, to:
- a. Submit proof that the violation has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation; or
 - b. Establish that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of that violation. If the administrative or judicial authority either denies a stay applied for in the appeal or affirms the violation, then any operations being conducted under a permit issued under this section must immediately cease, until the provisions of subdivision a are satisfied.

3. Any permit issued on the basis of proof submitted under subdivision a of subsection 2 that a violation is being corrected, or pending the outcome of an appeal under subdivision b of subsection 2, will be conditionally issued.
4. The commission will not issue a permit if it finds the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of any law or rule of this state, the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201, et seq.], or any state or federal program approved under the Surface Mining Control and Reclamation Act of 1977, of such nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with those laws, rules, or programs. The applicant, anyone who owns or controls the applicant, or the operator must be given an opportunity for hearing on the determination under North Dakota Century Code section 38-14.1-30.
5. After an application is deemed ready for approval, but before the permit is issued, the commission's decision to approve or disapprove the application will be made, based on the compliance review required by subsection 1, in light of any new information submitted under subsection 2 of section 69-05.2-06-01 and subsection 6 of section 69-05.2-06-02.
6. In addition to the requirements of subsection 3 of North Dakota Century Code section 38-14.1-21, no permit or significant revision will be approved, unless the application affirmatively demonstrates and the commission finds, in writing, on the basis of information in the application or otherwise available, which is documented in the approval and made available to the applicant, that:
 - a. The permit area is not on any lands subject to the prohibitions or limitations of North Dakota Century Code section 38-14.1-07 or the area has met the application review procedures of section 69-05.2-04-01.
 - b. For alluvial valley floors:
 - (1) The applicant has obtained either a negative determination; or
 - (2) If the permit area or adjacent area contains an alluvial valley floor:
 - (a) The operations would be conducted according to chapter 69-05.2-25 and all applicable requirements of North Dakota Century Code chapter 38-14.1.

- (b) Any change in the use of the lands covered by the permit area from its premining use in or adjacent to alluvial valley floors will not interfere with or preclude the reestablishment of the essential hydrologic functions of the alluvial valley floor.
- (3) The significance of the impact of the operations on farming will be based on the relative importance of the vegetation and water of the developed grazed or hayed alluvial valley floor area to the farm's production, or any more stringent criteria established by the commission as suitable for site-specific protection of agricultural activities in alluvial valley floors.
 - (4) Criteria for determining whether a mining operation will materially damage the quantity or quality of waters include:
 - (a) Potential increases in the concentration of total dissolved solids of waters supplied to an alluvial valley floor to levels above the threshold value at which crop yields decrease, based on crop salt tolerance research studies approved by the commission, unless the applicant demonstrates compliance with subdivision e of subsection 3 of North Dakota Century Code section 38-14.1-21.
 - (b) The increases in subparagraph a will not be allowed unless the applicant demonstrates, through testing related to local crop production that the operations will not decrease crop yields.
 - (c) For types of vegetation specified by the commission and not listed in approved crop tolerance research studies, a consideration must be made of any observed correlation between total dissolved solids concentrations in water and crop yield declines.
 - (d) Potential increases in the average depth to water saturated zones (during the growing season) within the root zone that would reduce the amount of subirrigated land compared to premining conditions.
 - (e) Potential decreases in surface flows that would reduce the amount of irrigable land compared to premining conditions.

- (f) Potential changes in the surface or ground water systems that reduce the area available to agriculture as a result of flooding or increased root zone saturation.
- (5) For the purposes of this subsection, a farm is one or more land units on which agricultural activities are conducted. A farm is generally considered to be the combination of land units with acreage [hectarage] and boundaries in existence prior to July 1, 1979, or, if established after July 1, 1979, with boundaries based on enhancement of the farm's agricultural productivity not related to mining operations.
- (6) If the commission determines the statutory exclusions of subsection 3 of North Dakota Century Code section 38-14.1-21 do not apply and that any of the findings required by this section cannot be made, the commission may, at the applicant's request:
 - (a) Determine that mining is precluded and deny the permit without the applicant filing any additional information required by this section; or
 - (b) Prohibit surface coal mining and reclamation operations in all or part of the area to be affected by mining.
- c. The applicant has, with respect to prime farmland, obtained either a negative determination or if the permit area contains prime farmlands:
 - (1) The postmining land use will be cropland.
 - (2) The permit specifically incorporates the plan submitted under section 69-05.2-09-15 after consideration of any revisions suggested by the ~~United--States--soil~~ natural resource conservation service.
 - (3) The operations will be conducted in compliance with chapter 69-05.2-26 and other standards required by this article and North Dakota Century Code chapter 38-14.1.
- d. The operations will not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats.

- e. The applicant has submitted proof that all reclamation fees required by 30 CFR subchapter R have been paid.
 - f. The applicant has, if applicable, satisfied the requirements for approval of a cropland postmining land use under section 69-05.2-22-01.
7. The commission may make necessary changes in the permit to avoid adverse effects on finding that operations may adversely affect any publicly owned park or places included on the state historic sites registry or the national register of historic places. Operations that may adversely affect those parks or historic sites will not be approved unless the federal, state, or local governmental agency with jurisdiction over the park or site agrees, in writing, that mining may be allowed.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990; May 1, 1992; June 1, 1994; July 1, 1995; June 1, 1997.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21, 38-14.1-33

CHAPTER 69-05.2-13

69-05.2-13-02. Performance standards - General requirements - Annual map. The permittee shall submit two copies of an annual map to the commission for all permit areas by each February fifteenth. The scale must be 1:4,800 or other scale approved by the commission. The information must be reported for each calendar year until all bond has been released. The ~~1:4,800--scale~~ map, or maps if necessary, must clearly show the following and include a legend specifying the number of acres [hectares] in each category:

1. Each permit area and section and quarter lines.
2. Activities during the year for each permit, including:
 - a. Acreage [hectarage] affected.
 - b. Acreage [hectarage] where suitable plant growth material removal operations have been completed.
 - c. Acreage [hectarage] where coal mining operations are completed and the contemporaneous reclamation requirement of subsection 14 of North Dakota Century Code section 38-14.1-24 has been initiated.
 - d. Acreage [hectarage] where grade approval has been obtained.
 - e. Acreage [hectarage] where suitable plant growth material redistribution operations have been completed.
 - f. Acreage [hectarage] planted where the ten-year revegetation period has been initiated.
 - g. Acreage [hectarage] where bond has been partially released and the stage of release.
 - h. Acreage [hectarage] where bond has been totally released.
3. Location of suitable plant growth material stockpiles. Supporting information must include ownership, date seeded, type of material in each stockpile (topsoil or subsoil), and estimated cubic yards [meters] for each stockpile.
4. Cumulative information on the mining and reclamation activities that have occurred within each permit area which include:
 - a. Affected acreage where topsoil must be replaced. The acreage specified on the map legend must be listed separately for each surface owner unless the surface owner

has agreed to soil mixing as allowed by subsection 6 of section 69-05.2-15-04. The combined acreage for all surface owners who have agreed to soil mixing must be specified on the map legend.

- b. Affected acreage where subsoil must be replaced. The acreage specified on the map legend must be listed separately for each surface owner unless the surface owner has agreed to soil mixing as allowed by subsection 6 of section 69-05.2-15-04. The combined acreage for all surface owners who have agreed to soil mixing must be specified on the map legend.
- c. Acreage [hectarage] planted where the ten-year revegetation period has been initiated and the year of initiation.
- d. Acreage [hectarage] where bond has been partially released and the stage of release.
- e. A tabular listing of acreage [hectarage] where bond has been totally released.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1994; June 1, 1997.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-27

69-05.2-13-07. Performance standards - General requirements - Air resources protection. The permittee shall comply with all applicable air pollution control laws and rules of the state department of health and ~~consolidated laboratories~~ and stabilize and protect all surface areas.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1997.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

CHAPTER 69-05.2-15

69-05.2-15-04. Performance standards - Suitable plant growth material - Redistribution.

1. After final grading is approved under section 69-05.2-21-06 and before the suitable plant growth material is replaced, regraded land must be scarified or otherwise treated, if necessary, to eliminate slippage surfaces or to promote root penetration.
2. Subsoil must then be redistributed as approved by the commission in a manner that:
 - a. Achieves an approximate uniform thickness consistent with the postmining land use and meets the requirements of subsection 4.
 - b. Prevents excess compaction of the spoil and subsoil.
3. Following subsoil respreading, topsoil must be redistributed as approved by the commission in a manner that:
 - a. Achieves an approximate uniform thickness consistent with the postmining land use and meets the requirements of subsection 4.
 - b. Prevents excess compaction of the suitable plant growth materials.
4. Amount of suitable plant growth materials to be redistributed.
 - a. In areas where the graded spoil materials occur:
 - (1) All suitable plant growth material inventoried and removed according to the soil survey and any other suitable strata required to satisfy section 69-05.2-21-03 must be uniformly redistributed; or
 - (2) The amount of redistributed suitable plant growth material must be based on the graded spoil characteristics as follows:

Suitable Plant Growth Material
Redistribution Thickness

Spoil Properties			Total Redistribution Thickness
Texture	Sodium Adsorption	Saturation Percentage	(Topsoil Plus Subsoil) Average in Inches (Centimeters)

	Ratio (SAR)	(SP)		
Medium*	< 12	***	24	(61)
Coarse**	< 12	***	36	(91)
***	12 - 20	< 95	36	(91)
***	12 - 20	> 95	42	(107)
***	> 20	***	48	(122)

* Loam or finer
** Sandy loam or coarser
*** Not applicable

- (a) The minimum thickness of redistributed suitable plant growth material in any random location must be within six inches [15.24 centimeters] of the average thickness required for an area based on the graded spoil characteristics as determined by representative sampling. However, the commission may approve redistribution thicknesses less than those listed in the table if chemical and physical analyses and any available field trials, greenhouse test results or current research findings demonstrate that the overburden materials are equal to or more suitable than the subsoil for sustaining vegetation. In addition, the commission may approve a lesser redistribution thickness if an insufficient amount of material exists based on the results of the soil survey and the availability of other suitable strata pursuant to subdivision b of subsection 5 of section 69-05.2-15-02.
- (b) The texture, sodium adsorption ratio, and saturation percentage of the graded spoil materials will be determined by a commission evaluation of the premine overburden data, sample analyses of the graded spoil conducted by the operator, or by a combination of these methods.
- (c) This paragraph is effective only for those areas disturbed prior to the year 1997 1999.
- b. The amount of redistributed suitable plant growth materials in associated disturbance areas where graded spoil materials do not occur must be based on the amount removed under subsection 2 of section 69-05.2-15-02.
5. Following the respreading of suitable plant growth materials, appropriate measures must be taken to protect the area from wind and water erosion.

6. The suitable plant growth material and other suitable strata and substitutes saved from property owned by one party must be respread within the boundaries of that property if the surface ownership of the permit area is split between two or more parties, unless the parties otherwise agree.

History: Effective August 1, 1980; amended effective June 1, 1983; January 1, 1987; May 1, 1990; May 1, 1992; June 1, 1994; June 1, 1997.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

CHAPTER 69-05.2-16

69-05.2-16-02. Performance standards - Hydrologic balance - Compliance with state department of health and consolidated laboratories standards. Runoff water and pit water discharge must meet the water quality requirements of the North Dakota state department of health and consolidated laboratories, as well as those of this article. The commission will not issue or revise a mining permit until the state department of health and consolidated laboratories has had an opportunity to review the applicable information and plans. No rights under the mining permit shall be exercised until the necessary state department of health and consolidated laboratories permits are obtained.

History: Effective August 1, 1980; amended effective May 1, 1990; June 1, 1997.

General Authority: NDCC 38-14.1-03, 38-14.1-42

Law Implemented: NDCC 38-14.1-21, 38-14.1-42

69-05.2-16-04. Performance standards - Hydrologic balance - Water quality standards and effluent limitations.

1. The operator shall comply with the following water quality standards and effluent limitations:
 - a. All surface drainage from the disturbed area, including disturbed areas that have been graded, seeded, or planted, must be passed through a sedimentation pond, a series of sedimentation ponds, or other treatment facility before leaving the permit area.
 - b. Sedimentation ponds and other treatment facilities must be maintained until removal is authorized by the commission and the disturbed area has been stabilized and revegetated. The structure may not be removed sooner than two years after the last augmented seeding unless the last augmented seeding is a supplemental seeding into an established vegetation stand that is effectively controlling erosion.
 - c. The commission may grant exemptions from these requirements only when:
 - (1) The disturbed drainage area within the total disturbed area is small; and
 - (2) The permittee or operator demonstrates that sedimentation ponds and treatment facilities are not necessary for drainage from the disturbed drainage areas to meet the effluent limitations referenced in

subdivision g and the applicable state water quality standards for downstream receiving waters.

- d. For the purposes of this chapter only, "disturbed area" shall not include areas in which only diversion ditches, sedimentation ponds, or roads are installed in accordance with this article and the upstream area is not otherwise disturbed by the operator.
 - e. Sedimentation ponds must be constructed according to the plans in the approved permit before beginning surface mining activities in the drainage area to be affected.
 - f. Mixed drainage from disturbed and undisturbed land must meet effluent limitations before it leaves the permit area.
 - g. Discharges of water from areas disturbed by surface mining activities must comply with all applicable state laws and rules and with the state department of health and consolidated laboratories effluent limitations authorized by North Dakota Century Code chapter 61-28.
2. Adequate facilities must be installed, operated, and maintained to treat any water discharged from the disturbed area so that it complies with all state laws and rules and the effluent limitations of this section.

History: Effective August 1, 1980; amended effective September 1, 1984; January 1, 1987; May 1, 1990; January 1, 1993; June 1, 1997.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-16-05. Performance standards - Hydrologic balance - Surface water monitoring.

1. Surface water monitoring must be conducted in accordance with the monitoring program and based on the probable hydrologic consequences determination submitted under section 69-05.2-08-04. The commission will approve the nature of data that relate to the hydrologic reclamation plan in section 69-05.2-09-12, frequency of collection, and determine reporting requirements.
 - a. For locations in surface water bodies, such as streams, lakes, and impoundments, monitoring must:
 - (1) Be adequate to measure accurately and record quantity and quality of discharges from the permit area and identify the extent to which mining affects water quality and quantity in the adjacent area. Water samples taken from all monitoring sites must be

analyzed for the parameters specified in subdivision b of subsection 3 of section 69-05.2-08-07. Results must be submitted quarterly to the commission.

- (2) Be conducted to assure reliable test data according to existing standard procedures and analytical methods.

b. For point source discharges, monitoring must:

- (1) Be conducted according to state department of health and consolidated laboratories standards.

- (2) Result in notifying the commission within five days in any cases in which analytical results of the sample collections indicate noncompliance with a permit condition or applicable standard. Where a North Dakota pollutant discharge elimination system permit effluent limitation noncompliance has occurred, the operator or permittee shall forward the analytical results concurrently with the written notice of noncompliance.

- (3) Result in quarterly reports to the commission, to include analytical results from each sample taken during the quarter. Any sample results which indicate a permit violation must be reported to the commission as specified in subdivision c. In those cases where the discharge for which water monitoring reports are required is also subject to regulation by a North Dakota pollutant discharge elimination system (NDPDES) permit and where that permit includes provisions for equivalent reporting requirements and requires filing of the water monitoring reports within ninety days or less of sample collection, the operator or permittee shall submit to the commission on the same time schedule as required by the North Dakota pollutant discharge elimination system permit or within ninety days following sample collection, whichever is earlier, a copy of the completed North Dakota pollutant discharge elimination system reporting form along with analytical results from each sample taken during the quarter.

2. If violation of a permit condition occurs, the operator shall, if appropriate, immediately take the actions provided for in subdivision a of subsection 3 of section 69-05.2-10-05 and subsection 2 of section 69-05.2-09-12.

3. After disturbed areas have been regraded and stabilized, the permittee shall continue to monitor surface water flow and quality within the permit and adjacent areas. Data from this

monitoring may be used to demonstrate that the quality and quantity of runoff without treatment is consistent with the requirements to minimize disturbance to the prevailing hydrologic balance and attain the approved postmining land use. These data may also provide a basis for commission approval to remove water quality or flow control systems.

4. Equipment, structures, and other devices necessary to measure and sample accurately the quality and quantity of surface water discharges from the disturbed area must be properly installed, maintained, and operated and must be removed when no longer required.

History: Effective August 1, 1980; amended effective May 1, 1990; June 1, 1997.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-27

CHAPTER 69-05.2-19

69-05.2-19-02. Performance standards - Waste materials - Permanent disposal of coal wastes.

1. All coal processing waste and waste materials from coal utilization processes and coal conversion facilities to be permanently disposed of within a permit area and that are required to be permitted under the solid waste management rules of the North Dakota state department of health and ~~consolidated laboratories~~ must be disposed of according to those rules and this chapter.
 - a. The permittee or operator shall file application for and design the disposal site as required by the state department of health and ~~consolidated laboratories~~ and concurrently submit a copy of the application to the commission.
 - b. The permittee or operator shall also submit to the commission a permit revision that will incorporate the disposal activities into the operations and reclamation plan. The commission will not approve the revision until the state department of health and ~~consolidated laboratories~~ issues a solid waste permit.
2. Waste materials covered by this section must be placed only in excavated pit areas approved by the commission. Prior to disposal, the operator shall demonstrate, using hydrologic, geotechnical, physical, and chemical analyses, that disposal of these materials will not:
 - a. Adversely affect ground water quality and flow;
 - b. Create public health hazards; and
 - c. Cause instability in the disposal areas.
3. All permanent coal processing waste disposal facilities must be designed using current, prudent engineering practices and meet any design criteria established by the commission. A qualified registered professional engineer, experienced in the design of similar earth and waste structures, shall certify the design of the disposal facility.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1997.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-19-04. Performance standards - Waste materials - Disposal of noncoal wastes.

1. All noncoal waste materials disposed of within a permit area and that are required to be permitted under solid waste management rules of the state department of health and ~~consolidated laboratories~~ must be disposed of according to those rules and this chapter. Before disposal operations begin, the commission must be advised of plans to develop or modify a noncoal waste disposal site.
2. Noncoal wastes including ~~grease, lubricants, paints, flammable liquids, garbage,~~ concrete products, plastic material, abandoned mining machinery, lumber wood materials, and other combustibles nonhazardous materials generated during mining and noncoal waste materials from activities outside the permit area, such as municipal wastes, must be placed and stored in a controlled manner in a designated approved portion of the permit area. Placement and storage must ensure that leachate and surface runoff do not degrade surface or ground water, fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings. Any wastes containing asbestos may not be disposed of in the permit area unless specific approval is obtained from the state department of health. Solvents, grease, lubricants, paints, flammable liquids, and other combustible materials must be disposed off the permit area except for land treatments of small spills as approved by the state department of health.
3. ~~Disposal sites must be designed and constructed with appropriate water barriers on the bottom and sides.~~ Disposal sites in the permit area must be designed and constructed to ensure that leachate and drainage from the noncoal waste areas does not degrade surface or underground water. Wastes must be routinely compacted and covered to prevent combustion and windborne waste. When disposal is completed, two feet [60.96 centimeters] of cover or a greater thickness required by the commission must be placed over the site, slopes stabilized, suitable plant growth material respread and revegetation accomplished. Site operation must comply with all local and state requirements.
4. At no time may any solid waste material be deposited at embankment or impoundment sites, nor may any excavation for solid waste disposal be located within eight feet [2.44 meters] of any coal outcrop or coal storage area.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1997.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

CHAPTER 69-05.2-22

69-05.2-22-02. Performance standards - Revegetation - Methods.

1. All revegetation must be carried out in accordance with the approved reclamation plan.
2. When the approved postmining land use is tame pastureland, the permittee shall seed or plant species of introduced grasses and legumes adapted to the local site conditions and capable of supporting grazing and occasional haying under proper management.
3. When the approved postmining land use is native grassland, the species of grasses, legumes, forbs, half-shrubs, or shrubs seeded or planted and their pattern of distribution must be selected by the permittee to provide a diverse, effective, and permanent vegetative cover with seasonal variety, succession, and regenerative capabilities native to the area.
4. When the approved postmining land use is woodland or fish and wildlife habitat where the vegetation type is woodland, the permittee shall plant woody species adapted for local site conditions and climate, in combination with a cover of grains, grasses, legumes, or forbs to provide a diverse, effective, and permanent vegetative cover with the seasonal variety, succession, and regenerative capabilities native to the area. Approval of species composition, minimum stocking, spacing and planting arrangements of trees, shrubs, half-shrubs, and ground cover will be based on local and regional recommendations following consultation with the state game and fish department, state forester, and the soil natural resource conservation service.
5. When the approved postmining land use is shelterbelt, the permittee shall plant woody species adapted for local site conditions and climate. Understory vegetation must be controlled until it no longer interferes with the growth of woody species. The stocking of trees and shrubs must follow current standards and specifications developed by the soil natural resource conservation service for farmstead and field windbreaks in North Dakota or others approved by the commission.
6. When fish and wildlife habitat is included in the postmining land use, the permittee shall consult with appropriate state wildlife and land management agencies and shall select those plant species that will fulfill the needs of wildlife for food and cover. Plant groupings and water resources must be appropriately spaced and distributed.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1997.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24, 38-14.1-42

69-05.2-22-07. Performance standards - Revegetation - Standards for success.

1. Success of revegetation must be measured by using statistically valid techniques approved by the commission. Comparison of ground cover and productivity may be made on the basis of reference areas, through the use of standards in technical guides published by the United States department of agriculture, or through the use of other approved standards. If reference areas are used, the management of the reference area during the responsibility period required in subsection 2 must be comparable to that required for the approved postmining land use of the permit area. If standards are used, they must be approved by the commission and the office of surface mining reclamation and enforcement. Approved standards are contained in the commission's Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments.
2. The period of responsibility under the performance bond requirements of section 69-05.2-12-09 will begin following augmented seeding, planting, fertilization, irrigation, or other work, except for cropland and prime farmland where the period of responsibility begins at the date of initial planting of the crop being grown or a precropland mixture of grasses and legumes, and must continue for not less than ten years.
3. Vegetation establishment, for the purpose of the third stage bond release provided for in subdivision c of subsection 7 of North Dakota Century Code section 38-14.1-17, will be determined for each postmining land use according to the following procedures:
 - a. For native grassland, tame pastureland, and fish and wildlife habitat where the vegetation type is grassland, ground cover on the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence. All species used in determining ground cover must be perennial species not detrimental to the approved postmining land use.
 - b. For cropland, vegetation will be considered established after the successful seeding of the crop being grown or a precropland mixture of grasses and legumes.

- c. ~~For prime farmland, productivity on the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence~~ annual average crop production from the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence for a minimum of three crop years.
 - d. For woodland, shelterbelts, and fish and wildlife habitat where the vegetation type is woodland, the number of trees and shrubs must be equal to or greater than the approved standard. Understory growth must be controlled. Erosion must be adequately controlled by mulch or site characteristics.
 - e. For fish and wildlife habitat where the vegetation type is wetland, the basin must exhibit the capacity to hold water and support wetland vegetation. Ground cover of the contiguous areas must be adequate to control erosion.
4. The success of revegetation on the permit area at the time of final bond release must be determined for each postmining land use according to the following:
- a. For native grassland, the following must be achieved for the last two consecutive years of the responsibility period:
 - (1) Ground cover and productivity of the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence; and
 - (2) Diversity, seasonality, and permanence of the vegetation of the permit area must be equivalent to that of the approved standard.
 - b. For tame pastureland, ground cover and productivity of the permit area must be equal to or greater than that of the approved standard with ninety percent statistical confidence for the last two consecutive growing seasons of the responsibility period.
 - c. For cropland, crop production from the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence for the last two consecutive growing seasons of the responsibility period.
 - d. ~~For prime farmlands, crop production from the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence for the last three consecutive growing seasons~~

of---the---responsibility---period a showing that the requirements for the restoration of productivity as specified in subdivision c of subsection 3 have been met and that the ten-year period of responsibility has elapsed.

- e. For woodlands and fish and wildlife habitat where the vegetation type is woodland, the following must be achieved during the last two consecutive years of the responsibility period:
- (1) The number of woody plants established on the permit area must be equal to or greater than the number of live woody plants of the same life form of the approved standard with ninety percent statistical confidence. Trees, shrubs, half-shrubs, root crowns, or root sprouts used in determining success of stocking must meet the following criteria:
 - (a) Be healthy;
 - (b) Be in place for at least two growing seasons; and
 - (c) At least eighty percent of those counted must have been in place at least six years.
 - (2) The ground cover must be equal to or greater than ninety percent of the ground cover of the approved standard with ninety percent statistical confidence and must be adequate to control erosion; and
 - (3) Species diversity, seasonal variety, and regenerative capacity of the vegetation on the permit area must be evaluated on the basis of species stocked and expected survival and reproduction rates.
- f. For shelterbelts, the following must be achieved during the last two consecutive years of the responsibility period:
- (1) Trees, shrubs, half-shrubs, root crowns, or root sprouts used in determining success of stocking must meet the following criteria:
 - (a) Be healthy;
 - (b) Be in place for at least two growing seasons; and
 - (c) At least eighty percent of those counted must have been in place at least six years.

- (2) Shelterbelt density and vigor must be equal to or greater than that of the approved standard; and
 - (3) Erosion must be adequately controlled.
- g. For fish and wildlife habitat, where the vegetation type is wetland, vegetation zones and dominant species must be equal to those of the approved standard the last two consecutive years of the responsibility period. In addition, wetland permanence and water quality must meet approved standards.
 - h. For fish and wildlife habitat, where the vegetation type is grassland, the following must be achieved during the last two consecutive years of the responsibility period:
 - (1) Ground cover must be equal to or greater than that of the approved standard with ninety percent statistical confidence and must be adequate to control erosion.
 - (2) Species diversity, seasonal variety, and regenerative capacity of the vegetation must meet the approved standard.
 - i. For previously mined areas that were not reclaimed to the requirements of this chapter, any reclamation requirements in effect when the areas were mined must be met. In addition, the ground cover of living plants may not be less than can be supported by the best available plant growth material in the reaffected area, nor less than the ground cover existing before redisturbance. Adequate measures must be in place to control erosion as approved by the commission.
 - j. For areas to be developed for recreation, water areas, residential, or industrial and commercial uses within two years after the completion of grading or soil replacement, the ground cover of living plants on these areas may not be less than required to control erosion.
 - k. For areas to be developed for recreation, woody plants must meet the stocking and plant establishment standards for woodlands or shelterbelts found in paragraph 1 of subdivision e or in subdivision f as applicable. In addition, ground cover must not be less than required to achieve the approved postmining land use.
5. Throughout the liability period the permittee shall:
- a. Maintain any necessary fences and use proper management practices; and

- b. Conduct periodic measurements of vegetation, soils, and water prescribed or approved by the commission.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992; January 1, 1993; June 1, 1997.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

CHAPTER 69-05.2-26

69-05.2-26-05. Performance standards - Prime farmland - Revegetation and restoration of productivity. The following revegetation requirements must be met for areas being returned to prime farmland after mining:

1. Following soil replacement, the operator shall establish a vegetative cover capable of stabilizing the soil surface. All revegetation must comply with the plan approved by the commission and be carried out in a manner that encourages prompt vegetative cover and recovery of productive capacity. The timing and mulching provisions of sections 69-05.2-22-04 and 69-05.2-22-05 must be met.
2. Measurement of success in prime farmland revegetation will be determined in accordance with section 69-05.2-22-07.
3. Prime farmland productivity must be restored in accordance with the following:
 - a. Measurement of productivity must be initiated within ten years after completion of soil replacement.
 - b. Productivity must be measured on a representative sample or on all of the mined and reclaimed prime farmland area using the crop determined under subdivision f. The permittee shall use a statistically valid sampling technique approved by the commission. Approved techniques are found in the commission's Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments.
 - c. The measurement period for determining average annual crop production is specified in subdivision d c of subsection 4 3 of section 69-05.2-22-07.
 - d. The level of management applied during the measurement period must be the same as that used on nonmined prime farmland in the surrounding area.
 - e. Restoration of prime farmland productivity will be considered achieved when the average yield equals or exceeds that of the crop established on nonmined prime farmland soils in the surrounding areas ~~for---three consecutive--growing--seasons~~. The soil series, texture, and slope of the nonmined prime farmlands must be the same or similar to the prime farmlands that were mined and management practices must be equivalent.

- f. The crop on which restoration of productivity is proven must be selected from the crops most commonly produced on the surrounding prime farmland. Where row crops are the dominant crops grown on prime farmland in the area, the row crop requiring the greatest rooting depth must be used as one of the crops.
- g. Crop yields for the same or similar nonmined prime farmland soils during a given crop season must be determined by methods contained in Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessment or other methods approved by the commission and the office of surface mining reclamation and enforcement.

History: Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992; June 1, 1997.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

CHAPTER 69-05.2-27

69-05.2-27-02. Variances for experimental surface coal mining and reclamation practices.

1. In order to encourage advances in surface mining and reclamation practices, or to allow postmining land use for industrial, commercial, residential, or public use (including recreational facilities), on an experimental basis where the postmining land use proposed requires an experimental practice to demonstrate feasibility, the commission may, with the approval of the director of the office of surface mining reclamation and enforcement, authorize variances in individual cases from the standards of North Dakota Century Code section 38-14.1-24.
2. Variances will not be authorized for other than experimental practices. For the purpose of this section, "experimental practice" means the use of alternative surface coal mining and reclamation operation practices for experimental or research purposes.
3. No person shall engage in or maintain any experimental practice unless that practice has first been approved in a permit.
4. Each person who desires to conduct an experimental practice shall submit a permit or revision application to the commission and to the director of the office of surface mining reclamation and enforcement for approval. The application must contain appropriate descriptions, maps, plans, and data which show:
 - a. The nature of the experimental practice, including a description of the performance standards for which the variances are requested, the duration of the experimental practice, and any special monitoring which will be conducted.
 - b. How use of the experimental practice:
 - (1) Encourages advances in mining and reclamation technology; or
 - (2) Allows a postmining land use for industrial, commercial, residential, or public use (including recreational facilities), on an experimental basis, when the results are not otherwise attainable under the standards.

- c. That the operations proposed for using an experimental practice are not larger nor more numerous than necessary to determine the effectiveness and economic feasibility of the practice.
- d. That the experimental practice:
 - (1) Is potentially more or at least as environmentally protective, during and after the proposed operations, as would be required under the standards.
 - (2) Will not reduce the protection afforded public health and safety below that provided by the standards.
- e. That the applicant will conduct special monitoring with respect to the experimental practice during and after operations. The monitoring program must:
 - (1) Ensure the collection, analysis, and reporting of sufficient and reliable data to enable the commission and the director of the office of surface mining reclamation and enforcement to make adequate comparisons with other operations employing similar practices.
 - (2) Include requirements designed to identify, as soon as possible, potential risks to the environment and public health and safety from the use of the practice.
- 5. Each application must specify the environmental protection performance standards which will be implemented in the event the objective of the experimental practice is a failure.
- 6. All experimental practices for which variances are sought must be specifically identified through newspaper advertisements by the applicant and the written notifications by the commission required by North Dakota Century Code section 38-14.1-18.
- 7. No permit authorizing an experimental practice will be issued unless the commission first finds, in writing, upon the basis of both a complete application filed in accordance with the requirements of this section and the comments of the director of the office of surface mining reclamation and enforcement that:
 - a. The practice meets the requirements of subdivisions b through e of subsection 4.
 - b. The practice is based on a clearly defined set of objectives which can reasonably be expected to be achieved.

- c. The practice has been specifically approved, in writing, by the director of the office of surface mining reclamation and enforcement.
- d. The permit contains conditions which specifically:
 - (1) Limit the practice authorized to that granted by the commission and the director of the office of surface mining reclamation and enforcement.
 - (2) Impose enforceable alternative environmental protection requirements.
 - (3) Require the person conducting the periodic monitoring, recording, and reporting program to include additional requirements as the commission or the director of the office of surface mining reclamation and enforcement may require.
- 8. Each permit which authorizes the use of an experimental practice will be reviewed at least every two and one-half years by the commission, or at least once prior to the middle of the permit term. After review, the commission will, with the consent of the director of the office of surface mining reclamation and enforcement, require by order, supported by written findings, any reasonable revision or modification of the permit provisions. Copies of commission written findings will be sent to the permittee. Any person who is or may be adversely affected by the order has the opportunity for review under North Dakota Century Code sections 38-14.1-30 and 38-14.1-35.
- 9. Experimental practices granting variances from the special environmental standards of chapter 69-05.2-26, applicable to prime farmlands, will be approved only after consultation with the ~~United States soil~~ natural resource conservation service.
- 10. Revisions or modifications to an experimental practice will be processed in accordance with section 69-05.2-11-02. Any revisions which propose significant alterations to the experimental practice are subject to the notice, hearing, and procedural requirements contained in subdivision a of subsection 5 of section 69-05.2-11-02 and concurrence by the director of the office of surface mining reclamation and enforcement.

History: Effective August 1, 1980; amended effective May 1, 1990; June 1, 1997.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-03

JULY 1997

STAFF COMMENT: Chapters 69-02-10 and 69-02-11 contain all new material but are not underscored so as to improve readability.

**CHAPTER 69-02-10
ARBITRATION**

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69-02-10-01. Definitions. As used in this chapter:

1. "Act" means the federal Telecommunications Act of 1996 [Pub. L. No. 104-104].
2. "Arbitration" is a dispute resolution process by which a neutral third party renders a decision on disputed issues which is binding on the parties, subject to commission approval.
3. "Arbitrator" is the term used to identify the arbitration decisionmaker.
4. "Commission" means the North Dakota public service commission.
5. "Entire package final offer arbitration" is a procedure under which the arbitrator must select, without modification, the entire proposal of one of the parties.
6. "Final offer arbitration" is a procedure under which each party submits a final offer concerning the issues subject to arbitration, and the arbitrator selects, without modification, one of the final offers by the parties to the arbitration, or portions of both such offers.
7. "Issue-by-issue final offer arbitration" is a procedure under which the arbitrator must select, without modification, on an issue-by-issue process, one of the proposals of either party on each issue.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05.1, 49-01-07

69-02-10-02. Scope of rules. These rules govern arbitrations of open or unresolved issues which arise under sections 251 and 252 of the

Act, where one or more of the parties to a particular negotiation petition for arbitration.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05.1, 49-01-07

69-02-10-03. Representation. The parties may be represented by counsel. The attorney for a party may act on the party's behalf.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05.1, 49-01-07

69-02-10-04. Commencement of arbitration. The arbitration process is commenced with the filing of a petition with the commission pursuant to section 252(b)(1) of the Act by any party to the negotiation process within the time period designated in the Act. The arbitration process is deemed to begin on the date the petition is filed with the

commission. The petitioning party must deliver a copy of the petition with proof of service on all parties to the negotiation on the day the petition is filed with the commission.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05.1, 49-01-07

69-02-10-05. Contents of petition. The petition must be filed in accordance with the commission's rules of practice and procedure. The petition must include the following information:

1. The name, address, telephone number, e-mail address, and fax number of the party making the request.
2. The name, address, telephone number, e-mail address, and fax number of the other party to the negotiation.
3. The name, address, telephone number, e-mail address, and fax number of each representative of the parties who are participating in the negotiation.
4. A summary of the negotiation history including mediation proceedings.
5. A comprehensive statement identifying all unresolved issues including all relevant documentation concerning those unresolved issues.

6. A statement of the position of each of the parties concerning the unresolved issues including all relevant documentation pertaining to those issues.
7. A statement identifying the issues that have been resolved through voluntary negotiation.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05.1, 49-01-07

69-02-10-06. Relevant documentation. Relevant documentation, for purposes of an arbitration proceeding, includes:

1. A brief or other written statement addressing the disputed issues, applicable state or federal law, and applicable state or federal regulations.
2. In the case of price disputes, the incumbent local exchange company's proposed rates or charges, and all relevant cost studies and supporting documentation.
3. Conditions that the parties request be imposed together with justification for the requested conditions.
4. A proposed schedule for implementation of the terms and conditions of the agreement.
5. Proposed interconnection agreements submitted by both the petitioner and the respondent.
6. All other documents relevant to the dispute, including copies of all documents intended to be introduced as evidence in the proceeding.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05.1, 49-01-07

69-02-10-07. Response to petition. Under section 252(b)(3) of the Act, a nonpetitioning party to a negotiation may respond to a petition for arbitration within twenty-five days after the commission receives the petition, and may present additional issues and provide additional relevant documentation it wishes to have considered pertaining to any of the issues. The party that files a response to a petition for arbitration with the commission must deliver a copy of the response with proof of service on all parties to the negotiation at the time the response is filed with the commission.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05.1, 49-01-07

69-02-10-08. Parties to provide list of arbitrators. The party or parties that request arbitration shall provide the commission, within no less than fifteen days from when the petition for arbitration is filed, names and qualifications of at least two qualified neutral arbitrators that are acceptable to all parties to the negotiation. In the event the parties are unable to agree on the acceptability of arbitrators, each party shall submit names and qualifications of at least two arbitrators that would be acceptable to that party.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05.1, 49-01-07

69-02-10-09. Selection of the arbitrator. The commission shall select and appoint a qualified arbitrator from the list provided by the parties. If the parties are unable to comply with the requirements of section 69-02-10-08, the commission shall appoint an arbitrator it determines to be qualified who may be a person from the commission's staff. The commission may designate one or more commission staff personnel or an outside consultant to serve as technical adviser to the arbitrator.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05.1, 49-01-07

69-02-10-10. Appointment of an arbitrator. The commission shall appoint the arbitrator within twenty days after a petition has been filed.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05.1, 49-01-07

69-02-10-11. Ex parte communications. A party may not have any ex parte communication with the arbitrator or technical advisor regarding any issue related to the arbitration except for scheduling purposes.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05.1, 28-32-12.1, 49-01-07

69-02-10-12. Payment of costs and fees. The parties to the arbitration proceeding shall contract directly with the arbitrator for the arbitration services and shall pay all costs and fees of the

arbitrator and outside consultants retained to assist the arbitrator. Costs associated with the arbitration process which are incurred by the commission or commission staff in the arbitration proceeding must be paid by the telecommunications companies involved in the proceeding under subsection 6 of North Dakota Century Code section 49-21-01.7.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05.1, 49-01-07, 49-21-01.7

69-02-10-13. Procedural officer. The arbitrator appointed by the commission, in addition to having the authority to arbitrate the disputed issues, has the authority of a hearing officer and will conduct the procedural aspects of the arbitration proceeding.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05.1, 28-32-08.1, 28-32-08.5, 49-01-07

69-02-10-14. Prehearing conference. The arbitrator shall schedule a prehearing conference to be held no later than two hundred days from the date of making the request for negotiation. The purpose of the prehearing conference is to discuss a procedural schedule that conforms to the requirements of the Act, North Dakota laws and rules, and commission issued procedural order and preliminarily discuss areas of testimony, discuss the scope and timing of discovery, determine the timeline for filing testimony, and identify, simplify, and limit issues. The arbitrator shall issue an order following the prehearing conference setting forth a procedural order for the proceeding and identifying the issues in dispute.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05.1, 28-32-08.3, 49-01-07

69-02-10-15. Notice of arbitration hearing. Within fifteen days after the prehearing conference, the commission shall issue a notice of hearing specifying the disputed issues that are the subject of the arbitration proceeding. The notice of arbitration hearing must be issued as required under North Dakota Century Code Chapter 28-32. Arbitration proceedings must be open to the public.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05, 28-32-05.1, 49-01-07

69-02-10-16. Participation in the arbitration process. Participation in the arbitration process must be limited to the petitioning party, the responding party, and the commission staff.

Commission staff personnel may participate in both advocacy or advisory roles. In the event staff participates in an advocacy role, the commission will employ its split staff procedures to designate advocacy and advisory staff members. An individual staff person may not be permitted to serve in both an advocacy and advisory role.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05.1, 49-01-07

69-02-10-17. Confidentiality. The petition, response, accompanying materials, and all other documentation provided to the commission are subject to the North Dakota open records laws. A party may request trade secret protection for information by filing an application with the commission under the provisions of chapter 69-02-09.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-10-18. Exchange of information. The parties shall cooperate in good faith in the voluntary, prompt, and informal exchange of all documents and other information relevant to the disputed issues, subject to claims of privilege or confidentiality.

1. The parties shall exchange copies of all documents in their possession or control on which they rely in support of their positions or which they may introduce as exhibits at the arbitration hearing. The parties shall serve the documents within twenty days after the response to the petition is filed with the commission, unless otherwise agreed or such other time is ordered by the arbitrator.
2. The parties may offer other evidence that is relevant and material to the issues in dispute. The parties must be required to produce such additional evidence as the arbitrator deems necessary to understand and determine the issues in dispute.
3. The parties shall exchange a preliminary list of witnesses they expect to call at the arbitration hearing within twenty days after the response to the petition is filed, unless otherwise ordered by the arbitrator or agreed to by the parties. The preliminary list must identify expert witnesses and the subject matter of their testimony. Within seven calendar days prior to the hearing, the parties shall provide to each other and to the arbitrator a final list of witnesses they intend to call, including experts, together with a brief description of the testimony of each witness and the estimated time for the witness's direct testimony. In addition, within

seven calendar days prior to the hearing, the parties shall provide to each other and to the arbitrator a list of exhibits intended to be used at the hearing together with copies of all exhibits not previously provided.

4. Within seven calendar days prior to the hearing, each party shall submit concise written statements of the party's position, including summaries of the facts and evidence a party intends to present, discussion of the applicable law, and the basis for the requested decision or denial of relief sought.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05.1, 49-01-07

69-02-10-19. Formal discovery. The provisions of North Dakota Century Code chapter 28-32 control discovery in arbitration proceedings. In the event any party fails or refuses to informally exchange requested information and documents, the other parties may:

1. Submit a request to conduct discovery in accordance with North Dakota Century Code section 28-32-09.
2. Submit a request to the arbitrator to compel responses to reasonable discovery requests.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05.1, 28-32-09, 49-01-07

69-02-10-20. Filing of direct testimony. The parties to the arbitration proceeding shall file prepared written testimony relating to all of the disputed issues in the proceeding within the timeframe established in the prehearing conference order.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05.1, 49-01-07

69-02-10-21. Production of documents and other discovery materials. Any party to the arbitration proceeding that receives a discovery request from another party or from the arbitrator shall produce all discoverable information within the time period established in these rules or the procedural order. If any party refuses or fails unreasonably to respond on a timely basis to any reasonable request, the arbitrator may proceed on the basis of the best information available to the arbitrator from whatever source derived under section 252(b)(4)(B) of the Act.

History: Effective July 1, 1997.
General Authority: NDCC 28-32-02, 49-02-11
Law Implemented: NDCC 28-32-05.1, 49-01-07

69-02-10-22. Testimony of witnesses. All witnesses shall present their testimony at the hearing under oath. The witnesses shall authenticate their prefiled testimony and be subjected to direct examination and cross-examination.

History: Effective July 1, 1997.
General Authority: NDCC 28-32-02, 49-02-11
Law Implemented: NDCC 28-32-05.1, 28-32-11, 49-01-07

69-02-10-23. Evidence. The arbitrator will consider evidence relevant and material to the dispute, giving the evidence such weight as the arbitrator determines is appropriate. Exhibits to the record may be offered by either party and may be received into evidence by the arbitrator. The admissibility of evidence shall be guided by the applicable provisions of North Dakota Century Code chapter 28-32.

History: Effective July 1, 1997.
General Authority: NDCC 28-32-02, 49-02-11
Law Implemented: NDCC 28-32-05.1, 28-32-06, 49-01-07

69-02-10-24. Continuation of mediation. The parties may at any time return to mediation to attempt to resolve disputed issues and the parties may involve the arbitrator in such mediation efforts. The participation of the arbitrator in such mediation efforts does not disqualify the arbitrator from continuing in the arbitration process.

History: Effective July 1, 1997.
General Authority: NDCC 28-32-02, 49-02-11
Law Implemented: NDCC 28-32-05.1, 49-01-07

69-02-10-25. Transcript of the hearing. A stenographic record of each arbitration hearing must be made. The arbitrator may require an expedited copy of each hearing to be filed with the commission. The commission shall designate the court reporter for the proceeding. The parties shall pay the fees and costs of the reporter including the costs for preparing all transcripts directly to the court reporter.

History: Effective July 1, 1997.
General Authority: NDCC 28-32-02, 49-02-11
Law Implemented: NDCC 28-32-05.1, 49-01-07

69-02-10-26. Final offer arbitration. The arbitrator shall use final offer arbitration, except as otherwise provided in this section:

1. At the discretion of the arbitrator, final offer arbitration may take the form of either entire package final offer arbitration or issue-by-issue final offer arbitration.
2. Negotiations between the parties may continue after final arbitration offers are submitted and the parties may submit subsequent final offers following such negotiations.
3. The arbitrator may allow up to fifteen days after submission of the initial final offers before making a decision in order to provide the opportunity for parties to conduct postoffer negotiations.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05.1, 49-01-07

69-02-10-27. Filing of briefs and final offer arbitration agreements. The petitioner and the respondent shall each file a posthearing brief and a final offer arbitration agreement no later than ten days after the filing of the hearing transcript. The hearing officer has the discretion to shorten the time for filing. The posthearing briefs of each party must summarize all relevant portions of its final offer arbitrated agreement and cite legal authority and evidence to support the adoption of its agreement.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05.1, 49-01-07

69-02-10-28. Contents of final offers. Final offers submitted by the parties must:

1. Meet the requirements of section 251 of the Act and all rules prescribed by the federal communications commission pursuant to that section.
2. Establish rates for interconnection, services, or access to unbundled network elements according to section 252(d) of the Act, including all rules prescribed by the federal communications commission pursuant to that section.
3. Provide a schedule for implementation of the terms and conditions by the parties to the agreement. In the event a final offer of one or more of the parties fails to comply with the requirements of this section, the arbitrator may take the action necessary to result in an arbitrated agreement that satisfies the requirements of section 252(c) of the Act, including requiring the parties to submit new final offers or adopting a result not submitted by any party that is consistent with the requirements of section 252(c) of the Act

and rules prescribed by the federal communications commission pursuant to that section.

History: Effective July 1, 1997.
General Authority: NDCC 28-32-02, 49-02-11
Law Implemented: NDCC 28-32-05.1, 49-01-07

69-02-10-29. Arbitrator's decision. The arbitrator shall issue an arbitrator's decision which shall constitute resolution of the issues submitted for arbitration, subject to final commission approval. The arbitrator's decision shall include:

1. A summary of the material evidence presented;
2. A discussion of the issues incorporating the respective positions of each of the parties;
3. A proposed agreement of the arbitrated issues; and
4. The final recommendation of the arbitrator.

The arbitrator's decision shall be issued no later than nine months from the date of the request for negotiation.

History: Effective July 1, 1997.
General Authority: NDCC 28-32-02, 49-02-11
Law Implemented: NDCC 28-32-05.1, 49-01-07

69-02-10-30. Submission of an interconnection agreement. The parties shall jointly file with the commission an agreement incorporating the provisions adopted through negotiation and arbitration within thirty days after the filing of the arbitrator's decision. The combined agreement will be referred to as the interconnection agreement.

History: Effective July 1, 1997.
General Authority: NDCC 28-32-02, 49-02-11
Law Implemented: NDCC 28-32-05.1, 49-01-07

69-02-10-31. Public comments. Any person may file written comments on the interconnection agreement within fifteen days of the date of filing of the agreement with the commission. Each of the arbitrating parties may also file comments within the same timeframe.

History: Effective July 1, 1997.
General Authority: NDCC 28-32-02, 49-02-11
Law Implemented: NDCC 28-32-05.1, 49-01-07

69-02-10-32. Commission review. Within thirty days following the filing of the interconnection agreement, the commission shall issue a decision approving or rejecting the agreement.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05.1, 49-01-07

69-02-10-33. Applicable laws and rules. The arbitration procedure must be governed by the provisions of the Telecommunications Act of 1996, Public Law No. 104-104, 101 Stat. 56 (1996); the North Dakota Administrative Practices Act; North Dakota Century Code chapter 28-32; the commission's rules of practice and procedure; North Dakota Administrative Code article 69-02; and the commission issued guidelines and procedural orders.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05.1, 49-01-07

**CHAPTER 69-02-11
MEDIATION**

Section	
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69-02-11-01. Definitions. As used in this chapter:

1. "Act" means the federal Telecommunications Act of 1996 [Pub. L. No. 104-104].
2. "Commission" means the North Dakota public service commission.
3. "Mediation" means an informal, confidential, and nonadversarial process by which a neutral third party assists the parties in reaching their own settlement by enhancing communication, promoting understanding, focusing the parties on the issues, and seeking creative problem solving.
4. "Mediator" means a qualified, neutral, or impartial third party, who assists the parties in reaching a voluntary agreement.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05.1, 49-01-07

69-02-11-02. Mediation request. Under section 252(a)(2) of the Act, any party negotiating an agreement for interconnection, services, or network elements pursuant to section 251 of the Act, may at any point in the negotiation request the commission to participate in the negotiation and to mediate any difference between the parties arising in the course of the negotiation.

1. Parties are not required to seek mediation by the commission and may employ the services of a private mediator at their own expense.
2. A copy of the request for negotiation must be filed with the commission at the time the request is sent to the incumbent local exchange carrier.
3. The party that files a request for mediation with the commission shall deliver a copy of the request with proof of

service on all parties to the negotiation on the day the request is filed with the commission.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05.1, 49-01-07

69-02-11-03. Appointment of a mediator. The commission shall appoint a mediator within ten days after a request is filed.

1. The parties may select a mutually agreeable mediator and inform the commission in writing of the name and qualifications of the mediator. The commission shall appoint the mediator selected by the parties unless the commission determines for good cause that the mediator should be disqualified.
2. In the event the mediator selected by the parties is disqualified or the parties fail to select a mutually agreeable mediator, the commission may appoint a member of its own staff or may contract with a third party to provide mediation services.
3. If the parties select a mediator or demand that mediation services be provided by a third party, the parties shall contract for the mediation services and shall be responsible for payment of the services. The commission may designate one or more staff personnel to provide technical assistance to the mediator.
4. Costs associated with the mediation process which are incurred by the commission shall be paid by the telecommunications companies involved in the proceeding under subsection 6 of North Dakota Century Code section 49-21-01.7. Costs incurred by the parties in contracting for third-party mediation are not costs incurred by the commission and must be paid by the parties.
5. The mediator must remain impartial and must withdraw from the mediation process if the mediator's impartiality is compromised. A commission employee who serves as the mediator will not be permitted to participate in the arbitration or approval process for the same agreement, unless the parties consent.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05.1, 49-01-07, 49-21-07

69-02-11-04. Mediation procedure. The mediation process is an informal, confidential, and nonadversarial process in which an impartial

person, the mediator, assists the parties in efforts to resolve differences between them. The mediator has no authority to compel a resolution.

1. To the extent there is a conflict between these guidelines and the commission's rules of practice and procedure, the commission suspends its rules of practice and procedure under the authority of section 69-02-01-11.
2. Section 251(c)(1) of the Act imposes a duty on the parties to negotiate in good faith. For purposes of these rules, the duty to negotiate in good faith means a willingness to meet at reasonable times and at reasonable places with the intent and purpose of providing and sharing of information necessary to accomplish meaningful negotiation, cooperating in the negotiation process, and to negotiate with an attitude of openness and willingness to achieve a negotiated agreement. The duty to negotiate in good faith does not mean that the parties must reach agreement on any or all items being negotiated.
3. Parties to the mediation process may be represented by counsel or representatives of each party's choice. All parties shall provide to each other and to the mediator, in advance of the initial mediation session, the name, address, occupation, and telephone number of their counsel or representative.
4. Within fifteen days of the filing of the request for mediation, each party shall submit to the mediator a written statement summarizing the dispute and the issues or points in conflict, and the party's position on each point in conflict. The mediator may request such additional information the mediator determines is necessary to familiarize the mediator with the dispute.
5. Within ten days of the filing of the summary statements, the mediator shall convene the initial mediation conference. The purpose of the initial conference is to establish a procedural schedule for the process, and to attempt to identify, simplify, and limit issues to be resolved. In addition, each party will be expected to informally present its position to the mediator.
6. The mediator will conduct the mediation sessions and will control all procedural aspects of the mediation. The mediator will schedule mediation sessions in consultation with the parties. The parties are expected to cooperate fully with the mediator.
7. Participation in mediation proceedings is restricted to the parties to the mediation, unless otherwise mutually agreed to by the parties and the mediator. Mediation proceedings are closed to the public.

8. The mediator may meet and communicate individually with the parties or their attorneys in an attempt to bring the disputing parties closer to agreement and may request that the parties not communicate directly with each other without the mediator's concurrence.
9. The mediation process is confidential to the extent permitted by law. No stenographic record of the proceedings or any part thereof may be taken.
10. The mediator shall not provide legal advice to the parties. The mediator's statements as to law or policy are not binding on the commission.
11. The parties shall cooperate in the exchange of information needed or useful in the negotiation. The mediator may call a joint meeting to assist the parties in an agreement for the exchange of information. All documents must be returned to the originating party at the conclusion of the mediation process.
12. At any time during the mediation process, the mediator may request either party to provide additional information for clarification purposes and to assist in the resolution of the dispute.
13. The parties are expected to initiate and present proposals for resolution of disputed issues and to provide justification for their position. The mediator may also present recommendations for the resolution of disputed issues at any point in the mediation process.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05.1, 28-32-08, 49-01-07

69-02-11-05. Termination of mediation. Mediation must terminate upon execution of a mediated agreement by the parties, filing of a notice with the commission by a party that mediation is terminated, failure of a party or parties to negotiate in good faith, or notification to the commission by the mediator that further mediation is futile.

1. Any party that terminates the mediation proceeding shall provide a detailed explanation of its decision in a written declaration to the commission. If the mediator terminated the mediation procedure, the mediator must provide a detailed explanation why the mediation failed.
2. At any time subsequent to the termination of mediation, the parties and the mediator, by agreement, may resume mediation to attempt to resolve their differences. If appointment of a

new mediator is necessary, the mediation must be initiated in the same manner as a new mediation.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05.1, 49-01-07

69-02-11-06. Applicable laws and rules. The mediation procedure must be governed by the provisions of the Telecommunications Act of 1996, Public Law No. 104-104, 101 Stat. 56 (1996); the North Dakota Administrative Practices Act; North Dakota Century Code chapter 28-32; the commission's rules of practice and procedure; North Dakota Administrative Code article 69-02; and the commission issued guidelines and procedural orders.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 28-32-05.1, 49-01-07

CHAPTER 69-09-01

69-09-01-15. Requests and referee tests.

1. Each utility furnishing gas service shall make a test of the accuracy of any meter upon request of the consumer, provided the consumer does not request such a test more frequently than once in twelve months. A report giving the results of each request test shall be made to the consumer, and the complete original record shall be kept on file in the office of the utility. A gas service utility shall test the accuracy of any meter upon request of the customer, shall provide the customer with a report of the test results, and shall keep the complete original test record and a copy of the report on file in the utility's office.
2. Upon written application to the commission by the customer a test of the customer's meter will be made or supervised as soon as practicable by a representative of the commission. The application for such test shall be accompanied by a fee of five dollars. This fee shall be retained by the commission. However, if the meter is found to be more than two percent fast, the utility shall repay to the customer the amount of the fee paid by the customer to the commission for the test. The fee may be waived by the commission for a specific test on a meter where such test does not require extra traveling or other expense or where it is impractical to make the test incidental to the commission work. A customer may request in writing to the commission that the utility's test be supervised by a commission representative.
3. The customer shall not be charged for the test provided the customer requests no more than one test each twelve-month period, otherwise the utility may charge a tariffed rate. The charge must be waived if the meter error is more than plus or minus two percent.

History: Amended effective July 1, 1997.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-01-18.1. Discontinuance of gas service.

1. A utility may disconnect service if the customer is delinquent in payment for services rendered. However, no utility shall discontinue service to a customer for failure to pay for such service until the utility shall first have given the customer notice of its intention to discontinue such service on account of delinquency. The notice shall:

- a. Be sent by first-class mail addressed to the customer at the place where service is rendered, except that in the case of residential customers sixty-five years of age or older, or for handicapped customers, personal notice by delivery is required. A copy of each notice must also be mailed to the nearest social service office and to any other appropriate financial assistance agency, providing that prior approval has been given by the customer pursuant to subsection 2.
- b. Show the amount of the delinquency.
- c. Include the telephone number of the public service commission.
- d. Advise the customer of the customer's rights and remedies, including but not limited to the right of the customer to stay termination for up to thirty days if the customer advises the utility within the ten-day notice period that dangerous health conditions exist or that the customer is sixty-five years of age or older or that the customer is handicapped. In addition, the notice shall advise the customer of the customer's right to work out a satisfactory deferred installment agreement for delinquent accounts and of the opportunity to enter into equal monthly payment plans for future service.
- e. Inform the customer that service will be discontinued if the delinquent account is not paid within ten calendar days from the date of mailing or personal delivery of the notice, or if a satisfactory installment agreement is not made with the utility for payment of the delinquent bill.

If the customer elects to enter into a deferred installment agreement for delinquent accounts, service may not be terminated; however, the utility may discontinue service without further notice if the customer fails to pay the delinquent account on or before the date specified in the notice, or in accordance with the deferred installment agreement. The customer shall have the privilege of paying the delinquent account at any time prior to the actual disconnection of service, and the person directed by the utility to make the disconnection shall be deemed authorized and shall accept payment of the delinquent account if tendered to the person by the customer before actual disconnection of service is made.

2. It shall be the responsibility of all residential customers sixty-five years of age or older, handicapped, or having an emergency medical problem in the household, including life sustaining appliances, such as kidney dialysis, to notify the utility of such status. To assist in such notification, all utilities shall annually include a preaddressed postage-paid

postcard in the monthly billing mailed to all residential customers during the billing period ending October first. Such notice shall also be provided to all new customers in that service area when they are first provided service by the utility.

The postcard shall include the following questions:

	YES	NO
1. Is any member of your household 65 years of age or older, or handicapped?	—	—
2. Do you have any emergency medical problem in your household?	—	—
3. Do you desire that the area social service office or other appropriate financial assistance agency be notified in the event of a proposed disconnect?	—	—
4. Do you desire that some other third party be contacted in the event of a disconnect? If so, name and address of person _____	—	—
<hr/>		
5. If you are having difficulty paying your utility bill, please contact our local service representative or business office so that we can work with you on your problem. Utility Telephone Number _____ Office Address _____		
Date _____	Name _____	
	Address _____	
	_____ Signature	

3. Service shall not be disconnected under this section on weekends, Fridays, state holidays, the day before a state holiday, or after twelve noon on any day. ~~Whenever service is disconnected under this section during the period October fifteenth to April fifteenth, the utility shall immediately notify the commission of the specific disconnection by telephone.~~ A report describing the total number of actual disconnects, date and time, type of customer, and amount of delinquency for each disconnected customer shall be filed monthly with the commission within ten days after the last day of each month.
4. Whenever service has been disconnected for nonpayment of a bill, before reconnection is made the customer shall pay the reconnection fee established in the utility's rate schedules;

make a deposit pursuant to section 69-09-02-04 if all or a part of the previous deposit was used in settlement of the delinquent bill; and make a satisfactory settlement for the delinquent bill and for service rendered between the last meter reading date and the date service was disconnected.

5. In the event the customer disputes the amount of a bill for service, the customer may, to prevent disconnection for nonpayment, pay the disputed bill under protest to the utility. Alternatively, the customer may request a formal hearing pursuant to section 69-02-02-02 in which case the utility shall not disconnect service for nonpayment of the disputed bill until a final decision has been issued by the commission. The utility shall immediately give the commission notice of the dispute and the commission may investigate the dispute. The utility shall refund to the customer any part of such payment made under protest found by the commission to be excessive.
6. A utility may not disconnect service to a customer for failure of the customer: to pay for merchandise purchased from the utility; to pay for a different class of service furnished by the utility; to pay for service rendered to a previous occupant of the premises; or to pay the bill of another customer as guarantor thereof.
7. A utility may discontinue service to a customer for failure to comply with regulations of the utility on file with the commission pertaining to installation and operation of utilization equipment, or for use of equipment which interferes with, or adversely affects, the service to other customers, provided the customer has first been notified and afforded reasonable opportunity to change or disconnect such equipment.
8. A utility may discontinue service to a customer upon ten days written notice if it is determined that the meter or other equipment installed by the utility has been tampered with, or if there has been a diversion of service, or if the customer is utilizing gas before the energy has passed through a meter installed by the utility, or if a condition dangerous to life and property exists on the customer's premises.
9. Where a customer who has tenants is including the cost of utility services in the rent charged and the utility bill becomes delinquent, the utility before disconnecting service must also notify the tenants in writing at least ten days prior to the proposed termination date. The utility must allow each tenant to apply to become the customer of the utility in the tenant's own name, to have the service to the rental facility continued or resumed, and to pay the pro rata share of future bills. Such tenant-customer shall be subject to all the provisions of this chapter.

History: Effective October 1, 1980; amended effective May 1, 1996; July 1, 1997.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-01-30. Automatic adjustment clauses.

1. As used in this section, the term "automatic adjustment clause" means a tariff provision that provides for increases or decreases, or both, without prior hearing, in rates reflecting increases or decreases, or both, in gas supply costs incurred by a natural gas utility.
2. An automatic adjustment clause that does not conform to principles set out in this section may not be in the public interest. This section contemplates that the filing of a proposed tariff which includes a nonconforming automatic adjustment clause may result in suspension of all or part of the tariff.
3. The automatic adjustment clause must be in a form that provides for periodic adjustments per unit of sales equal to the difference between gas supply costs per unit of sales included in base rate schedules and gas supply unit of sales projected for the adjustment period.
4. Gas supply costs included under the adjustment clause must be set forth tariff approved by the commission.
5. The utility shall maintain a balancing account in which the difference between the actual gas supply cost and the amount collected through the adjustment cause is recorded. The balancing account must accrue interest monthly at a rate equal to the utility's three-month treasury bill rate of return on rate base last authorized by the commission as published monthly by the federal reserve board.
6. An automatic adjustment clause must include a balancing surcharge, which must be recalculated at least annually. The amount of the surcharge must equal the amount in the balancing account at the time of the proposed change that results from the recalculation divided by projected weather normalized sales volumes for the following twelve months.
7. Notice of change in the adjustment must be filed with the commission prior to billing. The notice must include:
 - a. Workpapers calculating the adjustment;
 - b. Copies of applicable pipeline tariffs and an explanation of regulatory approval status;

- c. A history of the balancing account since the last surcharge update; and
 - d. To the extent possible, an explanation of market and other factors causing the change.
8. If a current price is in litigation or otherwise being collected subject to refund the utility shall so advise the commission, inform the commission of the final outcome, and record the outcome in the balancing account.
 9. If a particular circumstance prevents the use of a standard provided in this section, or its use would result in an undue burden, the commission may permit deviation from the standard.
 10. The commission may review an automatic adjustment clause at any time to ensure the maximum economies in those operations and purchases which affect the rates to which the clause applies. The commission's review may include an evidentiary hearing. In making its review, the commission may examine and, if appropriate, cause to be audited, the practices of a utility relating to costs subject to an automatic adjustment clause, and may require any filings and reports that may be necessary to carry out the review, including volumes, prices, and contracts for each supply source and a disclosure of any affiliation between the utility and the seller of natural gas or other items to the utility.
 11. Each utility shall cause an independent audit of its automatic adjustment clause to be performed annually. A copy of the auditor's report must be filed annually with the commission.

History: Effective February 1, 1995; amended effective July 1, 1997.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

CHAPTER 69-09-02

69-09-02-05.1. Discontinuance of electric service.

1. A utility may disconnect service if the customer is delinquent in payment for services rendered. However, no utility shall discontinue service to a customer for failure to pay for such service until the utility shall first have given the customer notice of its intention to discontinue such service on account of delinquency. The notice shall:
 - a. Be sent by first-class mail addressed to the customer at the place where service is rendered, except that in the case of residential customers sixty-five years of age or older, or for handicapped customers, personal notice by delivery is required. A copy of each notice must also be mailed to the nearest social service office and to any other appropriate financial assistance agency, providing that prior approval has been given by the customer pursuant to subsection 2.
 - b. Show the amount of the delinquency.
 - c. Include the telephone number of the public service commission.
 - d. Advise the customer of the customer's rights and remedies, including, but not limited to, the right of the customer to stay termination for up to thirty days if the customer advises the utility within the ten-day notice period that dangerous health conditions exist or that the customer is sixty-five years of age or older or that the customer is handicapped. In addition, the notice shall advise the customer of the customer's right to work out a satisfactory deferred installment agreement for delinquent accounts and of the opportunity to enter into equal monthly payment plans for future service.
 - e. Inform the customer that service will be discontinued if the delinquent account is not paid within ten calendar days from the date of mailing or personal delivery of the notice, or if a satisfactory installment agreement is not made with the utility for payment of the delinquent bill.

If the customer elects to enter into a deferred installment agreement for delinquent accounts, service may not be terminated; however, the utility may discontinue service without further notice if the customer fails to pay the delinquent account on or before the date specified in the notice, or in accordance with the deferred installment agreement. The customer shall have the privilege of paying

the delinquent account at any time prior to the actual disconnection of service, and the person directed by the utility to make the disconnection shall be deemed authorized and shall accept payment of the delinquent account if tendered to the person by the customer before actual disconnection of service is made.

2. It shall be the responsibility of all residential customers sixty-five years of age or older, handicapped, or having an emergency medical problem in the household, including life-sustaining appliances, such as kidney dialysis, to notify the utility of such status. To assist in such notification, all utilities shall annually include a preaddressed postage-paid postcard in the monthly billing mailed to all residential customers during the billing period ending October first. Such notice shall also be provided to all new customers in that service area when they are first provided service by the utility.

The postcard shall include the following questions:

- | | YES | NO |
|--|-----|----|
| 1. Is any member of your household 65 years of age or older, or handicapped? | — | — |
| 2. Do you have any emergency medical problem in your household? | — | — |
| 3. Do you desire that the area social service office or other appropriate financial assistance agency be notified in the event of a proposed disconnect? | — | — |
| 4. Do you desire that some other third party be contacted in the event of a disconnect?
If so, name and address of person _____
_____ | — | — |
| 5. If you are having difficulty paying your utility bill, please contact our local service representative or business office so that we can work with you on your problem. | | |

Utility Telephone Number _____
Office Address _____

Date _____ Name _____
Address _____

Signature _____

3. Service shall not be disconnected under this section on weekends, Fridays, state holidays, the day before a state holiday, or after twelve noon on any day. ~~Whenever service is disconnected under this section during the period October fifteenth to April fifteenth, the utility shall immediately notify the commission of the specific disconnection by telephone.~~ A report describing the total number of actual disconnects, date and time, type of customer, and amount of delinquency for each disconnected customer shall be filed monthly with the commission within ten days after the last day of each month.
4. Whenever service has been disconnected for nonpayment of a bill, before reconnection is made the customer shall pay the reconnection fee established in the utility's rate schedules; make a deposit pursuant to section 69-09-02-04 if all or a part of the previous deposit was used in settlement of the delinquent bill; and make a satisfactory settlement for the delinquent bill and for service rendered between the last meter reading date and the date service was disconnected.
5. In the event the customer disputes the amount of a bill for service, the customer may, to prevent disconnection for nonpayment, pay the disputed bill under protest to the utility. Alternatively, the customer may request a formal hearing pursuant to section 69-02-02-02 in which case the utility shall not disconnect service for nonpayment of the disputed bill until a final decision has been issued by the commission. The utility shall immediately give the commission notice of the dispute, and the commission may investigate the dispute. The utility shall refund to the customer any part of such payment made under protest found by the commission to be excessive.
6. A utility may not disconnect service to a customer for failure of the customer: to pay for merchandise purchased from the utility; to pay for a different class of service furnished by the utility; to pay for service rendered to a previous occupant of the premises; or to pay the bill of another customer as guarantor thereof.
7. A utility may discontinue service to a customer for failure to comply with regulations of the utility on file with the commission pertaining to installation and operation of utilization equipment, or for use of equipment which interferes with, or adversely affects, the service to other customers, provided the customer has first been notified and afforded reasonable opportunity to change or disconnect such equipment.
8. A utility may discontinue service to a customer upon ten days' written notice if it is determined that the meter or other equipment installed by the utility has been tampered with, or

if there has been a diversion of service, or if the customer is utilizing electricity before the energy has passed through a meter installed by the utility, or if a condition dangerous to life and property exists on the customer's premises.

9. Where a customer who has tenants is including the cost of utility services in the rent charged and the utility bill becomes delinquent, the utility before disconnecting service must also notify the tenants in writing at least ten days prior to the proposed termination date. The utility must allow each tenant to apply to become the customer of the utility in the tenant's own name, to have the service to the rental facility continued or resumed, and to pay the pro rata share of future bills. Such tenant-customer shall be subject to all the provisions of this chapter.

History: Effective October 1, 1980; amended effective May 1, 1996; July 1, 1997.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-02-26. Meter testing.

1. The testing of any unit of metering equipment shall consist of a comparison of its accuracy with a standard of known accuracy. Meters shall be adjusted as closely as practicable to the condition of zero error, and may be checked for accuracy at the point where they are installed, or at a central testing laboratory, or in a mobile testing laboratory.
2. All meters shall be tested for accuracy before initially placed in service. Metering equipment associated with instrument transformers shall be tested for accuracy on the customer's premises within sixty days after installation and whenever the instrument transformers are changed.
3. Meters shall be tested for accuracy at unity power factor, provided that polyphase meters shall also be checked for accuracy at fifty percent power factor whenever tested.
4. Watt-hour meters, and associated equipment such as demand measuring devices, shall be periodically tested for accuracy in accordance with a plan approved by the commission or the following schedule:

PERIODIC TEST SCHEDULE

Meter Description	To Be Tested At Least Once in Every
-------------------	---

Alternating current meters:

Up to and including twelve kilovolt-amperes. 120 months
 Over twelve kilovolt-amperes up to and
 including one hundred kilovolt-amperes ... 36 months
 Over one hundred kilovolt-amperes 12 months

Direct current meters:

Up to and including six kilowatts 42 months
 Over six kilowatts up to and including
 one hundred kilowatts 18 months
 Over one hundred kilowatts 12 months

The kilovolt-ampere rating of an alternating current, single-element meter, or the kilowatt rating of a direct current meter, is the product of the rated voltage and the rated current. In the case of polyphase or multielement meters, the rating is the product of the rated voltage and the rated current multiplied by the number of meter elements. When meters are connected to and tested in conjunction with instrument transformers, the nominal rating of the transformer shall be used in the determination of the kilovolt-ampere rating of the metering equipment.

5. ~~Each utility shall, without charge, make a test of the accuracy of any metering installation upon request of a customer if twelve months or more have elapsed since the last test of the meter in the same location.~~ An electric service utility shall test the accuracy of any meter upon request of the customer, shall provide the customer with a report of the test results, and shall keep the complete original test record and a copy of the report on file in the utility's office.

6. ~~Upon application by the customer, and payment of the following fees, the commission will make, or supervise, a test of the customer's metering installation. The utility will be notified of any such application filed with the commission. The utility shall reimburse the customer for the fee if the meter is fast beyond the allowable limits of accuracy prescribed in these rules, if improper connections or auxiliary equipment result in overregistration, or if improper measuring equipment is used.~~ A customer may request in writing to the commission that the utility's test be supervised by a commission representative.

7. The customer may not be charged for the test provided the customer requests no more than one test each twelve-month period, otherwise the utility may charge a tariffed rate. The charge must be waived if the meter error is more than plus or minus two percent.

SCHEDULE OF FEES

Alternating-current-meters:
Up-to-and-including-one-hundred-kilovolt-amperes--\$5.00
Over-one-hundred-kilovolt-amperes-----7.50

Direct-current-meters:
Up-to-and-including-one-hundred-kilowatts-----2.50
Over-one-hundred-kilowatts-----5.00

History: Amended effective July 1, 1997.
General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-02-35. Installation and maintenance - Conformance to National Electrical Safety Code. The installation and maintenance of electric supply and communication lines shall conform to rules and regulations established in the 1993 1997 edition of the National Electrical Safety Code, issued ~~August 3, 1992~~ August 1, 1996, which is adopted by reference. Copies of these regulations may be obtained from the public service commission, state capitol, Bismarck, North Dakota 58505-0480.

History: Amended effective September 1, 1984; January 1, 1988; December 1, 1990; August 1, 1993; July 1, 1997.
General Authority: NDCC 49-02-04
Law Implemented: NDCC 49-02-04, 49-20-02

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, 1995 1997, 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; July 1, 1997.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-01.2

CHAPTER 69-09-05

69-09-05-02. Discontinuance of telecommunications services. A utility may not discontinue telecommunications services, except as provided in this section.

1. A utility may discontinue the essential services it provides:
 - a. If the customer is delinquent in payment for essential services, then essential services may be discontinued even though discontinuing the services results in the discontinuance of all telecommunication services.
 - b. If the customer is delinquent in payment for long-distance services rendered by a local exchange company or another company and billed by the local exchange company, but is not delinquent in payment for essential services rendered by the local exchange company, the local exchange company may discontinue the customer's local exchange services only at central offices lacking the technical ability to discontinue long-distance services while continuing to provide local exchange services.
2. A utility may discontinue nonessential services:
 - a. If the customer is delinquent in payment for nonessential services.
 - b. If the customer is delinquent in payment for long-distance telecommunications services rendered by another company and billed by the local exchange company, then the local exchange company may deny the customer ~~all forms of access to the network of the telecommunications company to which the customer is delinquent in payment.~~ However, if, due to technical limitations, a local exchange company must also deny the customer all forms of access to the long-distance networks of all telecommunications companies, including its own, in order to deny the customer access to the network of the company to which the customer is delinquent, the local exchange company may deny access to all long-distance carriers for 0+, 1+, 10XXX, and operator-assisted calling including third number billed, collect, and calling card. Access to 1-800, 888, 950, and essential services may not be denied. Access to incoming long-distance calls, with the exception of collect calls, may not be denied.
3. A utility may discontinue service to a customer for failure to comply with regulations of the utility on file with the commission pertaining to installation and use of equipment, or for use of equipment which interferes with or adversely

affects the service to other customers, provided the customer has first been notified and afforded reasonable opportunity to change or disconnect such equipment.

4. A utility may not discontinue service to a customer for failure of the customer to pay for merchandise purchased from the utility, to pay for a different class of service furnished by the utility, to pay for service rendered to a previous occupant of the premises, or to pay the bill of another customer as guarantor thereof.
5. A utility may not discontinue service to a customer for failure to pay for service until the utility first gives the customer notice of its intention to discontinue such service on account of delinquency. The notice must:
 - a. Be sent by first-class mail addressed to the billing name and address of the affected account.
 - b. Show the amount of the delinquency.
 - c. Include the telephone number of the public service commission.
 - d. Advise the customer of the customer's rights and remedies, including the customer's right to work out a satisfactory deferred installment agreement for delinquent accounts.
 - e. Inform the customer that service will be discontinued if the delinquent account is not paid within ten calendar days from the date of mailing or personal delivery of the notice, or if a satisfactory installment agreement is not made with the utility for payment of the delinquent bill. The utility may discontinue service without further notice if the customer fails to pay the delinquent account by the due date.
6.
 - a. A deferred installment agreement for essential services may not be combined with a deferred installment agreement for any other services.
 - b. A utility may not discontinue essential services if the utility and the customer make a mutually agreed upon deferred installment agreement for essential services. A utility may discontinue essential services without further notice if the customer fails to pay the delinquent account in accordance with the deferred installment agreement.
 - c. A utility may not discontinue nonessential services if the utility and the customer make a mutually agreed upon deferred installment agreement for nonessential services. A utility may discontinue nonessential services without further notice if the customer fails to pay the delinquent

account in accordance with the deferred installment agreement.

7. The customer may pay the delinquent account at any time prior to the actual discontinuance of service.
8. Whenever service has been discontinued for nonpayment of a bill, service must be resumed if the customer:
 - a. Pays the fee for resuming service established in the utility's rate schedules;
 - b. Makes a deposit under section 69-09-05-03 (if required by the company); and
 - c. Makes a satisfactory settlement for the delinquent bill and for the service rendered to the date the service was discontinued.

Interexchange carriers are not required to resume long-distance service if local service is not connected.

9. If the customer disputes the amount of a bill for service, the customer may, to prevent discontinuance for nonpayment, pay the disputed bill under protest to the utility. Alternatively, the customer may request a formal hearing pursuant to section 69-02-02-02 in which case the utility may not discontinue service for nonpayment of the disputed bill until a final decision has been issued by the commission. The utility shall immediately give the commission notice of the dispute and the commission may investigate the dispute. The utility shall refund to the customer any part of such payment made under protest found by the commission to be excessive.
10. The commission may order the discontinuance of services where a reseller or operator services provider violates commission rules. The commission will provide ten days' notice of a deficiency or violation and provide an opportunity for the noncomplying reseller or operator services provider to respond or correct the deficiency. A reseller or operator services provider disputing the alleged violation or discontinuance may request a formal hearing under section 69-02-02-02, in which case the discontinuance will be stayed until final decision by the commission.

History: Effective April 1, 1985; amended effective January 1, 1993; May 1, 1996; July 1, 1997.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11, 49-21-01.4

69-09-05-04. Rules for resale of telecommunications services.

1. Definitions.

- a. "End user" means a person who uses telecommunications service for the person's own use.
- b. "Premise cable" means telecommunications cable or channels on the reseller's side of the point of connection to the local exchange company (demarcation point).
- c. "Prepayment" means payments made by customers of a reseller in advance of receiving service.
- d. "Resale" means the subscription to local or long distance telecommunications services and facilities by one entity, and reoffered for profit or with markup to others with or without enhancements. Where reoffered service is part of a package, and the package is offered for profit or markup, it is resale.
- e. "Reseller" means a person reselling local or long distance telecommunications services. The definition does not include pay telephone providers, but does include cellular services.
- f. "Same continuous property" is contiguous real estate owned by the same individual, group of individuals, or other legal entity having title to the property. The property may be traversed by streets, ditches, or other similar manmade or natural terrain features provided that, but for terrain features, the property would be contiguous and provided that such terrain features are of a nature and dimension that it is reasonable to treat the property as contiguous.
- g. "Shared tenant service provider" means a person reselling telecommunications services to the tenants of a building complex on the same continuous property or to parties with a community of interest.

2. Resellers may not operate in North Dakota except in compliance with these rules. Each reseller shall:

- a. Obtain a certificate of registration from the commission authorizing the provision of local resale or long-distance resale services in the state of North Dakota.
- b. If they require prepayment for service:
 - (1) Submit a performance bond in an amount specified by the commission; or
 - (2) Establish an escrow account in a North Dakota bank containing an amount equal to the prepayments

collected at any given time, and file monthly reports showing escrow account activities and call completion data.

- (3) The requirements of paragraphs 1 and 2 are waived for any company that has provided cellular service in North Dakota for one year without a formal complaint having been filed against it. The commission may revoke the waiver after notice and opportunity for hearing if necessary to protect the public interest.

c. Forfeit its registration certificate if it is involuntarily dissolved under North Dakota Century Code section 10-23-02.2. A reseller may not operate and its registration certificate is void on the effective date of involuntary dissolution under North Dakota Century Code section 10-23-02.2.

3. A reseller may not appear on an equal access ballot without a certificate of registration from the commission.
4. Except for residents of dormitories or residence halls of schools, colleges, or universities, the end user has the unrestricted right to choose service from the local exchange.
5. A shared tenant service provider shall allow the tenant to use the shared tenant service provider's premise cable and wire in the event an end user wants to receive service from the local exchange company.
6. The reseller is responsible for the charges incurred for telecommunications services to which it subscribes for serving its end users.
7. A reseller is subject to reregulation by the commission, revocation of its certificate, and the penalties provided in North Dakota Century Code chapter 49-07 for violation of any applicable law or rule.

History: Effective March 1, 1989; amended effective August 1, 1991; December 1, 1993; February 1, 1995; July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 49-02-11, 49-21

69-09-05-04.2. Unauthorized service changes. A telecommunications company may not change a customer's local or long-distance carrier without authorization from the customer.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 49-02-11, 49-21

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. "Equipment repair notice tag" means a tag that allows a device to be operated for thirty days from its inspection date while repairs are being made to that device. The tag may be used only when the tolerance is less than 0.5 percent for a measuring device or one scale division for a weighing device. The tag becomes a rejection tag if the device is not repaired and placed into service within thirty days.
6. "Liquid or LPG computing pump" means a device that provides fuel or LPG to a consumer.
7. "NIST" means the United States department of commerce, national institute of standards and technology.
- ~~6~~ 8. "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~~ 9. "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.
- ~~8~~ 10. "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 repair and certify weighing and measuring devices described in North Dakota Century Code section 64-02-13.

- 9- 11. "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.
- 10- 12. "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.
- 11- 13. "Seal" means marking a weighing or measuring device to show certification or rejection.
- 12- 14. "Single draft weighing" means simultaneously weighing each end of a vehicle or individual elements of coupled combination vehicles.
- 13- 15. "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.
- 14- 16. "Standard" means test equipment used for certifying weighing or measuring devices.
- 15- 17. "Variance" means a temporary or permanent suspension of a particular rule.
- 16- 18. "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; July 1, 1997.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-03

69-10-01-02. Calibration Installation by other than a registered service person. A person, other than a registered service person, who installs, ~~repairs, or~~ calibrates a commercial weighing or measuring device used in commerce, must report the installation, ~~repair, or~~ calibration to the commission within five working days from the day the installation, ~~repair, or~~ calibration was completed. The device must then be certified by a weights and measures inspector or a registered service person, as ~~restricted~~ allowed by section 69-10-04-02.1, before the device can be used in commerce.

History: Amended effective April 1, 1992; August 1, 1993; July 1, 1997.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-02.1. Certification. A weighing and measuring device may only be certified for commercial use 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. Certification must take place at the location of intended use unless the device is otherwise designed, in which case the device must be tested by the commission at the location of intended use within thirty days of its installation. 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; July 1, 1997.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-02.2. Repair and calibration. A commercial weighing and measuring device may only be repaired, tested, calibrated, and placed into commercial service by a registered service person, or tested and adjusted, as allowed by law, and certified for commercial service by the commission, whichever is applicable.

History: Effective July 1, 1997.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-03. Sealing. ~~All~~ A weighing or measuring devices device used in commerce must be certified and sealed. A security seal must be installed internally,--or--externally, where applicable, to prevent adjustments to the calibration of the device. An adhesive sticker must be installed externally to show visual proof of certification. It is unlawful to remove, or allow to be removed, an official tag or seal without commission approval. Effective January 1, 1995, an adhesive sticker must contain the following information: name, address, and telephone number of the commission or registered service person certifying the device, the words "tested and approved", and the sticker--must--show--the month and year that the device was tested and approved of certification. ~~The public service commission will provide an--illustrated--prototype--of--the--adhesive--sticker--to--all--registered service--persons--by--August--1,--1994.~~

History: Amended effective April 1, 1992; August 1, 1993; September 1, 1994; July 1, 1997.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-03.1. Registration of a new commercial device. A new commercial weighing or measuring device must be reported to the commission at least twenty-four hours prior to its use.

History: Effective July 1, 1997.

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-weight 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 manufacturer's name, type, location, serial number, deck length, 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 that will allow a scale device to be used beyond its rated sectional or concentrated load 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; July 1, 1997.

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 manufacturer's name, type, location, deck length, serial number, 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 concentrated load 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 front and rear 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; amended effective July 1, 1997.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-04

69-10-01-05.1. Inactive weighing or measuring devices. ~~Unless a variance is first granted, any~~ An inactive commercial weighing or measuring device either unused ~~for longer than one year,~~ or tagged "not sealed" for longer than one year, ~~whether as a result of a rejection or a cessation of business,~~ must meet all current state laws and rules before it may be retested and certified ~~for commercial use, unless the operator receives a variance allowing for the use of the device.~~

History: Effective September 1, 1994; amended effective July 1, 1997.

General Authority: NDCC 28-32-02, 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-04

69-10-01-09. Bulk liquid fuel meters. A newly manufactured liquid fuel meter placed into service on or after January 1, 1999, for use in the sale of bulk liquid fuels must be equipped with a ticket printing device meeting the requirements of NIST Handbook No. 44. ~~--A meter placed into service prior to January 1, 1999, that is not equipped with a ticket printing device may be used after that date until it is rejected for repair.~~

History: Effective August 1, 1993; amended effective July 1, 1997.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-11. Device adjustments. State weights and measures inspectors may not make adjustments to a commercial weighing or measuring device other than ~~the following: ---replacing to replace meter factor change gears, zeroing zero a device, adjusting adjust LP meter temperature compensator, or adjusting adjust the level on certain counter, dormant, and platform scales.~~

History: Effective September 1, 1994; amended effective July 1, 1997.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-12. Sale of anhydrous ammonia. The sale of anhydrous ammonia after January 1, 1999, on any basis other than by certified scale or certified meter by any new or newly expanded anhydrous ammonia dealer is prohibited.

History: Effective July 1, 1997.

General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

CHAPTER 69-10-02

69-10-02-01. Livestock scales - Specifications. ~~All scales used for weighing livestock in commercial trade~~ A commercial livestock scale must be equipped with a type registering print device, and the value of the minimum graduated interval shall must not be greater than five pounds [2.27 kilograms], provided, however, that for scale capacities in excess of fifty thousand pounds [22679.6 kilograms] the scale may indicate and record in ten-pound [4.54-kilogram] divisions. ~~All A scale racks rack on a livestock scales-shall scale must be securely mounted on the scale platform, with adequate clearance to-be-maintained between the outside of the rack and other obstructions. The steel yard or beam rod must be connected directly to the transverse lever on-all-livestock scales.~~

History: Amended effective July 1, 1997.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-02. Livestock scales - Installation. All livestock scales must be installed so as to permit ready access for large capacity testing equipment. At the one end of a livestock scale there must be a straight concrete approach the full width of the scale platform, in the same plane as the scale platform and equal in length to the width of the scale platform in order to provide a clean and level area for the purpose of unloading test weights used in testing the scale. Provisions must be made to allow the test truck to back up to the approach by providing an entrance of adequate height and width to enable the test truck to be reasonably level when weights are unloaded. ~~All A livestock scales scale~~ newly constructed after July 1, 1993, must have a minimum entrance and approach width and height of twelve feet [3.66 meters].

A livestock ring scale constructed after January 1, 1998, must have an approach that is level with the scale platform and at least twenty-eight feet [8.53 meters] in length and ten feet [3.05 meters] in width.

History: Amended effective August 1, 1993; July 1, 1997.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-05. Portable pitless scales and portable hopper scales. ~~Self-contained~~ A self-contained portable pitless scales scale and a self-contained portable hopper scales scale used solely to weigh materials used for government highway construction are exempt from the provisions of this article. Installation and operation of a self-contained portable pitless scales scale and a self-contained portable hopper scale 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; July 1, 1997.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-08. Deviations from manufacturer's design. Neither the length nor the width of the load receiving element, nor the indicating element of a scale shall be increased beyond the manufacturer's design dimension; ~~except when~~ unless the proposed modification has been approved by competent scale engineering authority; ~~(preferably that of the engineering department of the scale manufacturer)~~ engineer, and a variance has been granted by the commission. The weighbridge of a scale shall be constructed of steel ~~(of sufficient strength)~~ to ensure permanence, and shall include steel support members providing to provide adequate support for the platform.

History: Amended effective August 1, 1993; July 1, 1997.

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 structures. ~~In case of a dial~~ The installation there should be of a dial must allow for 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 with a copy of the printed receipt must be issued to the customer at the time of the delivery. Notwithstanding the above date, for a scale installed prior to July 1, 1973, equipped with any type of ticket printing capability, its operator 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~~ behind the zero graduation. ~~Indicating and~~ An indicating or printing elements element must be adequately protected ~~from all environmental elements detrimental to their efficient operation~~ against environmental damage.

History: Amended effective August 1, 1993; September 1, 1994; February 1, 1996; July 1, 1997.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-13. Inspection and testing accessibility. ~~A person may not install a livestock, truck, or a hopper scale, used for commercial purposes in this state, unless it is so~~ commercial weighing or measuring

device must be installed so that it is easily accessible for inspection and testing ~~by the commission.~~

History: Amended effective September 1, 1994; July 1, 1997.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-15. Counter computing scales. A counter computing scale manufactured before January 1, 1986, and used for commercial trade must meet the applicable requirements ~~set forth in table 3, section 2-20,~~ of the NIST Handbook No. 44, by January 1, 1999.

History: Effective August 1, 1993; amended effective September 1, 1994; July 1, 1997 .

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

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 following sections and subsections of the 1995 1996 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;~~ all of section 1, all of section 2, subsections 3.30, 3.31, 3.32, 3.33, 3.35, and 3.37 of section 3, subsections 5.50, 5.51, and 5.52 of section 5, and, all of appendices A, B, C, and D. 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; July 1, 1997.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-07

69-10-03-02. Adequate standards. ~~Except as modified below, only~~ Only standards annually certified by the commission may be used to certify commercial weighing and measuring devices. However, standards annually certified by any national institute of standards and technology ~~certified~~ certified accredited 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~~ The annual recertification requirements are modified as follows Annual recertification is subject to the following exceptions and conditions:

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 certified by the commission or by another national institute of standards and technology ~~certified~~ certified accredited state laboratory.
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~~ certified accredited 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.
6. The commission may test and inspect any commercial LPG meters by using a certified master meter that has a flow rate of twelve to sixty gallons [45.4 to 227.1 liters] per minute at 0.02 percent accuracy, and has an orifice size of one and one-half inches [38.1 millimeters]. A master meter must be tested and certified quarterly with a prover traceable to the national institute of standards and technology.

History: Amended effective April 1, 1992; September 1, 1994; February 1, 1996; July 1, 1997.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-03-04. Enforcement. ~~Operators--using~~ An operator of a commercial weighing and measuring devices--in--this--state--shall device must ensure that these devices--are the device is designed, constructed, and operated, and maintained to meet the applicable standards in regulations--in state and Handbook No. 44 of the national institute of standards--and--technology--as--adopted--or--modified--in--this--section requirements. The commission may require proof of compliance. The commission may issue a complaint for noncompliance, and assess civil penalties under North Dakota Century Code chapter 49-07.

History: Effective August 1, 1993; amended effective July 1, 1997.

General Authority: NDCC 49-07, 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

CHAPTER 69-10-04

69-10-04-01. Registration of service persons. A registered service person has the authority to certify weighing or measuring devices described in North Dakota Century Code section 64-02-13 and to remove an official rejection seal, "equipment repair notice", or "not sealed" tag or sticker and place the device in service.

History: Amended effective April 1, 1992; September 1, 1994; July 1, 1997.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

69-10-04-02. Application for registration of a service person. It is the policy of the commission to accept an annual application for registration as a registered service person under the following requirements:

1. First time applicants must:
 - a. Provide acceptable evidence that they are fully qualified to repair, test, and certify a commercial weighing or measuring device;
 - b. (1) Provide a legible copy of an applicable certificate of training issued by the national institute of standards and technology; or.
(2) Score eighty seventy-five percent or more on commission testing taken from applicable sections of the adopted edition of the NIST Handbook No. 44;
 - c. Score eighty seventy-five percent or more on commission testing taken from applicable weights and measures sections of the North Dakota Century Code and North Dakota Administrative Code; and
 - d. Have in their possession adequate standards.
2. Repeat applicants must:
 - a. Complete and submit an application; and
 - b. Have in their possession adequate standards.

Upon acceptance and approval of an application, the commission will issue a placing in service permit to the applicant. All permits issued under this section remain the property of the commission and must be surrendered upon demand.

History: Amended effective April 1, 1992; September 1, 1994; July 1, 1997.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

69-10-04-02.1. Self-certification. A person or company may repair, test, and certify the person's or company's own commercial weighing and measuring devices with written permission from the commission and subject to commission approval of the following conditions:

1. The person doing the self-certification must be registered with the commission under section 69-10-04-02. However, persons or companies who make written application to the commission describing their weighing or measuring devices, operating and maintenance procedures, testing processes including a list of testing technicians and their expertise, and reporting requirements, subject to commission approval, are exempt from the provisions of section 69-10-04-02, except for subdivision d of subsection 1 and subdivision b of subsection 2 of that section.
2. Upon testing, the device must be within commission approved tolerance.
3. Whenever a weighing or measuring device is recertified, the person or company must, within seven working days, report the recertification to the commission. The report must clearly identify each device, the initial test results recorded during self-certification, and the test results upon recertification.
4. Weights and measures inspectors may randomly recertify any self-certified weighing or measuring device either by actual testing or by witnessing a test.

History: Effective April 1, 1992; amended effective August 1, 1993; September 1, 1994; July 1, 1997.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-04-03. Revocation of registration. The commission may, for good cause, suspend or revoke a ~~registration registered service person's permit.~~ This does not limit the right of any qualified A person not registered with the commission to but qualified to install a commercial weighing or measuring device may install; ~~service; repair; or recondition~~ but may not service, repair, or recondition a commercial weighing or measuring device.

History: Amended effective April 1, 1992; July 1, 1997.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

~~69-10-04-04. Reports. A registered service person must, within seven working days, send a placing in service and a test report on all rejected or newly installed weighing and measuring devices certified or recertified by the person to the commission, and shall furnish copies of those reports to the owner or operator of the device.~~ A registered service person must, within seven working days, send a test report on all commercial weighing or measuring devices certified, recertified, serviced, or inspected and tested by the person to the commission, and shall furnish a copy of the test report to the owner or operator of the device.

History: Amended effective April 1, 1992; August 1, 1993; September 1, 1994; July 1, 1997.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

TITLE 72
Secretary of State

FEBRUARY 1997

**CHAPTER 72-02.2-01
ATHLETIC COMMISSIONER**

[Repealed effective February 1, 1997]

STAFF COMMENT: Chapter 72-02.2-01.1 contains all new material but is not underscored so as to improve readability.

**CHAPTER 72-02.2-01.1
ATHLETIC COMMISSIONER AND ATHLETIC ADVISORY BOARD**

Section	
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72-02.2-01.1-24	Boxing Fouls
72-02.2-01.1-25	Stalling or Faking Prohibited

72-02.2-01.1-01. Definitions. For purposes of this chapter, unless the context otherwise requires:

1. "Board member" means the North Dakota state athletic advisory board, or an agent of the board acting on its behalf.
2. "Boxing" means a contest or match in which the act of attack and defense is practiced with fists by two contestants.
3. "Commissioner" means the North Dakota secretary of state acting as the state athletic commissioner.
4. "Contestant" or "boxer" means a participant in a match who receives remuneration directly or indirectly as consideration for the participant's performance.
5. "Exhibition" means boxing or sparring where a decision is not rendered.
6. "Gong" means the bell, horn, or buzzer that has a clear tone loud enough for the contestants and referee to hear.
7. "Match" means any bout, contest, or sparring, in which participants intend to and actually inflict punches, blows, or employ other techniques to temporarily incapacitate an opponent in a match, regardless of whether the object of the participants is to win or display their skills without striving to win.
8. "Matchmaker" means any person who brings together a professional boxer or arranges professional boxing matches.
9. "Promoter" means any person, club, corporation, or association, and in the case of a corporate promoter, includes any officer, director, employee, or stockholder thereof, who produces, arranges, or stages any professional boxing or kickboxing matches.
10. "Sparring" means boxing for either practice or as an exhibition.
11. "Stalling or faking" means that a boxer is pulling punches or holding an opponent or deliberately maintaining a clinch.

History: Effective February 1, 1997.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07

72-02.2-01.1-02. Athletic advisory board. The North Dakota state athletic advisory board consists of nine members who must be appointed to either one-year, two-year, or three-year terms. Any vacancy in the membership of the board, caused other than by expiration of terms, must be filled only for the balance of the term of the member in whose position the vacancy occurs.

History: Effective February 1, 1997.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07

72-02.2-01.1-03. General provisions. These rules govern all boxing matches, exhibitions, or sparring, unless another set of rules is specifically approved in writing for a particular match, exhibition, or sparring as an exception to normal practice by the commissioner. Kickboxing matches will be governed by rules generally recognized and accepted in the kickboxing industry and submitted to the commissioner.

The board and the commissioner have sole direction, management, control, and jurisdiction over all professional boxing or sparring matches to be conducted or held within the state of North Dakota and over all licenses to any and all persons who participate in boxing or sparring.

The commissioner will not approve the following type of boxing matches:

1. Matches containing both amateur and professional contests on the same card.
2. Matches in which more than two contestants appear in the ring at the same time.
3. Matches in which members of the opposite sex are matched against each other.
4. Any barroom type brawls, "so you think you're tough" type contests, roughneck type matches, or matches of a similar character or nature if any contestant receives remuneration directly or indirectly whether or not a contestant has prior organized amateur or professional training.
5. Matches in which there are no gloves used by the contestants.

History: Effective February 1, 1997.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07

72-02.2-01.1-04. Licensing. An application for a license must be made in writing on a form supplied by the board and be verified under

oath by the applicant. The applicable fee must be submitted with the application. A license is valid for one calendar year and expires on December thirty-first of each year. The licenses available and license fees are as follows:

1. Boxer or kickboxer - ten dollars.
2. Cornerperson/second/trainer - no fee.
3. Judge - no fee.
4. Knockdown counter - no fee.
5. Manager - twenty-five dollars.
6. Matchmaker - no fee.
7. Physician - no fee.
8. Promoter - one hundred dollars.
9. Referee - twenty-five dollars.
10. Timekeeper - no fee.

History: Effective February 1, 1997.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07

72-02.2-01.1-05. Terms and conditions of license. The following terms and conditions apply to licensed boxing participants:

1. Every license, excluding those for professional boxers, is subject to the following terms and conditions:
 - a. The applicant must be at least eighteen years of age;
 - b. The applicant must have at least one year of experience in amateur or professional boxing;
 - c. The applicant must submit verifications, from qualified persons, of the licensee's proficiency, if requested by the board;
 - d. The applicant must agree that training requirements may be established;
 - e. Applicants performing multiple duties must be licensed for each duty, but are not responsible for payment of more than one license fee. The license fee required of those holding more than one license is the highest of the applicable license fees;

- f. Financial responsibility, experience, character, and general fitness of an applicant, including in the case of corporations, its officers and stockholders, are such that the participation of such applicant will be consistent with the public interest, convenience, or necessity and the safety of boxing participants and with the best interests of boxing generally; and
 - g. For the first infraction of any of the provisions of this subsection, the board may issue a verbal warning. Following a second infraction a written warning may be issued. Following a third infraction the license may be suspended up to a six-month period. However, the board may suspend a license for any serious violation that endangers the life or health of any person.
2. Every license issued to a professional boxer is subject to the following terms and conditions:
- a. The applicant must be at least eighteen years of age;
 - b. The applicant must provide the applicant's legal and professional name, street address, city, state, country, zip code, telephone number, social security number, date of birth, height, weight, color of eyes, and any distinguishing marks;
 - c. The applicant must provide the names and addresses of the applicant's trainers and managers;
 - d. The applicant must provide the applicant's professional fight record;
 - e. The applicant must disclose whether the applicant is, or has been, under suspension during the preceding twelve months. If so, the state and the reason for the suspension must be disclosed;
 - f. The applicant must provide a picture identification; and
 - g. The applicant must disclose the date of the most recent complete physical examination; any serious bodily injuries; any serious head injuries; any surgeries; and whether the applicant is taking any medications.
- (1) If the board determines that a question exists as to the medical condition of a boxer, a complete physical may be required. A list of approved physicians who are qualified to perform the physical will be provided and the boxer must choose one to conduct the physical. Upon completion of the physical the physician chosen shall submit a report of the results directly to the commissioner. The boxer shall also

receive a report. The report must affirmatively state the physician's opinion as to the advisability of the boxer participating in the boxing match.

- (2) The physical performed must address the question raised about the boxer's health and include such testing as a prudent physician would perform to determine the health and fitness of an individual to engage in the sport of professional boxing. The results of all required examinations must be made a part of the boxer's permanent medical record as maintained by the board. The costs of all examinations required by this section shall not be paid by the board.
 - (3) No contestant, under any circumstances, may compete or appear in a match or noncompetitive boxing within thirty days of having suffered a knockout or a technical knockout. All such suspensions must be recorded on the boxer's record by a board official.
- h. Upon the request of the board the applicant must provide satisfactory evidence of the applicant's ability to compete. The board may hold an informal hearing to determine whether the license should be granted or revoked;
 - i. Boxers shall wear trunks that are belted at the waistline. The trunks may not have any buckles or other ornaments on them that would cause injury;
 - j. A boxer must use a mouthpiece designed for the contestant's mouth;
 - k. Female contestants shall wear a breast protector and groin protector and male contestants shall wear a protection cup;
 - l. All contestants shall have their hair secured in a manner that does not interfere with the vision or safety of either contestant;
 - m. Contestants shall use a minimum of cosmetics;
 - n. A female contestant must certify that she is not pregnant and that the contest will not take place during a menstrual period;
 - o. The board will honor and give faith and credit to reasonable actions of regulatory agencies in other jurisdictions;

- p. If, in the judgment of the board, the licensee has been guilty of an act detrimental to the best interests of boxing generally, or to the public interest, convenience or necessity, such act is grounds for the denial or suspension of a license; and
- q. For the first infraction under this subsection, the board may issue a verbal warning. Following a second infraction a written warning may be issued. Following a third infraction the license may be suspended up to a six-month period. However, the board may suspend a license for any serious violation that endangers the life or health of any person.

History: Effective February 1, 1997.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07

72-02.2-01.1-06. Duties of promoter. A promoter is subject to the following requirements:

1. Any person, party, or organization acting as a promoter of a professional boxing match must obtain approval from the commissioner at least two weeks prior to the date of the match.
2. Prior to a match, the promoter must file with the board proof of adequate insurance for the protection of the contestants, officials, and the attending public. However, insurance to cover injuries incurred by a contestant as a result of a match is the responsibility of the individual contestant.
3. The promoter shall submit a completed notification of contest form to the commissioner at least five days before a match.
4. Changes in the announced or advertised programs for any main bout contest must be filed with and approved by the board at least forty-eight hours before the weighing-in time of the contest unless otherwise directed or authorized by the board. Notices of such change or substitution must also be included in any public announcement or advertisement relating to the card, and must be conspicuously posted at all box offices on the premises and announced from the ring before the opening bout, and if any of the patrons apply for refunds on tickets already purchased, the promoters shall make such refunds upon demand, provided such tickets are presented at the box office on the date of the program and before the commencement of the second bout or the main bout, whichever comes first.
5. The promoter shall submit ticket information along with a financial report to the commissioner, on a form prescribed by

the commissioner, within ten days after the match, as provided in section 72-02.2-01.1-14.

6. The promoter is responsible for the selection and financial arrangements for payment for all officials, except the board members.
7. The promoter must file all contracts between the promoter and the contestants with the board and the board may review and approve such contracts to ensure that they conform to the provisions of these rules.
8. Failure to file any required report or form may result in a denial of the next match requested.

History: Effective February 1, 1997.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07

72-02.2-01.1-07. Duties of referee. A referee is subject to the following requirements:

1. A referee may not be assigned to officiate more than thirty-two scheduled rounds in any one scheduled promotion.
2. The referee must have a physical examination before acting in the referee's official capacity. This may be done at either the official weigh-in or before the match begins by the ringside physician. A physician's approval must be given to the commissioner before entering the ring.
3. The referee shall exercise immediate authority, direction, and control over the fight for which the referee has been designated, and it is the referee's responsibility to enforce all rules.
4. Before starting a contest the referee shall ascertain from each contestant the name of the contestant's chief cornerperson, and shall gather them together for final instructions; such chief cornerperson will be responsible for the conduct of assistant corners during the contest. At the beginning of each round the referee shall hand out score sheets to each of the three judges.
5. Pursuant to these rules, the referee may stop the fight and make a decision during any stage in the fight, if the referee determines that the bout has become partial, or if a contestant is in such condition that if such contestant continues fighting, the contestant is liable to suffer a serious injury.

6. If a contestant suffers a cut or a wound that is considered dangerous, the referee has the authority to stop the fight. In these cases, the referee shall consult the head ringside physician appointed to attend the fight, on the necessity of stopping the fight.
7. The referee is responsible for deciding whether an injury had been done by a legal or illegal blow, intentional or accidental.
8. When, for whatever reason, a contestant loses a mouthpiece, the referee will proceed to return the mouthpiece when there is a lull in the action. The referee will exercise full authority, to avoid a contestant ejecting the mouthpiece intentionally, and can discount a point as a result of this behavior or disqualify the contestant.
9. At the end of each round, the referee shall collect the score sheets from the three judges, and give the score sheets to the commissioner at ringside for computation.
10. If a referee becomes incapacitated and is unable to complete the entire bout, a time-out shall be called by the commissioner, and an alternate licensed referee shall immediately be assigned to referee.

History: Effective February 1, 1997.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07

72-02.2-01.1-08. Duties of judges. All judges are subject to the following requirements:

1. Each of the three judges must be seated on a stool midway between the ring posts of the ring, but not on the same side as another judge, and must have an unimpaired view of the ring.
2. The judges must use the "ten point must" score system. The winner of each round must be awarded ten points, and the loser of the round must be awarded nine points or less.
3. Judges shall indicate the winner of each round on the score card by marking and signing their cards in ink. Judges must be discreet at all times. There should be no discussion with anyone except with the board members or the commissioner.
4. A decision that is rendered at the termination of a match may not be changed without a hearing before the board, unless it is determined that the computation of the scorecards shows a clerical or mathematical error giving the decision to the

wrong contestant, in which case such clerical or mathematical error may be corrected by the judges.

5. If a judge becomes incapacitated, and is unable to complete the scoring of a match, a time-out shall be called by the commissioner and an alternate licensed judge must immediately be assigned to score the contest from the point at which the duties were assumed.

History: Effective February 1, 1997.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07

72-02.2-01.1-09. Duties of cornerpersons. All cornerpersons are subject to the following requirements:

1. A contestant may not have more than three cornerpersons, (unless sanctioned by another body) one of whom must be designated as the chief corner. During the rest period, one corner must be allowed inside the ring, two corners will be allowed on the apron.
2. The corners are restricted to the corner and must not be touching the apron. The corner may not enter the ring until the timekeeper has indicated the end of the round and shall leave the ring at the timekeeper's gong, at which time the ring platform should be cleared of all obstructions.
3. A chief cornerperson may indicate to the referee that the contestant cannot continue and that the contest should be stopped. Verbal notification, hand signals, or mounting of the ring by the chief cornerperson may be used. The throwing of a towel into the ring does not indicate the defeat of the contestant.
4. A corner may not administer alcoholic beverages, narcotics, or stimulants to a contestant, pour or spray excessive water on the body of a contestant, or place ice in the trunks or protective cup of a contestant during the contest.

History: Effective February 1, 1997.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07

72-02.2-01.1-10. Duties of timekeeper and knockdown counter. A timekeeper and knockdown counter are subject to the following requirements:

1. The timekeeper must possess a stopwatch. The timekeeper shall indicate the beginning and end of each round by the gong. Ten

seconds before the end of each round the contestants shall be warned by the knockdown counter striking the apron.

2. If a contest terminates before the scheduled limit of rounds, the timekeeper shall inform the appropriate officials of the exact duration of the contest.

History: Effective February 1, 1997.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07

72-02.2-01.1-11. Duties of physician. A physician is subject to the following requirements:

1. The physician shall examine each contestant before the bout at the weigh-in. After the examination, if the contestant is determined to be in acceptable physical condition, the physician must certify this on the form provided by the board.
2. The examination shall include an examination of the following:
 - a. Eyes;
 - b. Ears;
 - c. Mouth and jaw;
 - d. Nose;
 - e. Chest;
 - f. Head;
 - g. Hands;
 - h. Abdomen;
 - i. Blood pressure; and
 - j. Resting heart rate.
3. One of the two physicians, if two physicians are required by the board to be present, will be selected by the board, prior to the match, to be the head physician in charge. If the board has a physician appointed as a member, such board member may not act in the capacity of both a ringside physician and board member during the match.
4. The physician or physicians must be seated near the steps into the ring, one in each corner if two are present. The physician or physicians will remain there for the duration of

the contest, unless the physician or physicians are needed in the ring.

5. The physician, or either of the physicians if two are present, may enter the ring at any time during a match, and may terminate any match if, in the physician's opinion, any contestant has received severe punishment or is in danger of serious physical injury.
 - a. In the event of any serious physical injury, such physician shall immediately render any emergency treatment necessary, recommend further treatment or hospitalization if required, and fully report the entire matter to the commissioner within twenty-four hours and, if necessary, subsequently thereafter;
 - b. Such physician may also require that the injured boxer and boxer's manager remain in the ring, or on the premises, or report to a hospital after the contest for such period of time as such physician deems advisable; and
 - c. A physician shall examine each contestant after the bout. If the contestant is determined to be in acceptable physical condition the physician shall certify this on the form provided by the board.

History: Effective February 1, 1997.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07

72-02.2-01.1-12. Boxing ticket provisions. The following requirements apply to boxing match tickets:

1. All tickets of admission to any such boxing match must bear clearly the purchase price, and no such ticket may be sold for more than such price as printed thereon.
2. The following persons may be admitted to a match without presenting a ticket of admission, but must show appropriate identification as either approved or issued by the commissioner. No other persons may be admitted without presenting an admission ticket.
 - a. The commissioner and board members;
 - b. Persons designated by the commissioner for official duty;
 - c. Officials required to attend under provisions of state law or these rules;
 - d. The principals, managers, and corners who are involved in the match;

- e. The emergency medical personnel on duty;
- f. The police officers, firefighters, and other public officials actually on duty; and
- g. Persons arranged by the promoter for other duties.

History: Effective February 1, 1997.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07

72-02.2-01.1-13. Contracts and financial arrangements. No promoter, either directly or indirectly, may have any financial interest in a contestant competing on premises owned or leased by the promoter, or in which such promoter is otherwise interested, except pursuant to the specific written authorization of the board.

A copy of all contracts between the contestants and promoters must be given to the board prior to the weigh-in. The board may refuse to honor or approve a contract unless it is filed with the board prior to the weigh-in.

All payments to the contestant will be paid by the promoter or promoter's designee. A contestant may not be paid for services before the contest, and should it be determined by the commissioner that such contestant did not fight an honest match of the contestant's skill, the contestant may not be paid for such services.

History: Effective February 1, 1997.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07

72-02.2-01.1-14. Gross revenue fee. There is hereby imposed a fee upon each promoter, or other principal, operating in this state who conducts any professional boxing matches held within this state for each such event. The fee must be equal to the product of the gross revenues of each such boxing or sparring match multiplied by one percent. For purposes of this section, gross revenues means any and all revenues, from whatever source derived, received by any promoter, or other principal, on account of any particular match, including any revenues received from any advance ticket sales, gate receipts, promotional or advertising consideration, and from any cable television and pay-per-view telecasts of such match, exclusive of any federal tax thereon.

Each promoter, or other principal, liable for such gross revenue fee shall provide an accounting to the commissioner on a form provided by the commissioner not later than ten days from the date of the particular match, prepared by the promoter or by a certified public accountant, on behalf of the promoter, using generally accepted accounting principles, which details the source and amount of each component of gross revenues and contains a calculation showing the fee

owed to the commissioner. Any source documents or records used by the promoter, or the certified public accountant, in preparing the accounting must be made immediately available to the commissioner, upon request, for verification.

The gross revenue fee due thereon must be remitted to the commissioner by no later than ten days from the date of the match. Any promoter or other principals involved in the receipt of moneys, or staging of the exhibition or match, are jointly and severally liable for the gross revenue fee provided for by this section. Any promoter who fails to calculate or remit the fee, as required, is subject to an immediate suspension of the promoter's license until the delinquent accounting or fee is submitted to the commissioner or until a hearing requested by such promoter is conducted and concluded by or on behalf of the commissioner.

History: Effective February 1, 1997.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07

72-02.2-01.1-15. Sham or collusive matches. Any person, including any corporation and the officers thereof, any physician, referee, judge, timekeeper, boxer, manager, trainer, or cornerperson, who promotes, conducts, gives, or participates in any sham or collusive boxing or sparring match, shall be deprived of the person's license. A licensed promoting corporation or matchmaker may not knowingly engage in a course of conduct in which one contestant's skills or abilities is significantly in excess of the other boxer so that a mismatch results with the potential of physical harm to the boxer. If such action occurs, the board may exercise its powers to discipline.

Without otherwise limiting the discretion of the board as provided in these rules, the board may suspend or revoke a license or refuse to renew or issue a license, if it finds that the applicant, or any person who is a partner, agent, employee, stockholder, or associate of the applicant, has been convicted of a crime in any jurisdiction, or is associating or consorting with any person who has or persons who have been convicted of a crime or crimes in any jurisdiction or jurisdictions, or is consorting or associating with bookmakers, gamblers, or persons of similar pursuits, or if the applicant or applicant's associate engaged in similar pursuits, or is financially irresponsible, or has been guilty of or attempted any fraud or misrepresentation in connection with boxing, or has violated or attempted to violate any law with respect to boxing in any jurisdiction or any rules, regulation, or order of the board, or has violated any rule of boxing or which has been approved or adopted by the commissioner, or has been guilty of or engaged in similar, related, or like practices.

When the board is notified in writing of tampering with any contest or contestants, it may send a letter notifying the applicable board or commission of any other state involved.

History: Effective February 1, 1997.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07

72-02.2-01.1-16. Weight and weighing ceremony. The time of the weigh-in must be approved by the board. Unless otherwise arranged, the boxers must be weighed at least eight but not more than twenty-four hours before the match. The contestants must be weighed in the presence of the other contestants by a board member.

A designated board member shall run the weigh-in. This board member shall take control and inform all participants of the procedure and keep the crowd out of the way.

The scales to be used at the official weighing must be available to all boxers at least two hours before the official weigh-in. For a title fight, there must be two scales, one for the official weigh-in and one for the boxers' use. The scales must be arranged for and provided by the promoter. The official scale must be certified and calibrated for any title fights and must also be arranged for and paid by the promoter.

Only those contestants who have been previously approved for the contest may be permitted to be weighed in during the official ceremony.

A contestant who has contracted to participate in a given weight class may not be permitted to compete if the boxer's weight exceeds that class, unless the contract provides for the opposing contestant to agree to the weight differential.

If any contestant fails to reach the weight limit determined in the applicable category, at the indicated date and time for the official weigh-in, and the opposing contestant does not agree, each one of them, or both, has two additional hours to make the prescribed weight.

If the contestants fail in making the weight after the two-hour period, both managers must come to an agreement or the bout must be canceled. The boxer may then be allowed to fight an exhibition at the promoter's discretion.

History: Effective February 1, 1997.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07

72-02.2-01.1-17. Conduct of matches. Boxing matches may not be less than twenty-four total scheduled rounds. Each bout must consist of not less than four scheduled rounds and no more than twelve rounds in length for male contestants and ten rounds for female contestants; such rounds to be no more than three minutes each for male contestants and two minutes for female contestants with one minute rest between rounds. There must be a maximum of ten minutes between bouts, except for an

intermission that may not exceed twenty minutes. A contestant may not participate in more than twelve rounds within seventy-two consecutive hours.

The board may not allow a bout in which the contestants are not fairly matched. In determining if contestants are fairly matched, the following must be considered:

1. Win-loss records of the contestants.
2. Weights of the contestants.
3. Number of fights by the contestants.

At each regulated match, there must be in attendance a licensed referee who shall direct and control the bout.

At each regulated match, there must be in attendance three licensed judges who shall at the termination of each boxing match render their decisions.

History: Effective February 1, 1997.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07

72-02.2-01.1-18. Bandage and glove requirements. A contestant's bandage for each hand must consist of soft gauze not more than twelve yards [10.97 meters] long and not more than two inches [50.8 millimeters] wide. The gauze must be held in place by not more than three feet [0.91 meters] of medical tape per hand. No tape may be applied over the knuckles of the hand.

The bandages must be adjusted in the dressing room under the supervision of a board member. The use of water or any other substance other than medical tape on the bandages is prohibited.

Unless otherwise directed by the board, each male contestant shall wear during such contest gloves weighing not less than eight ounces [226.8 grams] for any contestant who weighs one hundred eight pounds [48.99 kilograms] to one hundred fifty-six pounds [70.76 kilograms], and ten ounce [283.5 grams] gloves for any boxer over one hundred fifty-six pounds [70.76 kilograms]. A female boxer shall wear ten ounce [283.5 grams] gloves.

1. The gloves will be approved at the weigh-in by the board. They will be examined to assure they are not broken, unclean, or have padding which is misplaced or lumpy. After the approval of the gloves, they must be retained by the board until the fight.

2. In all boxing matches and exhibitions, the gloves of each boxer must be put on in the dressing room under the supervision of a board member.
3. Thumbless boxing gloves (or gloves with the thumb section locked, fastened, tied, or immovable set to the balance of the glove) of a type approved by the board must be used in all boxing matches. However, this requirement may be waived at the discretion of the board for championship matches of at least twelve scheduled rounds.
4. The laces must be tied on the outside of the back of the wrist of the gloves and must be secured and covered with athletic tape to the top of the glove.

History: Effective February 1, 1997.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07

72-02.2-01.1-19. Medical and other safeguards. The matches may not begin until adequate safeguards to protect the health of the participants are made. Adequate safeguards must include:

1. The presence of the highest level of emergency medical personnel available in the community, i.e., EMT, EMT-intermediate, or EMT-paramedic, as defined by the North Dakota department of health, emergency health services section. The appropriate level of emergency medical personnel present shall be determined by the commissioner.
2. The presence of at least one physician, licensed by the North Dakota state board of medical examiners and licensed as a ring physician by the board, at ringside at all times during the match. Ring physicians licensed by other state athletic boards may be allowed at ringside at the discretion of the commissioner.
3. The presence of an ambulance, dedicated solely to the participants, at the site of the match. The ambulance may be released in an emergency, only temporarily and only with the approval of the designated ring physician. The match must be held in abeyance until the ambulance and the emergency medical personnel return to the match site.
4. The use of rubber or plastic gloves acceptable to the commissioner during the match by all persons including managers, cornerpersons, timekeepers, ring physicians, and referees, coming into contact with a contestant during the course of a match, other than another contestant in the same match.

5. The prohibition of smoking or alcoholic beverages at official tables ringside.
6. The placement of camera and media people only in neutral corners. Such persons must have a pass to sit around the ring. These persons must be approved by the promoter and the commissioner before they receive passes.

The board may declare forfeited any prize, remuneration, or purse, or any part thereof, belonging to the contestants or one of them, or the share thereof of any manager if, in its judgment, such contestant or contestants are not honestly competing or the contestant or manager of a contestant, as the case may be, has committed an act on the premises in violation of any rule, order, or regulation of the commissioner. The amount so forfeited must be paid within forty-eight hours to the board, following notice to the offending contestant or manager and an opportunity for such person to respond to the forfeiture, in person or in writing, to the board.

History: Effective February 1, 1997.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07

72-02.2-01.1-20. The boxing ring. A boxing match may not be permitted in any ring unless such ring has been inspected and approved by the board. The board shall prescribe standard acceptable size and quality requirements for rings. The following requirements also apply:

1. A ring may not be less than sixteen feet [4.88 meters] nor more than twenty-two feet [6.71 meters] square inside the ropes. The apron on the ring must be at least two feet [0.61 meters]. The ring platform may not be elevated more than four feet [1.22 meters] and must have a smooth, firm surface covered with clean canvas duck or other resilient material stretched taut and laced tightly to the ring platform, and must be completely padded both inside and outside the ropes to a thickness of at least one inch [25.4 millimeters], but not more than four inches [101.6 millimeters], with insulate or a similar material approved by the board.
2. Each ring must have four ring posts that must extend above the ring platform. The ring posts may not extend above the platform more than five feet [1.52 meters], and must be at least eighteen inches [457.2 millimeters] from the ring ropes. All ring posts, post tops, and turnbuckles must be suitably padded. Corners must have protective padding extending from the top to the bottom rope.
3. There must be four ring ropes attached to the ring posts by adjustable turnbuckles. Each rope must be at least one inch [25.4 millimeters] in diameter. Ring ropes must be covered with soft material and must be securely fastened to the ring

posts. The ropes must be readily adjustable and must be kept at a proper and safe degree of tautness. Ties must be fastened to the ropes at appropriate intervals to ensure the safety of the contestants.

4. The ring must be illuminated by overhead lights that are arranged so that shadows are eliminated and heat and glare are minimized.
5. Steps must lead to the ring platform at least two diagonally opposite corners of the ring platform.
6. Any extra steps required for use by any other person must be placed in a neutral corner.

History: Effective February 1, 1997.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07

72-02.2-01.1-21. Ringside equipment.

1. The promoter or cornerperson shall supply the following items, which must be available for use as needed in the corner. The following items must be available and approved by a board member prior to the match:
 - a. Sufficient number of buckets for contestants.
 - b. Plastic water bottle and water.
 - c. Sponges.
 - d. Surgical tape.
 - e. Chairs or stools for use by the corners.
 - f. A stretcher to be kept under the ring.
 - g. A portable resuscitator with oxygen to be kept under the ring.
2. The following items may also be placed in the corner:
 - a. Vaseline, for discretionary use around the eyes.
 - b. Adrenalin (in a manufacturer's premeasured vial in a 1/1000 solution).
 - c. Anticoagulant (avitene, thrombin, thrombinplastin, or fibroplastic).

The use or administration of drugs, stimulants, or nonprescription preparations by or to a contestant other than those listed above is prohibited.

History: Effective February 1, 1997.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07

72-02.2-01.1-22. Scoring system. The scoring system must be the "ten point must system". The winner of each round is entitled to ten points as determined by clean hitting, effective aggressiveness, defense, and ring generalship. The opponent shall receive a proportionally smaller number than ten. If the round is even, each boxer receives ten points. No fraction of points may be given. Under no circumstances may the score be less than ten to seven.

History: Effective February 1, 1997.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07

72-02.2-01.1-23. Boxing knockdowns and knockouts requirements. The following definitions and provisions are applicable with regard to knockdowns, knockouts, and low blows:

1. **Knockdown:** A boxer is "down" when any part of the boxer's body, except the boxer's feet, touches the floor of the ring, or when the boxer hangs helplessly on the ring ropes or when the boxer is rising from a down position, as a result of a legal blow, according to the judgment of the referee, who is the only person authorized to determine when a boxer has suffered a knockdown. A contestant who is knocked down shall take a mandatory count of eight seconds. If either a knockdown or mandatory eight count or a combination of either occurs three times in one round, the contest must be stopped and a technical knockout must be awarded to the opponent.
2. **Eight count:** A boxer who is down must be required to take a count of eight whether or not the boxer has regained the boxer's feet before the count of eight has been reached.
3. **Standing eight count:** If a boxer appears to be in or entering a state of unconsciousness, notwithstanding that such boxer has not been knocked down, the referee shall order such boxer's opponent to a neutral corner and commence a count of eight. Upon completion of said eight count, the referee shall determine whether such boxer is able to continue the contest or exhibition. If in the opinion of the referee such boxer is unable to continue, the referee shall declare such boxer's opponent the winner by a technical knockout. If, in the opinion of the referee, such boxer is able to continue, the referee shall order the boxers to continue and said "standing

eight count" shall be deemed to be a knockdown for purposes of scoring the round and these rules. Should a boxer slip or fall down, or be pushed, the boxer must be ordered to the boxer's feet immediately. Failure to rise may subject such boxer to disqualification.

4. Counting: When a boxer is down, the knockdown counter shall at once commence calling off the seconds, indicating the count with an arm motion. The referee shall immediately order the other boxer to a neutral corner and shall thereafter pick up the count from the knockdown counter and indicate it with an arm motion. If a boxer is unable to continue at the count of eight, the referee shall declare the other boxer the winner.
5. Save the boxer: The bell can save the boxer only in the last round.
6. Low blow: The referee may give a boxer not more than a five-minute break if the referee believes a foul has been committed. Each boxer must be instructed to return to the boxer's respective corner by the referee until the round is ready to resume.

History: Effective February 1, 1997.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07

72-02.2-01.1-24. Boxing fouls. The following provisions apply to fouls committed in matches staged under this chapter:

1. Intentional fouls: If the fighter who is fouled cannot continue, the offender will lose the fight by disqualification. If the fight continues and subsequently the fight is stopped because the same injury has become worse, the injured boxer will be the winner.
2. Accidental fouls: If a fighter is accidentally injured and the fight cannot continue, or if the fight does continue and subsequently the injury becomes severe enough to stop the fight, then the fighter who is ahead on points will be the winner by technical decision, as long as one-half of the scheduled rounds have been completed.

History: Effective February 1, 1997.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07

72-02.2-01.1-25. Stalling or faking prohibited. A referee shall warn a contestant if the referee believes the contestant is stalling or faking. If, after proper warning, the referee determines the contestant

is continuing to stall or pull punches, the referee shall stop the bout at the end of the round.

If it is determined that either or both contestants are stalling or faking, or if the contestant refuses to fight, the contest shall be terminated and announced as a no contest and the one or ones in violation shall forfeit their pay as provided in this chapter.

A contestant who falls down without being struck must be immediately examined by a physician. After conferring with the physician, the referee may disqualify the contestant and require the contestant to forfeit the contestant's pay as provided in this chapter.

History: Effective February 1, 1997.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07

72-02.2-01.1-26. Fight results. The following fight results apply to boxing matches staged under this chapter.

1. Draw: Winner cannot be determined by score cards.
2. TKO: Fighter cannot continue.
3. KO: Fighter knocked out.
4. Disqualified: Fighter disqualified for breaking of rules.
5. Split decision: Judges split vote on outcome.
6. Unanimous decision: Judges all voted in favor of one fighter.
7. Majority draw: Two of the three judges score the bout even, while the third judge scores the bout for a particular boxer.

History: Effective February 1, 1997.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07

JULY 1997

CHAPTER 72-02.2-01.1

72-02.2-01.1-01. Definitions. For purposes of this chapter, unless the context otherwise requires:

1. "Board member" means the North Dakota state athletic advisory board, or an agent of the board acting on its behalf.
2. "Boxing" means a contest or match in which the act of attack and defense is practiced with fists by two contestants.
3. "Commissioner" means the North Dakota secretary of state acting as the state athletic commissioner.
4. "Contestant" or "boxer" means a participant in a match who receives remuneration directly or indirectly as consideration for the participant's performance.
5. "Exhibition" means boxing or sparring where a decision is not rendered.
6. "Gong" means the bell, horn, or buzzer that has a clear tone loud enough for the contestants and referee to hear.
7. "Match" means any bout, contest, or sparring, in which participants intend to and actually inflict punches, blows, or employ other techniques to temporarily incapacitate an opponent in a match, regardless of whether the object of the participants is to win or display their skills without striving to win.

8. "Matchmaker" means any person who brings together a professional boxer or arranges professional boxing matches.
9. "Promoter" means any person, club, corporation, or association, and in the case of a corporate promoter, includes any officer, director, employee, or stockholder thereof, who produces, arranges, or stages any professional boxing or kickboxing matches.
10. "Registry" means any entity certified by the association of boxing commissions for the purposes of maintaining records and identification of boxers.
11. "Sparring" means boxing for either practice or as an exhibition.
- 11: 12. "Stalling or faking" means that a boxer is pulling punches or holding an opponent or deliberately maintaining a clinch.

History: Effective February 1, 1997; amended effective July 1, 1997.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07

72-02.2-01.1-04. Licensing. An application for a license must be made in writing on a form supplied by the board and be verified under oath by the applicant. The applicable fee must be submitted with the application. A license is valid for one calendar year and expires on December thirty-first of each year. The licenses available and license fees are as follows:

1. Boxer or kickboxer - ten dollars.
2. Cornerperson/second/trainer - ~~no-fee~~ ten dollars.
3. Judge - ~~no-fee~~ twenty-five dollars.
4. Knockdown counter - ~~no-fee~~ ten dollars.
5. Manager - twenty-five dollars.
6. Matchmaker - ~~no-fee~~ fifty dollars.
7. Physician - no fee.
8. Promoter - one hundred dollars.
9. Referee - twenty-five dollars.
10. Timekeeper - ~~no-fee~~ ten dollars.

History: Effective February 1, 1997; amended effective February 26, 1997.

General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07

72-02.2-01.1-05. Terms and conditions of license. The following terms and conditions apply to licensed boxing participants:

1. Every license, excluding those for professional boxers, is subject to the following terms and conditions:
 - a. The applicant must be at least eighteen years of age;
 - b. The applicant must have at least one year of experience in amateur or professional boxing;
 - c. The applicant must submit verifications, from qualified persons, of the licensee's proficiency, if requested by the board;
 - d. The applicant must agree that training requirements may be established;
 - e. Applicants performing multiple duties must be licensed for each duty, but are not responsible for payment of more than one license fee. The license fee required of those holding more than one license is the highest of the applicable license fees;
 - f. Financial responsibility, experience, character, and general fitness of an applicant, including in the case of corporations, its officers and stockholders, are such that the participation of such applicant will be consistent with the public interest, convenience, or necessity and the safety of boxing participants and with the best interests of boxing generally; and
 - g. For the first infraction of any of the provisions of this subsection, the board may issue a verbal warning. Following a second infraction a written warning may be issued. Following a third infraction the license may be suspended up to a six-month period. However, the board may suspend a license for any serious violation that endangers the life or health of any person.
2. Every license issued to a professional boxer is subject to the following terms and conditions:
 - a. The applicant must be at least eighteen years of age;
 - b. The applicant must provide the applicant's legal and professional name, street address, city, state, country, zip code, telephone number, social security number, date

of birth, height, weight, color of eyes, and any distinguishing marks;

- c. The applicant must provide the names and addresses of the applicant's trainers and managers;
- d. The applicant must provide the applicant's professional fight record;
- e. The applicant must disclose whether the applicant is, or has been, under suspension during the preceding twelve months. If so, the state and the reason for the suspension must be disclosed;
- f. The applicant must provide a picture identification which must be an identification card issued by the commissioner under this section or an official identification card issued by the boxing commission of any other state; and
- g. The applicant must disclose the date of the most recent complete physical examination; any serious bodily injuries; any serious head injuries; any surgeries; and whether the applicant is taking any medications.

- (1) If the board determines that a question exists as to the medical condition of a boxer, a complete physical may be required. A list of approved physicians who are qualified to perform the physical will be provided and the boxer must choose one to conduct the physical. Upon completion of the physical the physician chosen shall submit a report of the results directly to the commissioner. The boxer shall also receive a report. The report must affirmatively state the physician's opinion as to the advisability of the boxer participating in the boxing match.
- (2) The physical performed must address the question raised about the boxer's health and include such testing as a prudent physician would perform to determine the health and fitness of an individual to engage in the sport of professional boxing. The results of all required examinations must be made a part of the boxer's permanent medical record as maintained by the board. The costs of all examinations required by this section shall not be paid by the board.
- (3) No contestant, under any circumstances, may compete or appear in a match or noncompetitive boxing within thirty days of having suffered a knockout or a technical knockout. All such suspensions must be recorded on the boxer's record by a board official.

- h. Upon the request of the board the applicant must provide satisfactory evidence of the applicant's ability to compete. The board may hold an informal hearing to determine whether the license should be granted or revoked at the request of the boxer or upon the board's own motion. The board may also hold an informal hearing to determine whether to review or revoke a suspension of a license issued by the state. The boxer shall be notified of the time and place of the informal hearing and the substance of the matter to be determined. The board shall permit the boxer the opportunity to present evidence on the boxer's behalf;
- i. Boxers shall wear trunks that are belted at the waistline. The trunks may not have any buckles or other ornaments on them that would cause injury;
- j. A boxer must use a mouthpiece designed for the contestant's mouth;
- k. Female contestants shall wear a breast protector and groin protector and male contestants shall wear a protection cup;
- l. All contestants shall have their hair secured in a manner that does not interfere with the vision or safety of either contestant;
- m. Contestants shall use a minimum of cosmetics;
- n. A female contestant must certify that she is not pregnant and that the contest will not take place during a menstrual period;
- o. The board will honor and give faith and credit to reasonable actions of regulatory agencies in other jurisdictions However, the board may allow a fighter suspended in another state to box in this state if permitted under the Professional Boxing Safety Act of 1996 [Pub. L. 104-272];
- p. If, in the judgment of the board, the licensee has been guilty of an act detrimental to the best interests of boxing generally, or to the public interest, convenience or necessity, such act is grounds for the denial or suspension of a license; and
- q. For the first infraction under this subsection, the board may issue a verbal warning. Following a second infraction a written warning may be issued. Following a third infraction the license may be suspended up to a six-month period. However, the board may suspend a license for any

serious violation that endangers the life or health of any person-; and

- r. A boxer may request an informal hearing before the board to review or revoke a suspension imposed for a recent knockout, injury, or other medical reason upon the boxer's furnishing of further proof of a sufficiently improved physical condition. A boxer may also request an informal hearing before the board to review or revoke a suspension imposed for failure of a drug test or for the use of a false alias, or for falsifying, or attempting to falsify, an official identification card or document, upon the boxer's furnishing of proof that the suspension was not, or is no longer, merited by the facts.
3. Each boxer who is a resident of this state, and each boxer who is a resident of a foreign country who is applying for a boxing license in this state, must register with the commissioner for the purpose of receiving an identification card issued by the commissioner and must renew the identification card at least once every two years. The identification card must contain the following:
- a. A recent passport type photograph of the boxer, supplied by the boxer at the boxer's expense;
 - b. The social security number of the boxer, or in the case of a foreign boxer registering under the provisions of this rule, any similar citizen identification number or professional boxing number from the boxer's country of residence. The boxer must provide proof of the social security or other identifying number satisfactory to the commissioner; and
 - c. A personal identification number assigned to the boxer by a registry.

History: Effective February 1, 1997; amended effective July 1, 1997.

General Authority: NDCC 53-01-07

Law Implemented: NDCC 53-01-07

TITLE 75
Department of Human Services

DECEMBER 1996

CHAPTER 75-02-01.1

AGENCY SYNOPSIS: Amendments to North Dakota Administrative Code Chapter 75-02-01.1 Aid to Families with Dependent Children.

Amendments to North Dakota Administrative Code Chapter 75-02-01.1, Aid to Families with Dependent Children, include section 75-02-01.1-64, Intentional Program Violation - Disqualification Penalties. The amendment concerns the time of imposition of disqualification penalties. This change conforms North Dakota rules to a directive issued by federal officials.

75-02-01.1-64. Intentional program violation - Disqualification penalties.

1. An individual who, on any basis, is found to have committed an intentional program violation by a state administrative disqualification proceeding or by a federal or state court must be subject to the penalties provided in this section.
2. An individual who waives the individual's right to appear at an intentional program violation hearing must be subject to the penalties provided in this section.
3. During any period of disqualification:
 - a. The individual's needs may not be taken into account when determining the assistance unit's need and amount of assistance; and
 - b. All assets and income of the disqualified individual, including gross earned income, must be considered available to the assistance unit.

4. The duration of the penalty described in this must be:
 - a. Six months for the first offense;
 - b. Twelve months for the second offense; and
 - c. Permanent for the third and any subsequent offense.
5. Any period of disqualification must remain in effect, without possibility of an administrative stay, unless and until the finding upon which the penalty was based is subsequently reversed by a court of appropriate jurisdiction, but in no event may the duration of the period for which the penalty was imposed be subject to review.
6. In cases where a disqualification penalty and other sanctions or penalties apply:
 - a. The disqualification penalties in this section must be in addition to, and may not be substituted for, any other sanctions or penalties that may be imposed for the same offense; and
 - b. The disqualification penalties imposed under this section affect only the individual concerned and cannot substitute for other sanctions imposed under this chapter.
7. A disqualification penalty imposed on an individual by another state may be continued in this state and may be used to determine the appropriate duration of a disqualification penalty imposed under this section.
8. ~~Except as provided in subsection 9, a~~ A disqualification penalty period must begin no later than the first day of the second month that follows the date of notice of imposition of the penalty.
9. ~~If the individual's disqualification resulted from a prior period of assistance, the disqualification period begins after a reapplication for assistance under this chapter is approved.~~
10. The department shall issue a written notice informing the individual of the period of disqualification and the amount of assistance the assistance unit may receive during the disqualification period.

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

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 50-06-05.1, 50-09

CHAPTER 75-02-02.1

AGENCY SYNOPSIS: Amendments to North Dakota Administrative Code Chapter 75-02-02.1 Eligibility for Medicaid.

Amendments to North Dakota Administrative Code Chapter 75-02-02.1, Eligibility for Medicaid, include an amendment to subsection 8 of section 75-02-02.1-33.1, disqualifying transfers made after August 1, 1993, and a new subsection 11 to section 75-02-02.1-33.1, concerning the purchase of insurance by Medicaid applicants. This identifies the types of insurance that suffice to qualify under North Dakota Century Code Section 50-24.1-02.5.

75-02-02.1-33.1. Disqualifying transfers made after August 10, 1993.

1. a. Except as provided in subsections 2 and 9, an individual is ineligible for nursing facility services, swing-bed services, and medicaid-waivered services if the individual or the spouse of the individual disposes of assets or income for less than fair market value on or after the look-back date specified in subdivision b.
 - b. The look-back date specified in this subdivision is a date that is thirty-six months (or, in the case of payments from a trust or portions of a trust that are treated as income or assets disposed of by an individual, sixty months) before the date on which the individual is both an institutionalized individual and has applied for benefits under this chapter, without regard to the action taken on the application.
 - c. The period of ineligibility begins the first day within the first month during or after which income or assets have been transferred for less than fair market value and which does not occur in any other periods of ineligibility under this section or section 75-02-02.1-33.
 - d. The number of months of ineligibility under this subdivision for an individual shall be equal to the total, cumulative uncompensated value of all income and assets transferred by the individual (or individual's spouse) on or after the look-back date specified in subdivision b, divided by the average monthly cost of nursing facility care in North Dakota at the time of application.
2. An individual shall not be ineligible for medicaid by reason of subsection 1 to the extent that:
 - a. The assets transferred were a home, and title to the home was transferred to:

- (1) The individual's spouse;
- (2) The individual's son or daughter who is under age twenty-one, blind, or disabled;
- (3) The individual's brother or sister who has an equity interest in the individual's home and who was residing in the individual's home for a period of at least one year immediately before the date the individual became an institutionalized individual; or
- (4) The individual's son or daughter (other than a child described in paragraph 2) who was residing in the individual's home for a period of at least two years immediately before the date the individual became an institutionalized individual, and who provided care to the individual which permitted the individual to reside at home rather than in an institution or facility;

b. The income or assets:

- (1) Were transferred to the individual's spouse or to another for the sole benefit of the individual's spouse;
- (2) Were transferred from the individual's spouse to another for the sole benefit of the individual's spouse;
- (3) Were transferred to, or to a trust established solely for the benefit of, the individual's child who is blind or disabled; or
- (4) Were transferred to a trust established solely for the benefit of an individual under sixty-five years of age who is disabled;

c. The individual makes a satisfactory showing that:

- (1) The individual intended to dispose of the income or assets, either at fair market value or other valuable consideration, and the individual had an objectively reasonable belief that fair market value or its equivalent was received;
- (2) The income or assets were transferred exclusively for a purpose other than to qualify for medicaid; or
- (3) For periods after the return, all income or assets transferred for less than fair market value have been returned to the individual;

- d. The individual shows that the total cumulative uncompensated value of all income and assets transferred for less than fair market value by the individual (or the individual's spouse) is less than the actual cost of those nursing facility services, swing-bed services, and medicaid-waivered services, provided after the transfer was made, for which payment has not been made and which are not subject to payment by any third party, provided that such a showing may only be made with respect to periods when the individual is otherwise eligible for medicaid; or
- e. The asset transferred was:
- (1) Household goods, personal effects, or an exempt motor vehicle;
 - (2) A burial fund of up to one thousand five hundred dollars, plus earnings on the burial fund;
 - (3) A burial space or agreement which represents the purchase of a burial space held for the transferor, the transferor's spouse, or any other member for the transferor's immediate family;
 - (4) Property essential to self-support, which means property which the transferor owns, to the extent the equity value does not exceed six thousand dollars, which produces annual income at least equal to six percent of equity value, and which the transferor is not actively engaged in using to produce income; and nonbusiness property which the transferor owns, to the extent the equity value does not exceed six thousand dollars when used to produce goods or services essential to daily activities or, for instance, when used to grow produce or livestock solely for consumption in the transferor's household; but which does not mean cash or any other liquid asset;
 - (5) Property that is essential to earning a livelihood;
 - (6) Assets set aside, by a blind or disabled (but not an aged) transferor, as a part of a plan approved by the social security administration, for the transferor to achieve self-support;
 - (7) Assistance received under the disaster Relief and Emergency Assistance Act of 1974 [Pub. L. 93-288], or other assistance provided pursuant to a federal statute on account of a catastrophe declared to be a major disaster by the president, and interest earned

on that assistance, but only for nine months following receipt of that assistance;

- (8) Any amounts received from the United States attributable to underpayments of benefits due from one or more prior months, under title II or title XVI of the Act [42 U.S.C. 401 et seq. and 1381 et seq.], but only for six months following receipt of those amounts;
 - (9) The value of assistance, paid with respect to a dwelling unit occupied by the transferor, under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the National Housing Act [12 U.S.C. 1701 et seq.], section 101 of the Housing and Urban Development Act of 1965, title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], or section 202(h) of the Housing Act of 1959 [12 U.S.C. 1701q(h)];
 - (10) Any amounts received by the transferor from a fund established by a state to aid victims of crime, to the extent that the transferor demonstrates that the amount was paid in compensation for expenses incurred or losses suffered as a result of a crime, but only for nine months following receipt of the amount; or
 - (11) Relocation assistance amounts provided by a state or local government to the transferor, comparable to assistance provided under title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 [42 U.S.C. 4621 et seq.], which are subject to the treatment required by section 216 of such Act [42 U.S.C. 4636], but only for nine months following receipt of the amounts.
3. There is a presumption that a transfer for less than fair market value was made for purposes that include the purpose of qualifying for medicaid:
- a. In any case in which the individual's assets (and the assets of the individual's spouse) remaining after the transfer produce income which, when added to other income available to the individual (and to the individual's spouse) totals an amount insufficient to meet all living expenses and medical costs reasonably anticipated to be incurred by the individual (and by the individual's spouse) in the month of transfer and in the thirty-five months (fifty-nine months in the case of a transfer to a trust) following the month of transfer;
 - b. In any case in which an inquiry about medicaid benefits was made, by or on behalf of the individual to any person, before the date of the transfer;

- c. In any case where the individual or the individual's spouse was an applicant for or recipient of medicaid before the date of transfer;
 - d. In any case in which a transfer is made by or on behalf of the individual's spouse, if the value of the transferred income or asset, when added to the value of the individual's other assets, would exceed asset limits; or
 - e. In any case where the transfer was made, on behalf of the individual or the individual's spouse, by a guardian, conservator, or attorney in fact, to the guardian, conservator, or attorney in fact or to any spouse, child, grandchild, brother, sister, niece, nephew, parent, or grandparent, by birth, adoption, or marriage, of the guardian, conservator, or attorney in fact.
4. An applicant or recipient who claims that income or assets were transferred exclusively for a purpose other than to qualify for medicaid must show that a desire to receive medicaid benefits played no part in the decision to make the transfer and must rebut any presumption arising under subsection 3. The fact, if it is a fact, that the individual would be eligible for the medicaid benefits described in subdivision a of subsection 1, had the individual's spouse not transferred income or assets for less than fair market value, is not evidence that the income or assets were transferred exclusively for a purpose other than to qualify for medicaid.
 5. In the case of a transfer by an individual's spouse which results in a period of ineligibility under this section for the individual, if the spouse otherwise becomes an institutionalized spouse who is eligible for medicaid, the period of ineligibility shall be apportioned equally between the spouses. Any months remaining in the period of ineligibility must be assigned or reassigned to the spouse who remains institutionalized if one spouse dies or is no longer institutionalized.
 6. If the transferee of any income or asset is the child, grandchild, brother, sister, niece, nephew, parent, or grandparent of the individual or the individual's spouse, services or assistance furnished by the transferee to the individual or the individual's spouse may not be treated as consideration for the transferred income or asset unless the transfer is made pursuant to a valid written contract entered into prior to rendering the services.
 7. A transfer is complete when the individual (or the individual's spouse) making the transfer has no lawful means of undoing the transfer or requiring a restoration of ownership.

8. For purposes of this section:

a. "Average daily cost of nursing care" means the cost determined by the department under 42 U.S.C. 1396p(c)(1)(E)(i)(II) or subdivision d of subsection 1.

b. Fair market value is received:

(1) In the case of an asset that is not subject to reasonable dispute concerning its value, such as cash, bank deposits, stocks, and fungible commodities, when one hundred percent of apparent fair market value is received;

(2) In the case of an asset that is subject to reasonable dispute concerning its value, when seventy-five percent of estimated fair market value is received; and

(3) In the case of income, when one hundred percent of apparent fair market value is received.

b- c. "Major medical policy" includes any policy, certificate, or subscriber contract issued on a group or individual basis by any insurance company, nonprofit health service organization, fraternal benefit society, or health maintenance organization, which provides a plan of health insurance or health benefit coverage including medical, hospital, and surgical care, approved for issuance by the insurance regulatory body in the state of issuance, but does not include accident-only, credit, dental, vision, medicare supplement, long-term care, or disability income insurance, coverage issued as a supplement to liability insurance or automobile medical payment insurance, or a policy or certificate of specified disease, hospital confinement indemnity, or limited benefit health insurance.

d. "Medicare" means the Health Insurance for the Aged and Disabled Act, title XVIII of the Social Security Act of 1965, as amended [42 U.S.C. 1395, et seq.; Pub. L. 92-603; 86 Stat. 1370].

e. "Medicare supplement policy offering plan F benefits" means a policy, group, or individual accident and health insurance policy or a subscriber contract of a health service corporation or a health care plan of a health maintenance organization or preferred provider organization, other than a policy issued pursuant to a contract under section 1876 or 1833 of the Social Security Act [42 U.S.C. 1395, et seq.] or an issued policy under a demonstration project authorized pursuant to amendments to the Social Security Act that:

- (1) Is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare;
- (2) Is not a policy or contract of one or more employers or labor organizations, or the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organization;
- (3) Is approved for issuance by the insurance regulatory body in the state of issuance; and
- (4) Includes:
 - (a) Hospitalization benefits consisting of medicare part A coinsurance plus coverage for three hundred sixty-five additional days after medicare benefits end;
 - (b) Medical expense benefits consisting of medicare part B coinsurance;
 - (c) Blood provision consisting of the first three pints of blood each year;
 - (d) Skilled nursing coinsurance;
 - (e) Medicare part A deductible coverage;
 - (f) Medicare part B deductible coverage;
 - (g) Medicare part B excess benefits at one hundred percent coverage; and
 - (h) Foreign travel emergency coverage.

f. "Uncompensated value" means the difference between fair market value and the value of any consideration received.

9. The provisions of this section may not be applied to deny, to qualified medicare beneficiaries, benefits available due to their status as qualified medicare beneficiaries.
10. This section is applicable to all transfers made after August 10, 1993.
11. An individual is not ineligible for medicaid by reason of subsection 1 if, for a period of at least thirty-six consecutive months, beginning after August 1, 1995, the

individual has in force home care and long-term care coverage, with a daily benefit at least equal to 1.25 times the average daily cost of nursing care for the year in which the policy is issued or an aggregate benefit at least equal to 1095 times that daily benefit, and:

- a. For each such month during which the individual is not eligible for medicare benefits, the individual has in force a major medical policy that provides a lifetime maximum benefit of one million dollars or more, an annual aggregate deductible of five thousand dollars or less, and an out-of-pocket maximum annual expenditure per qualifying individual of five thousand dollars or less; and
- b. For each such month during which the individual is eligible for medicare benefits, the individual has in force a medicare supplement policy offering plan F benefits, or their equivalent.

History: Effective October 1, 1993; amended effective December 1, 1996.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02; 42 USC 1396p(c)

CHAPTER 75-02-11

AGENCY SYNOPSIS: Amendments to North Dakota Administrative Code Chapter 75-02-11 Food Stamp Program.

Amendments to North Dakota Administrative Code Chapter 75-02-11, Food Stamp Program, include an amendment to subsection 4 of section 75-02-11-05, Income Eligibility - Determining Household Income - Aid to Families with Dependent Children Grant - Standard Utility Allowance - Telephone Standard. The amendment concerns the amount of the standard utility allowance used in determining the household's shelter deduction. The amendment changes the way of calculating the standard utility allowance to conform to directives of federal officials.

75-02-11-05. Income eligibility - Determining household income - Aid to families with dependent children grant - Standard utility allowance - Telephone standard.

1. A household that contains an elderly or disabled member must meet the net income eligibility standards to participate in the program. A household that does not contain an elderly or disabled member must meet both the net income eligibility standards and the gross income eligibility standards to participate in the program. The net monthly income standards reflect one hundred percent of the federal poverty level. The gross monthly income standards reflect one hundred thirty percent of the federal poverty level. The monthly income

limits are adjusted on October first of each year to reflect inflation.

2. A household's monthly income is determined prospectively, based on the best estimate of the household's income for the month for which eligibility and benefits are computed.
3. The entire amount of a household's aid to families with dependent children grant is considered unearned income.
4. A household billed for heating or cooling costs shall use a standard utility allowance in determining its shelter deduction unless the household verifies that its actual costs are in excess of the standard utility allowance. The amount of the standard utility allowance depends-on-the-household size-and is adjusted on October first of each year, using the same-percent-of-change-that a methodology approved by the food and nutrition service applies--to--the--gross--monthly--income eligibility---standards under 7 CFR 273.9(d)(6)(iv). A household that uses the standard utility allowance may not use the telephone standard.
5. A household not entitled to use the standard utility allowance but which incurs costs for a telephone in its home is allowed a telephone standard in determining its shelter deduction. Actual telephone costs are not allowed. The telephone standard is adjusted on October first of each year, based on a survey of the basic local service charges of telephone companies operating in North Dakota.
6. A household not entitled to use the standard utility allowance and which incurs utility expenses other than telephone costs shall claim actual verifiable utility expenses in determining its shelter deduction.
7. Limits on total shelter deductions may be set at amounts required by the food and nutrition service.

History: Effective February 1, 1995; amended effective December 1, 1996.

General Authority: NDCC 50-06-05.1

Law Implemented: NDCC 50-06-05.1; 7 CFR 273.9(a), 7 CFR 273.9(c)(12), 7 CFR 273.9(d)(6), 7 CFR 273.21(b)

JANUARY 1997

CHAPTER 75-01-03

AGENCY SYNOPSIS: Amendments to North Dakota Administrative Code Chapter 75-01-03, Appeals and Hearings, include an amendment to Section 75-01-03-15, Hearing - General Rules and Procedures, concerning testimony by telephone, and a new Section 75-01-03-15.2, Hearing - Issues to be Considered, concerning issues for consideration.

The amendment to Section 75-01-03-15 specifically provides for telephonic testimony in hearings. New Section 75-01-03-15.2 requires appellants who wish to raise new issues to provide advance notice or agree to have the hearing continued to allow the other party time to respond.

75-01-03-15. Hearing - General rules and procedure.

1. Attendance at the hearing shall be limited to those directly concerned, namely, the claimant; the claimant's representative, if any; an interpreter, if any; witnesses; representatives of the county agency, nursing facility, or unit of the department that made the determination under appeal; and the hearing officer. The hearing officer shall exclude unauthorized persons from a fair hearing unless both principals agree to their presence. The hearing officer may exclude persons whose actions cause substantial disruption of the hearing. Appearance by the claimant, in person or by representative, is required at a fair hearing. Representation by the county agency, nursing facility, or unit of the department that made the determination under appeal is also required.

2. Hearings may be conducted by telephone unless the person requesting the hearing demands to appear personally before the hearing officer. In all food stamp telephone hearings, except food stamp intentional program violation hearings, the person requesting the hearing shall be present at the same location as the county agency representative. This provision may be waived by the department when illness, disability, travel difficulty, or other reason makes attendance of the person requesting the hearing, or that person's representative, at the location of the county agency representative impracticable.
3. Witnesses may give testimony by telephone unless the hearing officer determines that it will be unreasonably difficult to judge the witness's credibility without the witness's presence before the hearing officer. The party calling a witness by telephone shall provide reliable identification of the witness and assume responsibility for providing a satisfactory telephone connection. A party intending to call a witness by telephone shall provide notice of that intention to the administrative law judge and to the other parties at least three days before the date of the witness's intended testimony unless the administrative law judge determines arrangements for a satisfactory telephone connection may be made on shorter notice.
4. The hearing must be conducted in an impartial manner. All testimony must be submitted under oath or affirmation.
- 4- 5. The proceedings at the hearing must be reported or otherwise perpetuated by mechanical, electronic, or other means capable of reproduction or transcription.
- 5- 6. The hearing officer shall consider if the parties or their representatives are familiar with the North Dakota Rules of Evidence and shall waive application of those rules unless all parties to the proceeding or their representatives are familiar with the North Dakota Rules of Evidence. The waiver, if necessary, must be stated prior to or at any hearing.
- 6- 7. An interpreter shall be provided by the state if the hearing officer determines this necessary.

History: Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995; January 1, 1997.

General Authority: NDCC 28-32-02, 50-06-16

Law Implemented: NDCC 50-06-05.1

75-01-03-15.2. Hearing - Issues to be considered.

1. Except as provided in subsection 2, or as specifically required in any law or rule describing the determination of

issues at a hearing, the issues for consideration in a hearing requested to review a decision issued by the department, a county agency, or a facility are limited to matters described in the decision notice.

2. A person seeking a hearing in review of a decision issued by the department, a county agency, or a facility may raise additional issues only if the person:

a. Provides, at least ten days before the date set for the hearing:

(1) A written statement of additional issues;

(2) A copy of any documents and a description of any exhibit proposed for introduction in support of the additional issues; and

(3) A brief synopsis of testimony of any proposed witness relating to the additional issues;

b. Consents to a continuance, waives any requirement that a decision be made within a limited time, and:

(1) If the person is a recipient receiving continued benefits until a fair hearing decision is reached, secures consent of the department; or

(2) If the person is appealing a notice of intention to transfer or discharge a resident, secures consent of the facility; or

c. Secures the consent of the department or facility.

History: Effective January 1, 1997.

General Authority: NDCC 28-32-02, 50-06-16

Law Implemented: NDCC 50-06-05.1

CHAPTER 75-02-01.1

AGENCY SYNOPSIS: Amendments to North Dakota Administrative Code Chapter 75-02-01.1, Aid to Families with Dependent Children, include two new subsections 9 and 10 of Section 75-02-01.1-27, Age of Parent - Effect on Eligibility, concerning requirements for minor parents, and a new Section 75-02-01.1-29.1, Value of Grant, concerning the value of the care or support furnished by the AFDC program.

The two new subsections to Section 75-02-01.1-27 were added to conform these rules to a May 14, 1996, federal directive, based on a May 4, 1996, Executive Order concerning strengthening teen parent responsibility. The amendments require minor parents to live in their own parent's homes, with appropriate exceptions.

New Section 75-02-01.1-29.1 is intended to replace former Section 75-02-01-06.1, which was repealed effective March 1, 1995, but which was inadvertently omitted when replacement Chapter 75-02-01.1 was adopted, also effective March 1, 1995.

75-02-01.1-27. Age of parent - Effect on eligibility.

1. For purposes of this section:

- a. "Adult parent" means a parent who is not a minor parent.
- b. "Minor parent" means an individual, under the age of eighteen years, who has never been married and who:
 - (1) Is the parent of a dependent child living in the same household; or
 - (2) Is eligible as a pregnant woman who is a caretaker relative to no child.

2. A minor parent who lives with the minor parent's own parent (grandparent) or legal guardian is eligible only if eligibility may be established after consideration of the income, but not the assets, of the grandparents, with whom the minor parent lives, applying the following disregards:

- a. The first ninety dollars of earned income of each employed grandparent, for work expenses.
- b. An amount equal to the standard of need, not including special allowances, applicable to a household consisting of the grandparent or grandparents and any other individuals living in the household, who are or could be claimed as dependents of the grandparent or grandparents for federal income tax purposes, but who are not members of the assistance unit;

- c. Amounts paid by the grandparent or grandparents, to support individuals who are not members of the household or the assistance unit, who are or could be claimed as dependents of the grandparent or grandparents for federal income tax purposes;
 - d. Amounts paid by the grandparent or grandparents, as child support or spousal support, to individuals who are not members of the household or the assistance unit.
3. An adult parent, who lives with the adult parent's own parent (grandparent) or legal guardian, if eligible, is eligible without consideration of the income or assets of the grandparents with whom the adult parent lives, except that regular contributions of money made by the grandparents to any member of the assistance unit must be considered.
 4. For purposes of this section, a minor parent who becomes an adult parent while living with the minor parent's own parent or legal guardian is treated as an adult parent, effective the first day of the month in which the minor parent reaches age eighteen.
 5. For purposes of this section, a minor parent who ends residency with the minor parent's own parents (grandparents) is treated as having ended residency on the first day of the month in which the minor parent left the grandparent's home.
 6. For purposes of this section, a minor parent who resumes residency with the minor parent's own parents (grandparents) is treated as having resumed that residency on the first day of the month after the month in which the minor parent resumed residency with the grandparents.
 7. A minor parent who does not live with the minor parent's own parents (grandparents), if eligible, is eligible without consideration of the income or assets of the grandparents except that regular contributions of money made by the grandparents to any member of the assistance unit must be considered. The grandparents remain legally responsible for the minor parent's support. The matter must be referred to the child support agency for the purpose of securing support from the grandparents for the minor parent as well as for the purpose of securing support for the minor parent's child from the child's absent parent.
 8. No assistance unit may include the child of a minor parent, living with that minor parent, during any time when the minor parent is living in a foster home or child care institution and receiving a foster care maintenance benefit. Any amount reasonably necessary to the maintenance of such a child of the minor parent is included in the minor parent's foster care maintenance benefit.

9. Except as provided in subsection 10, a minor parent must live in the home of the minor parent's own parent (grandparent), legal guardian, or other adult relative, or in an adult-supervised supported living arrangement.
10. A minor parent may show there is good cause to live in a place other than required in subsection 9. Good cause exists if, based on evidence provided to the county agency:
- a. The minor parent has no living parent or legal guardian;
 - b. No parent or legal guardian of the minor parent will allow the minor parent to live in the home of the parent or legal guardian;
 - c. The physical or emotional health or safety of the minor parent or the minor parent's child would be jeopardized if they lived with the minor parent's parent or legal guardian;
 - d. The minor parent lived apart from his or her parent or legal guardian for at least one year before the earlier of the birth of the dependent child or the minor parent's application for aid to families with dependent children;
 - e. The minor parent has earned a high school diploma or general equivalency diploma and is participating in postsecondary education under an approved job opportunities and basic skills program employability plan; or
 - f. Some other reason exists which, in the judgment of the county agency, makes independent living more conducive to the well-being of the minor parent and the minor parent's child than does living in a place required under subsection 9.

History: Effective March 1, 1995; amended effective January 1, 1997.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 50-06-05.1, 50-09

75-02-01.1-29.1. Value of grant.

1. The reasonable value of the physical and custodial care or support which has been furnished to the child or children of a noncustodial parent by the aid to families with dependent children program is, for each month such child or children are eligible, the amount of the aid to families with dependent children grant received multiplied by the number of children of the noncustodial parent in the family receiving benefits and divided by the total number of children in the family receiving benefits.

2. Stepparents cannot be legally required to support their stepchildren, but when they are able and willing to do so, should be encouraged to support to the extent of their ability.
3. In cases where a stepparent is eligible to receive aid to families with dependent children benefits, the reasonable value of the physical and custodial care or support which has been furnished to the child or children of a noncustodial parent by the aid to families with dependent children program is, for each month such child or children are eligible, the amount of the aid to families with dependent children grant received multiplied by the number of children of the noncustodial parent in the family receiving benefits and divided by one plus the total number of children in the family receiving benefits.

History: Effective January 1, 1997.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 50-06-05.1, 50-09

CHAPTER 75-02-02

AGENCY SYNOPSIS: Amendments to North Dakota Administrative Code Chapter 75-02-02, Medical Services, include an amendment to Section 75-02-02-08(1)(p)(1), concerning travel expenses; a repeal of Section 75-02-02-08(2)(g), concerning cost sharing; a new Section 75-02-02-09.1, concerning cost sharing; a new Section 75-02-02-9.2, concerning limitations on inpatient rehabilitation; and an amendment to Section 75-02-02-10, concerning limitations on inpatient psychiatric services.

These amendments refine the department's utilization control procedures.

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 transportation services is limited in accordance with sections 75-02-02-13.1 and 75-02-02-13.2.

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.~~
Repealed effective January 1, 1997.

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; July 1, 1996; January 1, 1997.

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

75-02-02-09.1. Cost sharing.

1. Copayments provided for in this section may be imposed unless:

a. The recipient receiving the service:

- (1) Lives in a nursing facility, intermediate care facility for the mentally retarded, or the state hospital;
- (2) Receives swing bed services in a hospital;
- (3) Has not reached the age of twenty-one years;
- (4) Is pregnant; or
- (5) Is entitled to have a portion of the cost of the visit paid for by medicare; or

b. The service is:

- (1) Emergency room services; or
- (2) Family planning services.

2. Copayments are:

- a. Fifty dollars for each inpatient hospital admission except admissions to hospitals paid as psychiatric, rehabilitative, or long-term hospitals;
- b. Three dollars for the first monthly nonemergency outpatient visit to a hospital except visits to hospitals paid as psychiatric, rehabilitative, or long-term hospitals;
- c. Three dollars for each nonemergency service provided in a hospital emergency room;

- d. Two dollars for each physician visit;
- e. Two dollars for each office visit to a rural health clinic or federally qualified health center;
- f. One dollar for each chiropractic visit; and
- g. Two dollars for each preventive dental office visit.

History: Effective January 1, 1997.

General Authority: NDCC 50-24.1-04

Law Implemented: NDCC 50-24.1-04

75-02-02-09.2. Limitations on inpatient rehabilitation. No payment will be made for inpatient rehabilitation services provided to a recipient age twenty-one or older, in a distinct part unit of a hospital, except for the first thirty days of each admission.

History: Effective January 1, 1997.

General Authority: NDCC 50-24.1-04

Law Implemented: NDCC 50-24.1-04

75-02-02-10. Limitations on inpatient psychiatric services.

1. ~~The medical and remedial care and services made available to any categorically needy individual included under the plan will not be less in amount, duration, or scope than those made available to other individuals included under the program~~ Inpatient psychiatric services for individuals under age twenty-one must be provided:

a. Under the direction of a physician;

b. By a psychiatric facility, or an inpatient program in a psychiatric facility, which is accredited by the joint commission on accreditation of health care organizations; and

c. Before the individual reaches age twenty-one, or, if the individual was receiving inpatient psychiatric services immediately before reaching age twenty-one, before the earlier of:

(1) The date the individual no longer requires inpatient psychiatric services; or

(2) The date the individual reaches age twenty-two.

2. ~~The medical and remedial care and services made available to a group, i.e., either the categorically needy or the medically needy, will be equal in amount, duration, and scope for all~~

~~individuals within the group, with the exception specified in subsection 1~~ A psychiatric facility or program providing inpatient psychiatric services to individuals under age twenty-one must:

- a. Except as provided in subdivision c, obtain a certification of need from an independent review team qualified under subsection 3 prior to admitting an individual who is eligible for medical assistance;
 - b. Obtain a certification of need from a team responsible for developing a plan of care under 42 CFR 441.156 for an individual who applies for medical assistance while in the facility or program covering any period for which claims are made; or
 - c. Obtain a certification of need from a team responsible for developing a plan of care under 42 CFR 441.156 for an emergency admission or an individual, within fourteen days after the admission, covering any period prior to the certification for which claims are made.
3. ~~The medical assistance division of the department of human services will be responsible for all utilization review plans and activities in the program~~
- a. An independent review team must:
 - (1) Be composed of individuals who have no business or personal relationship with the inpatient psychiatric facility or program requesting a certification of need;
 - (2) Include a physician;
 - (3) Have competence in diagnosis and treatment of mental illness; and
 - (4) Have adequate knowledge of the situation of the individual for whom the certification of need is requested.
 - b. Before issuing a certification of need, an independent review team must use professional judgment and standards approved by the department and consistent with the requirements of 42 CFR part 441, subpart D, to demonstrate:
 - (1) Ambulatory care resources available in the community do not meet the treatment needs of the individual;

(2) Proper treatment of the individual's psychiatric condition requires services on an inpatient basis under the direction of a physician; and

(3) The requested services can reasonably be expected to improve the individual's condition or prevent further regression so services may no longer be needed.

4. ~~Fee structures are designed to enlist participation of a sufficient number of providers of services in the program so that eligible persons can receive the medical care and services included in the plan at least to the extent these are available to the general population. Payments will be made only to medical vendors who sign agreements with the state under which the vendor agrees to:~~

~~a. Accept as payment in full, the amounts paid in accordance with the payment structures of the state.~~

~~b. Keep such records as are necessary fully to disclose the extent of the services provided to individuals receiving assistance under the state plan.~~

~~c. Furnish the state agency with such information, regarding any payments claimed by such person or institution for providing services under the state plan, as the state agency may from time to time request. No payment will be made for inpatient psychiatric services provided to recipients, other than those described in subsection 1, in a distinct part unit of a hospital except for the first twenty-one days of each admission.~~

History: Amended effective January 1, 1997.

General Authority: NDCC 50-24.1-04

Law Implemented: NDCC 50-24.1-04; 42-CFR-431.107; 42-CFR-Part-447; 42-CFR-Part-456 42 CFR Part 441, subpart D

CHAPTER 75-02-02.1

AGENCY SYNOPSIS: Amendments to North Dakota Administrative Code Chapter 75-02-02.1, Eligibility for Medicaid, include an amendment to Section 75-02-02.1-05(4)(d), concerning medical assistance coverage to children. These amendments conform these rules to section 30 of 1995 House Bill No. 1050, Session Laws Chapter 246, which created North Dakota Century Code Section 50-24.1-02.6.

75-02-02.1-05. Covered groups. Within the limits of legislative appropriation, four broad coverage groups are included under the medicaid program. Within each coverage group, one or more aid categories is established. These coverage groups do not define eligibility for medicaid benefits. Any person who is within a coverage group must also demonstrate that all other eligibility criteria are met.

1. Categorically needy groups include:

- a. Persons who are receiving cash assistance payments through aid to families with dependent children.
- b. Persons who are deemed to be recipients of aid to families with dependent children including:
 - (1) Individuals denied an aid to families with dependent children payment solely because the amount would be less than ten dollars;
 - (2) Individuals 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;
 - (3) 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;
 - (4) Children for whom adoption assistance maintenance payments are made under title IV-E;
 - (5) Children for whom foster care maintenance payments are made under title IV-E;

- (6) Children who are living in North Dakota and are receiving title IV-E adoption assistance payments from another state; and
 - (7) Children in a foster care placement in North Dakota and receiving a title IV-E foster care payment from another state.
- c. Families which 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).
 - d. 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.
 - e. Eligible pregnant women who applied for medicaid during pregnancy continue to be eligible, as though they were pregnant, for sixty days after the day each pregnancy ends, and for the remaining days of the month in which the sixtieth day falls.
 - f. 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.
 - g. Aged, blind, or disabled individuals who are receiving supplemental security income payments or who appear on the state data exchange as zero payment as a result of supplemental security income's recovery of an overpayment or who are suspended because the individuals do not have a protective payee, provided that the more restrictive medicaid criteria is met.
 - h. Individuals who meet the more restrictive requirements of the medicaid program and qualify for supplemental security income benefits under section 1619(a) or 1619(b) of the Act [42 U.S.C. 1382h(a) or 1382h(b)].

- i. Essential spouses of, or persons essential to, individuals who received benefits, in December 1973 under the state's approved plan for title XVI of the Social Security Act (repealed), who were grandfathered into the supplemental security income program and who have continuously received benefits under the supplemental security income program and the medicaid program since the inception of the supplemental security income program, but only if the essential spouse of, or person essential to, the individual continues to reside with the individual.
 - j. 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.
2. Optional categorically needy groups include:
- a. 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.
 - b. All individuals under age twenty-one who are residing in adoptive homes and who have been determined under the state-subsidized adoption program to be eligible as provided in state law and in accordance with the requirements of the department.
 - c. All individuals under age twenty-one who qualify on the basis of financial eligibility for medicaid and who are residing in foster homes or private child care institutions licensed or approved by the department, irrespective of financial arrangements, including children in a "free" foster home placement.
3. Medically needy groups include:
- a. 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.
 - b. 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 or children in non-IV-E foster care.

- c. Pregnant women whose pregnancy has been medically verified and who, except for income and assets, would be eligible as categorically needy.
- d. Pregnant women whose pregnancy has been medically verified and who qualify on the basis of financial eligibility.
- e. 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.
- f. Aged, blind, or disabled individuals who would be eligible for supplemental security income benefits or certain state supplemental payments, but who have not applied for cash assistance or have sufficient income or assets to meet their maintenance needs.
- g. Individuals under age twenty-one (who have been certified as needing the service) or age sixty-five and over in the state hospital who qualify on the basis of financial eligibility.

4. Poverty level groups include:

- a. 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.
- b. Eligible pregnant women who applied for medicaid during their pregnancy who continue to be eligible for sixty days after the day each pregnancy ends, and for the remaining days of the month in which the sixtieth day falls.
- c. 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.
- d. Children, age six or older, ~~born-after-September-30,-1983~~ who have not reached age eighteen, 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.
- e. Qualified medicare beneficiaries are aged, blind, or disabled individuals who are entitled to medicare part A benefits, meet the medically needy nonfinancial criteria,

have assets no greater than twice the supplemental security income resource standards, and have income at or below one hundred percent of the poverty level.

- f. Qualified disabled and working individuals are individuals entitled to enroll in medicare part A under section 1818a of the Social Security Act [42 U.S.C. 1395i-2(a)], have income no greater than two hundred percent of the federal poverty level, have assets no greater than twice the supplemental security income resource standard, and are not eligible for medicaid under any other provision. The supplemental security income program income and asset methodologies must be used and none of the more restrictive 209b criteria may be applied.
- g. Special low-income medicare beneficiaries are aged, blind, or disabled individuals who are entitled to medicare part A benefits, meet the medically needy nonfinancial criteria, have assets no greater than twice the supplemental security income resource standards, and have income above one hundred percent of the poverty level, but not in excess of one hundred ten percent of the poverty level until January 1, 1995, and thereafter, not in excess of one hundred twenty percent of the poverty level.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; January 1, 1994; January 1, 1997.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02

CHAPTER 75-02-10

AGENCY SYNOPSIS: Amendments to North Dakota Administrative Code Chapter 75-02-10, Aid to Vulnerable Aged, Blind, and Disabled Persons, include an amendment to Section 75-02-10-01, concerning definitions; a new Section 74-02-10-06.1, concerning adaptive assessment services; and an amendment to Section 75-02-10-10, concerning county administration.

These amendments update several definitions used in the AVABD program. They also describe the individuals who are eligible for adaptive assessment services. Finally, they remove language that governed determinations of the county share of program costs for the period from August 1, 1995, through December 31, 1995.

75-02-10-01. Definitions. For purposes of this chapter, unless the context requires otherwise:

1. "Assisted living" means an environment where a person lives in an apartment-like unit and receives services on a twenty-four-hour basis to accommodate that person's needs and abilities to maintain as much independence as possible.
2. "Basic care facility" means a facility defined in North Dakota Century Code section 23-09.3-01, which is not owned or operated by the state.
3. "Congregate housing" means housing shared by two or more persons not related to each other which is not provided in an institution.
4. "Countable income" ~~includes any income at the disposal of an applicant, recipient, or responsible relative; any income with respect to which an applicant, recipient, or responsible relative has a legal interest in a liquidated sum and the legal ability to make the sum available for support or maintenance; or any income an applicant, recipient, or responsible relative has the lawful power to make available or to cause to be made available. It includes any income that would be applied in determining eligibility for benefits under chapter 75-02-02.1, and also includes any annuities, pensions, retirement, and disability benefits to which an applicant or recipient may be entitled including veteran's compensation and pensions of any type, old-age survivors, and disability insurance benefits; railroad retirement benefits; and unemployment compensation.~~ means gross income reduced by:
 - a. The cost of guardianship or conservatorship fees actually charged, but no more than five percent of monthly gross income;

- b. The cost of the medicare premium, but only if the person is ineligible for medicare cost-sharing benefits described in subdivision a of subsection 19 of section 75-02-02.1-01 as a qualified medicare beneficiary or a special low-income medicare beneficiary;
 - c. Court-ordered child support payments actually paid on behalf of a minor child who is not a member of the person's medicaid unit; and
 - d. For persons receiving benefits provided under subsection 1 or 2 of section 75-02-10-02:
 - (1) In the month the person enters the facility, the medically needy income level for a family of the size of the family in which the person was a member at the beginning of the month; and
 - (2) Sixty-five dollars plus one-half of the remaining monthly gross earned income.
5. "County agency" means the county social service board.
6. "Department" means the department of human services.
7. "Gross income" includes any income at the disposal of an applicant, recipient, or responsible relative; any income with respect to which an applicant, recipient, or responsible relative has a legal interest in a liquidated sum and the legal ability to make the sum available for support or maintenance; or any income an applicant, recipient, or responsible relative has the lawful power to make available or to cause to be made available. It includes any income that would be applied in determining eligibility for benefits under chapter 75-02-02.1; any income, except occasional small gifts, that would be disregarded in determining eligibility for benefits under chapter 75-02-02.1; annuities, pensions, retirement, and disability benefits to which an applicant or recipient, or spouse of an applicant or recipient, may be entitled including veteran's compensation and pensions of any type, old-age survivors, and disability insurance benefits; railroad retirement benefits; and unemployment compensation.
8. "Institution" means an establishment that makes available some treatment or services beyond food or shelter to four or more persons who are not related to the proprietor.
- 8- 9. "Living independently" includes living in congregate housing. The term does not include living in an institution.
- 9- 10. "Necessary benefits" means those benefits:
- a. Provided under this chapter;

- b. Identified by the department (or a county agency under the direction and supervision of the department) as appropriate to meet the needs of an applicant or recipient; and
- c. Which, when provided in coordination and conjunction with benefits available from any other source, represent the means least costly to the department of meeting the needs of the applicant or recipient.

~~10-~~ 11. "Qualified service provider" means a county agency or independent contractor who agrees:

- a. Agrees to meet standards for services and operations established by the department;
- b. Has in effect a current provider agreement with the department; and
- c. Has not been subject to loss of provider status under chapter 75-02-05 or section 75-03-23-08.

~~11-~~ 12. "Remedial care" means services that produce the maximum reduction of an eligible beneficiary's physical or mental disability and the restoration of an eligible beneficiary to the beneficiary's best possible functional level.

13. "Total income" means countable income.

History: Effective May 1, 1995; amended effective January 1, 1997.

General Authority: NDCC 50-06-15, 50-24.5-02(8)

Law Implemented: NDCC 50-24.5

75-02-10-06.1. Adaptive assessment services. Adaptive assessment services are available to a person receiving services under section 75-02-10-02, except subsection 1 or 2, only if the person:

- 1. Is eighteen years of age or older;
- 2. Seeks to enhance independence and functional capabilities resulting in a direct benefit of increased performance of personal cares and routine household tasks; and
- 3. Agrees to comply with recommendations of an interdisciplinary team regarding the use of adaptive devices, equipment, or modifications to the person's surroundings.

History: Effective January 1, 1997.

General Authority: NDCC 50-06-16, 50-24.5-02(8)

Law Implemented: NDCC 50-24.5

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:--LaMoire---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:--Roulette---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; amended effective January 1, 1997.
General Authority: NDCC 50-06-15, 50-24.5-02(8)
Law Implemented: NDCC 50-24.5

CHAPTER 75-04-06

AGENCY SYNOPSIS: Proposed amendments to North Dakota Administrative Code Chapter 75-04-06 Eligibility for Mental Retardation-Developmental Disabilities Case Management Services.

A public hearing was conducted on April 15, 1996, in Bismarck, concerning proposed amendments to North Dakota Administrative Code Chapter 75-04-06, Eligibility for Mental Retardation-Developmental Disabilities Case Management Services. The proposed chapter addresses eligibility criteria for mental retardation-developmental disability case management services now that ARC v. Olsen is resolved and class membership no longer exists.

Written comments were received from two commentors within the comment period. Two comments were received at the public hearing.

The proposed amendments set forth the eligibility criteria for adult clients if they have a diagnosis of mental retardation severe enough to constitute a developmental disability, a diagnosis of mental retardation and may benefit from treatment and services, or have another condition other than mental illness so severe as to constitute a developmental disability and may benefit from treatment and services (North Dakota Administrative Code Section 75-04-06-02.1.). Services eligibility for children aged birth through age two are based on other distinct criteria that is not fundamentally altered by amendment (North Dakota Administrative Code Section 75-04-06-04).

75-04-06-01. Principles of eligibility.

1. The process of determining whether--a--person--should an individual's eligibility to receive services---eordinated through mental retardation-developmental disabilities case management services involves the recognition of several criteria and an understanding of expected outcomes as each criterion is applied. Professional judgment is appropriately applied to answer-two-questions: determine the applicability of the provision of mental retardation-developmental disability case management services in accordance with chapter 75-05-06.

a.--Whether--a--person--is--a--class--member--and,--therefore, entitled-to-mental-retardation-developmental--disabilities case-management-services;-and

b.--Whether----a----person----is----appropriate---for---mental retardation-developmental--disabilities--case---management services-even-though-not-a-class-member-

2. These--questions The following criteria must be used as the frame of reference for a team of at least three professionals in the human service center, led by the developmental

disabilities program administrator or the administrator's designee, for the determination of whether a person should be served through services coordinated by an individual's eligibility for mental retardation-developmental disabilities case manager management services. For purposes of this chapter, "the team" refers to such a team.

History: Effective July 1, 1991; amended effective January 1, 1997.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-01.2-02, 50-06-05.3

75-04-06-02. Criteria for service eligibility - Class member.

1. The order of the federal district court in Association of Retarded Citizens v. Sinner makes a specific group of persons with disabilities eligible for services. These persons are "members of the plaintiff class". The team's initial task is to determine whether the applicant for services is a member of the plaintiff class. The terms "members of the plaintiff class" or "class members" refer to the class of persons who, as of September 26, 1980, and at any time subsequent, have been or may become residents of the developmental center at Grafton, North Dakota, and San Haven, located near Dunseith, North Dakota. This language creates, in effect, three separate groups:

a. Those persons who, as of September 26, 1980, were residents of the developmental center or San Haven.

b. Those persons who, subsequent to September 26, 1980, became residents of developmental center or San Haven.

c. Those persons who, subsequent to September 26, 1980, would have become residents of the developmental center or San Haven were it not for the community alternatives created or expanded as a result of this litigation.

2. Class membership for subdivisions a and b of subsection 1 will be determined by reference to facility records. The team must use recognized evaluation criteria to identify persons eligible for services under subdivision c of subsection 1. The court has eliminated persons with a sole condition of mental illness from this group. In determining whether a person would have been served by the developmental center and, consequently, is eligible under subdivision c of subsection 1, the following criteria must be met:

a. The person must have a diagnosis of mental retardation which is so severe as to constitute a developmental disability; or

b. The person must have a combination of conditions, one of which must be any level of mental retardation, which together are so severe as to constitute a developmental disability.

3. A diagnosis of the condition of mental retardation must be made by an appropriately licensed professional using diagnostic criteria accepted by the American psychiatric association.

4. Determination of whether the manifestation of the conditions is so severe as to constitute a developmental disability must be done in accordance with the definition of developmental disability in North Dakota Century Code section 25-01.2-01.

5. If the team determines that the person requesting services meets the criteria of subdivision c of subsection 1, the person is eligible for mental retardation developmental disabilities case management services. Repealed effective January 1, 1997.

History: Effective July 1, 1991.

General Authority: NDCC-25-01.2-18, -50-06-16

Law Implemented: NDCC-25-01.2-02, -50-06-05.3

75-04-06-02.1. Criteria for service eligibility.

1. An individual is eligible for mental retardation-developmental disabilities case management services if the individual has a diagnosis of mental retardation which is severe enough to constitute a developmental disability.

a. A diagnosis of the condition of mental retardation must be made by an appropriately licensed professional using diagnostic criteria accepted by the American psychiatric association.

b. Determination of whether the manifestation of the condition is severe enough to constitute a developmental disability must be done in accordance with the definition of developmental disability in North Dakota Century Code section 25-01.2-01.

2. An individual is eligible for mental retardation-developmental disabilities case management services if the individual has a condition of mental retardation, diagnosed by an appropriately licensed professional using diagnostic criteria accepted by the American psychiatric association, which is not severe enough to constitute a developmental disability, and the individual must be able to benefit from treatment and services purchased through the developmental disability division on

behalf of an individual who meets the criteria of subsection 1.

3. An individual is eligible for mental retardation-developmental disabilities case management services if the individual has a condition, other than mental illness, severe enough to constitute a developmental disability, which results in impairment of general intellectual functioning or adaptive behavior similar to that of an individual with the condition of mental retardation, and the individual must be able to benefit from services and intervention techniques which are so closely related to those applied to an individual with the condition of mental retardation that provision is appropriate. Determination of eligibility for individuals described in this subsection requires the application of professional judgment in a two-step process:

a. The team must first determine whether the condition is severe enough to constitute a developmental disability. North Dakota Century Code section 25-01.2-01 must be applied in order to determine if a developmental disability is present. The presence of a developmental disability does not establish eligibility for services through the mental retardation-developmental disabilities case management services system, but does require the team to consider all assessment data and apply professional judgment in the second step.

b. The team must then determine whether services can be provided to an individual determined to have a condition, other than mental illness, severe enough to constitute a developmental disability. The team must have a thorough knowledge of the condition and service needs of the applicant, as well as a thorough knowledge of services that would be appropriate through the developmental disabilities system. When considering if mental retardation-developmental disabilities case management is appropriate, the team must consider factors, including:

(1) Whether the individual would meet criteria appropriately used to determine the need for services in an intermediate care facility for the mentally retarded.

(2) Whether appropriate services are available in the existing developmental disabilities service delivery system.

(3) Whether a service, which uses intervention techniques designed to apply to an individual with mental retardation, delivered by staff trained specifically in the field of mental retardation, would benefit the individual.

(4) Whether a service, designed for an individual with the condition of mental retardation, could be furnished to the individual without any significant detriment to the individual or others receiving the service.

c. If the team concludes, through the application of professional judgment, that an individual's needs can be met through specific services purchased by the department for individuals who meet the criteria of subsection 1, a mental retardation-developmental disabilities case manager may be assigned. Services may be provided, subject to the limits of legislative appropriation. New services need not be developed on behalf of the individual.

History: Effective January 1, 1997.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-01.2-02, 50-06-05.3

75-04-06-03. Criteria for service eligibility - Applicants who are not members of the plaintiff class.

~~1. A person who is not a class member may be eligible for services which the department, through the developmental disabilities division, purchases on behalf of persons whose needs are similar to those of class members. Such a person must:~~

~~a. Have a condition of mental retardation, diagnosed by an appropriately licensed professional using diagnostic criteria accepted by the American psychiatric association, which is not so severe as to constitute a developmental disability, but be able to benefit from treatment and services; or~~

~~b. Have a condition, other than mental illness, so severe as to constitute a developmental disability, which results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons, and must be able to benefit from services and intervention techniques which are so closely related to those applied to persons with the condition of mental retardation that provision is appropriate.~~

~~2. Determination of eligibility for persons described in subdivision b of subsection 1 requires the application of professional judgment in a two-step process:~~

~~a. The team must first determine whether the condition is so severe as to constitute a developmental disability. North Dakota Century Code section 25-01.2-01 must be applied in order to determine if a developmental disability is~~

present.---The-presence-of-a-developmental-disability-does not-establish-eligibility-for-services-through-the-mental-retardation-developmental---disabilities--case-management system;--but--does--require--the--team--to--consider---all assessment--data--and--apply--professional-judgment-in-the second-step.

b.---The--team-must-next-determine-whether-appropriate-services can--be--provided--to--a--person--determined--to--have---a condition;--other--than--mental--illness;--so-severe-as-to constitute-a-developmental-disability.--The-team-must-have a-thorough-knowledge-of-the-condition-and-service-needs-of the-applicant;--as-well-as-a-thorough-knowledge-of-services that---would--be--appropriate--through--the--developmental disabilities---system.----When---considering---if---mental-retardation-developmental--disabilities-case-management-is appropriate;--the-team-must-consider-factors;--including:

(1)---Whether--the-person-would-meet-criteria-appropriately used--to--determine--the--need--for--services--in--an intermediate-care-facility-for-the-mentally-retarded.

(2)---Whether--appropriate--services--are--available-in-the existing-developmental-disabilities-service--delivery system.

(3)---Whether-a-service;--which-uses-intervention-techniques designed-to-apply-to-persons-with-mental-retardation; delivered--by-staff-trained-specifically-in-the-field of-mental-retardation;--would-benefit-the-person.

(4)---Whether---a---service;---designed--for--the--mentally retarded;--could-be-furnished-to--the--person--without any--significant--detriment--to--the-person-or-others receiving-the-service.

3.---If-the-team-concludes;--through-the-application-of-professional judgment;--that-a--person's--needs--can--be--appropriately--met through--specific--services--purchased--by--the-department-for class-members;--a-mental-retardation-developmental-disabilities case-manager-may-be-assigned-to-coordinate-services.--Services may--be--provided--subject--to--the--limits---of---legislative appropriation.---New--services-need-not-be-developed-on-behalf of-the-individual. Repealed effective January 1, 1997.

History: Effective-July-1,-1991.
General Authority: NDEC-25-01.2-18,-50-06-16
Law Implemented: NDEC-25-01.2-02,-50-06-05.3

75-04-06-04. Criteria for service eligibility - Children birth through age two.

1. Service eligibility for children from birth through age two is based on distinct and separate criteria designed to enable preventive services to be delivered. Young children may have conditions which could result in substantial functional limitations if early and appropriate intervention is not provided. The collective professional judgment of the team must be exercised to determine whether the child is high risk or developmentally delayed, and if the child may need early intervention services. If a child, age from birth through age two, is either high risk or developmentally delayed, ~~he or she~~ the child may be included on the caseload of a mental retardation-developmental disabilities case manager and considered for those services designed to meet specific needs. Eligibility for continued service inclusion through mental retardation-developmental disabilities case management must be redetermined by age three using criteria specified in sections ~~75-04-06-02 and 75-04-06-03~~ section 75-04-06-02.1.

2. For purposes of this section:

a. "Developmentally delayed" means a child, age from birth through age two:

(1) Who is performing twenty-five percent below age norms in two or more of the following areas:

(a) Cognitive development;

(b) Gross motor development;

(c) Fine motor development;

(d) Sensory processing (hearing, vision, haptic);

(e) Communication development (expressive or receptive);

(f) Social or emotional development; or

(g) Adaptive development; or

(2) Who is performing at fifty percent below age norms in one or more of the following areas:

(a) Cognitive development;

(b) Physical development, including vision and hearing;

(c) Communication development (expressive and receptive);

(d) Social or emotional development; or

(e) Adaptive development.

b. "High risk" means a child, age from birth through age two:

- (1) Who, based on a diagnosed physical or mental condition, has a high probability of becoming developmentally delayed; or
- (2) Who, based on informed clinical opinion which is documented by qualitative and quantitative evaluation information, has a high probability of becoming developmentally delayed.

History: Effective July 1, 1991; amended effective July 1, 1993; January 1, 1997.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-01.2-02, 50-06-05.3

FEBRUARY 1997

CHAPTER 75-01-03

AGENCY SYNOPSIS: Amendments to North Dakota Administrative Code Chapter 75-01-03, Appeals and Hearings, include an amendment to Section 75-01-03-20, Appeals Concerning Determinations Affecting Nursing Facilities, concerning the application of appeals procedures to intermediate care facilities for the mentally retarded as well as nursing facilities.

The amendment to Section 75-01-03-20 replaces prior requirements with provisions derived from 42 CFR Section 431.153, 42 CFR Section 488.438(e), and 42 CFR Section 448.404. The amended section applies to both nursing facilities and intermediate care facilities for the mentally retarded. As before, this section provides rules for appeals enforcement actions taken by the department.

75-01-03-20. Appeals concerning procedures for determinations affecting participation of intermediate care facilities for the mentally retarded and certain nursing facilities in medicaid.

1.--Whenever---a--nursing--facility--appeals--a--decision--by--the department--regarding--the--denial--,-termination--,-or--nonrenewal--of the--facility's--provider--agreement--under--the--medicaid--program, the--department--shall--provide--the--facility--with--an--opportunity for--an--informal--reconsideration--of--the--decision--before--the effective--date--of--such--decision-

2.--The--informal--reconsideration--must--include:

- a. --Written notice to the facility of the denial, termination, or nonrenewal of the provider agreement and the findings upon which the denial, termination, or nonrenewal is based;
 - b. --An opportunity for the facility to refute, in writing, the department's finding; and
 - c. --Written affirmation or reversal of the denial, termination, or nonrenewal of the facility's provider agreement.
3. --If, after the informal consideration, the facility is still dissatisfied with the department's decision, the facility may, within thirty days, appeal the denial, termination, or nonrenewal of the facility's provider agreement. An appeal will not delay or suspend the effective date of the proposed action concerning the provider agreement.
4. --The department shall conduct a full evidentiary hearing prior to determining its action on the appeal. The full evidentiary hearing must be completed within one hundred twenty days after the effective date of the action in question. The procedures for a full evidentiary hearing must include:
- a. --Timely written notice to the facility of the basis for the decision as well as disclosure of the evidence on which the decision was made;
 - b. --An opportunity for the facility or its representatives to appear before a hearing officer to refute the basis for the decision;
 - c. --An opportunity for the facility to be represented by counsel or another representative;
 - d. --An opportunity for the facility or its representatives to be heard in person, to call witnesses, and to present documentary evidence;
 - e. --An opportunity for the facility or its representatives to cross-examine witnesses; and
 - f. --A written decision by the department setting forth the reasons for the decision and the evidence upon which the decision is based.
5. --If the department's action to deny, terminate, or not renew a provider agreement is based on the fact that the facility has been denied, terminated, or not renewed for participation in the medicare program, the department shall advise the facility that the facility is entitled to the review procedures for medicare facilities set forth in 42 CFR 498, which shall be in

in lieu of the procedure set forth in this section, a final decision entered under the medicare review procedures is binding on the department and the facility for purposes of medicaid participation.

1. a. This section sets forth the appeals procedures the department makes available:

(1) To a nursing facility that is dissatisfied with the department's finding of noncompliance that has resulted in an enforcement action under chapter 75-02-05.2; or

(2) To an intermediate care facility for the mentally retarded that is dissatisfied with the department's finding of noncompliance with medicaid program requirements that has resulted in the denial of a provided agreement or the termination or nonrenewal of its provider agreement as a sanction imposed under paragraph 1 of subdivision a of subsection 2 of section 75-02-05-08.

b. This section also sets forth the special rules that apply in particular circumstances, the limitations on the grounds for appeal, and the scope of review during a hearing.

2. a. Except as provided in subdivision b, a facility is entitled to a full evidentiary hearing, as described in subsection 3, on any of the actions specified in subsection 1.

b. A facility may not appeal:

(1) The choice of sanction or remedy;

(2) The state monitoring remedy;

(3) The loss of approval for a nurse aide training program; or

(4) The level of noncompliance found by the state survey agency except when a favorable decision would affect the amount of the civil money penalty imposed under section 75-02-05.2-02.

3. The appealing facility is entitled:

a. To appear before an impartial hearing officer to refute the finding of noncompliance upon which the department has based an action taken under subsection 1;

b. To be represented by counsel or other representative; and

- c. To be heard directly or through its representative, to call witnesses, and to provide documentary evidence.
- 4. In appeals disputing the imposition of a civil money penalty:
 - a. The department's finding as to a nursing facility's level of noncompliance must be upheld unless it is clearly erroneous; and
 - b. Upon a finding that a basis for imposing a civil money penalty exists, the appeal decision may not:
 - (1) Set a penalty of zero or reduce a penalty to zero;
 - (2) Review the exercise of discretion by the department to impose a civil money penalty; or
 - (3) Consider any factors in reviewing the amount of the penalty other than the factors described in subsection 6 of section 75-02-05.2-04 and the facility's degree of culpability. For purposes of this paragraph, "culpability" includes neglect, indifference, or disregard for resident care, comfort, or safety. The absence of culpability is not a mitigating circumstance in reducing the amount of the penalty.
- 5. An appeal may be perfected by mailing or delivering the information described in subdivisions a through c to the appeals supervisor. The mailed or delivered material must arrive at the office of the appeals supervisor on or before five p.m. on the sixtieth day after the date the appealing party is provided notice of an action appealable under subdivision a of subsection 1. The appeal request must include:
 - a. A statement of each disputed deficiency and the reason or basis in fact for the dispute;
 - b. The authority in statute or rule upon which the appealing party relies for each disputed item; and
 - c. The name, address, and telephone number upon whom all notices regarding the appeal must be served.
- 6. An appeal of a deficiency may not suspend or delay enforcement action except as provided in this section and chapter 75-02-05.2.
- 7. If an intermediate care facility for the mentally retarded requests a hearing concerning a finding of noncompliance with medicaid program requirements that has resulted in an action under paragraph 2 of subdivision a of subsection 1, the

evidentiary hearing must be completed within one hundred twenty days after the effective date of the action based on that finding.

8. If a nursing facility requests a hearing on the denial or termination of its provider agreement, the request does not delay the denial or termination and the hearing decision need not be issued before the effective date of the denial or termination.

History: Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995; February 1, 1997.

General Authority: NDCC 28-32-02, 50-06-16

Law Implemented: NDCC 50-06-05.1; 42 CFR 431.151, et seq.

CHAPTER 75-02-01.1

AGENCY SYNOPSIS: Amendments to North Dakota Administrative Code Chapter 75-02-01.1, Aid to Families with Dependent Children, include an amendment to Section 75-02-01.1-15, Incapacity of a Parent, concerning the demonstration of incapacity of a parent for AFDC eligibility purposes.

The amendments to Section 75-02-01.1-15 require the claimed incapacity to be supported by competent medical testimony and also require the department to consider the limited employment opportunities available to disabled individuals. These requirements have long been a part of federal regulations (45 CFR Section 233.90(c)(1)(iv)) and the department's practices. The amendments also specify that the incapacity be such as to preclude earning a livelihood by a change of occupation or work location.

75-02-01.1-15. Incapacity of a parent.

1. A child, if otherwise eligible for aid to families with dependent children, is "deprived of parental support or care" when the child's parent has a physical or mental defect, supported by current competent medical testimony, of such a debilitating nature as to reduce substantially or eliminate the parent's capacity either to earn a livelihood or to discharge the parent's responsibilities as a homemaker and provider of child care for a period of thirty days or more. In making a determination of capacity to earn a livelihood, the department shall take into account the limited employment opportunities of disabled parents.
2. The incapacity must be such that it reduces substantially or eliminates employment in the parent's usual occupation or another occupation to which the parent may be able to adapt. The fact that a parent may have to change occupation or work location does not establish incapacity or limited employment opportunities for a disabled parent. It does not matter whether a parent was employed or fulfilled the role of homemaker prior to the onset of the asserted incapacity. Incapacity is established either when the person parent is unable to earn a livelihood or to act as a homemaker. A parent may also establish incapacity by demonstrating that the parent has reached age sixty-five.
3. A determination that a parent is disabled or blind, made by the social security administration, constitutes adequate substantiation of incapacity for purposes of this section.

4. A parent continues to be incapacitated, for purposes of this section, if the incapacity is not reasonably subject to remediation, or if the parent makes reasonable progress towards remediation of the incapacity. For purposes of this section, "reasonable progress towards remediation of the incapacity" means cooperation with medical practitioners who prescribe a course of treatment intended to remediate or limit the effect of the incapacity, including physical therapy, counseling, use of prosthesis, drug therapy and weight loss, cooperation with vocational practitioners, cooperation with vocational and functional capacity evaluations, and reasonable progress in a course of training or education intended to qualify the parent to perform an occupation which, with that training or education, the parent would have the capacity to perform.
5. A parent who engages in activities inconsistent with the claimed incapacity may be determined to not be incapacitated.
6. The department may require a parent to demonstrate reasonable progress towards remediation of the incapacity, and may set reasonable deadlines for the demonstrations.

History: Effective March 1, 1995; amended effective February 1, 1997.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 50-06-05.1, 50-09

CHAPTER 75-02-02.1

AGENCY SYNOPSIS: Amendments to North Dakota Administrative Code Chapter 75-02-02.1, Eligibility for Medicaid, include an amendment to section 75-02-02.1-15, Incapacity of a Parent, concerning the demonstration of incapacity of a parent for Medicaid eligibility purposes.

The amendments to section 75-02-02.1-15 require the claimed incapacity to be supported by competent medical testimony and also require the department to consider the limited employment opportunities available to disabled individuals. The amendments also specify that the incapacity be such as to preclude earning a livelihood by a change of occupation or work location.

75-02-02.1-15. Incapacity of a parent.

1. A child, if otherwise eligible for medicaid benefits, is "deprived of parental support or care" when the child's parent has a physical or mental defect which is supported by current competent medical testimony, of such a debilitating nature as to reduce substantially or eliminate his-or-her the parent's capacity either to earn a livelihood (breadwinner) or to discharge his--or--her the parent's responsibilities as a homemaker and provider of child care (homemaker) for a period of thirty days or more. In making a determination of capacity to earn a livelihood, the department takes into account the limited employment opportunities of disabled parents.
2. ~~If--the--incapacitated--parent--is--a--breadwinner,~~ The incapacity must be such that it reduces substantially or eliminates employment in his--or--her the parent's usual occupation or another occupation to which he-or-she the parent may be able to adapt. The fact that a breadwinner parent may have to change occupation or work location does not establish incapacity or limited employment opportunities for a disabled parent. It does not matter whether a parent was employed or fulfilled the role of homemaker prior to the onset of the asserted incapacity. Incapacity is established either when the parent is unable to earn a livelihood or to act as a homemaker. A breadwinner parent may also establish incapacity by demonstrating that he--or-she the parent has reached age sixty-five.
3. ~~If--the--incapacitated--parent--is--a--homemaker,--the--incapacity must-be-such-that-it-reduces-substantially-or--eliminates--the performance--of--usual--homemaking-tasks-and-the-furnishing-of necessary-care-to-children.~~

4. A determination that a parent is disabled or blind, made by the social security administration, constitutes adequate substantiation of incapacity for purposes of this section.
5. 4. A parent continues to be incapacitated, for purposes of this section, if the incapacity is not reasonably subject to remediation, or if the parent makes reasonable progress towards remediation of the incapacity. For purposes of this section, "reasonable progress towards remediation of the incapacity" means:
- a. ~~In the case of an incapacitated homemaker,~~ cooperation with medical practitioners who prescribe a course of treatment intended to remediate or limit the effect of the incapacity, including, ~~but not limited to,~~ physical therapy, counseling, use of prosthesis, drug therapy and weight loss; and
- b. ~~In the case of an incapacitated breadwinner,~~ cooperation which is required ~~of an incapacitated homemaker,~~ cooperation with vocational practitioners, cooperation with vocational and functional capacity evaluations, and reasonable progress in a course of training or education intended to qualify the parent to perform an occupation which, with that training or education, the parent would have the capacity to perform.
6. 5. A parent who engages in activities which are inconsistent with the claimed incapacity may be determined to not be incapacitated ~~based upon these activities.~~
7. 6. The department may require a parent to demonstrate reasonable progress towards remediation of the incapacity, and may set reasonable deadlines for such the demonstrations.

History: Effective December 1, 1991; amended effective December 1, 1991; February 1, 1997.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-01

CHAPTER 75-02-05.2

AGENCY SYNOPSIS: Amendments to North Dakota Administrative Code Chapter 75-02-05.2, Nursing Facility Enforcement Action, include an amendment to Section 75-02-05.2-03, deleting requirements concerning civil money penalties; an amendment to Section 75-02-05.2-06, describing the required notice of an enforcement action; and an amendment to Section 75-02-05.2-08, deleting material to be incorporated into Section 75-02-03-20, Appeals Concerning Determinations Affecting Nursing Facilities.

These amendments reorganize Chapter 75-02-05.2. Substantively, the amendments incorporate notice provisions consistent with those required by 42 CFR Section 431.153(c) and (g), but do so by grouping all notice requirements respecting a nursing facility enforcement action into one place. The amendments also explain when a civil money penalty would be imposed (as required by 42 CFR Section 431.153(f)). The amendments also extend the appeal period from 30 days to 60 days, but actually do so by deleting subsection 3 of Section 75-02-05.2-08. The replacement language is included in Section 75-01-03-20.

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- 1. If immediate jeopardy to the health or safety of residents exists, the department shall impose a remedy provided in paragraph-1--or--2 subdivision a or b and may, in addition, impose any or all remedies provided in paragraphs-3,-4,-and--5 subdivisions c, d, and e. The department may:
 - {1} a. 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} b. 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} (1) There is an orderly closure of the facility; or
 - {b} (2) Improvements are made in order to bring the facility into substantial compliance;

enforcement action, or fails to publish a required notice, the department shall impose a civil money penalty.

e- 5. 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; amended effective February 1, 1997.

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 issued by the department must be hand delivered or mailed to the facility owner, administrator, or head of the facility's governing board. The notice must include:

a. The basis for the decision;

b. A statement of the deficiencies upon which the decision was based; and

c. If the facility is also participating or seeking to participate in medicare as a skilled nursing facility, and the basis for the department's denial or termination of participation in medicaid is also a basis for denial or termination in medicare:

(1) That the appeals procedures specified for medicare facilities in 42 CFR part 498 apply; and

(2) A final decision entered under the medicare appeals procedure is binding on the department.

2. If the department imposes a remedy:

a. Except as provided in subdivision b, the department must impose all remedies timely, even if the facility requests a hearing; and

b. The department may not collect a civil money penalty until after the period for requesting a hearing has elapsed or, if the facility requests a hearing, until issuance of a final administrative decision that supports imposition of the penalty.

3. 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; amended effective February 1, 1997.

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 in the manner provided in section 75-01-03-20. 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; amended effective February 1, 1997.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396r(h)

MARCH 1997

CHAPTER 75-03-21

75-03-21-03. License.

1. Issuance of a license to operate a home indicates compliance with the required standards, rules, and laws at the time of issuance.
2. A license is nontransferable.
3. A license is valid only for the person or persons named and the premises described on the license.
4. A license is valid for no more than twenty-four months from the date issued.
5. A provider may obtain both a license to operate a family foster home for adults and a license as a family foster care home for children, but may not provide care to both adults and children simultaneously without prior written approval from the department.
6. If the home of a native American family, not subject to the jurisdiction of the state of North Dakota for licensing purposes, is located on a recognized Indian reservation in North Dakota, an affidavit from an agent of the tribal social welfare agency or an appropriate tribal officer may be accepted in lieu of a licensing procedure if the affidavit represents the following:
 - a. That an investigation of the home was completed by the tribe's social welfare agency or tribal council.

b. That the prospective home is in compliance with the standards required by North Dakota Century Code section 50-11-02.

7. If the home of an active duty military family, not subject to the jurisdiction of the state of North Dakota for licensing purposes, is located on a recognized military base in North Dakota, an affidavit from an agent of the base social welfare agency or other appropriate military officer may be accepted in lieu of a licensing procedure if the affidavit represents the following:

a. That an investigation of the home was completed by the military base's social welfare agency.

b. That the prospective home is in compliance with the standards required by North Dakota Century Code section 50-11-02.

History: Effective May 1, 1992; amended effective May 1, 1995; March 1, 1997.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-03

75-03-21-09. General practices. The provider shall:

1. Permit a representative of the department, county agency, or other agency serving a resident entry into the home without prior notice.
2. Provide information about the residents to the department, county agency, or other agency serving a resident with reasonable promptness.
3. Report illness, hospitalization, or unusual behavior of a resident to the agency serving the resident, or to the resident's representative, whichever is appropriate.
4. a. Not permit a person, except for a resident, to reside in the home or act as a caregiver in the home, if that person has been convicted of an offense, unless:
 - (1) The department determines the person has been sufficiently rehabilitated; and
 - (2) The person has not been convicted of an offense which has a direct bearing upon the health, morality, and well-being of persons cared for in the home or a person's ability to serve the public as a caregiver in a home.

- b. Deem completion of probation or parole, or of a period of five years after final discharge or release from any term of imprisonment, without subsequent conviction, as prima facie evidence of sufficient rehabilitation.
 - c. Consider theft crimes involving the theft of entrusted property, crimes involving any assault, and any crimes against persons where the victim or intended victim was a minor, infirm, incompetent, unconscious, intoxicated or under the influence of drugs, or a ward or a resident of the perpetrator's living quarters are deemed as having a direct bearing on the health, morality, and well-being of persons cared for in the home or on a person's ability to serve the public as a caregiver in a home.
5. Assure that information related to the resident shall be kept confidential, except as may be necessary in the planning or provision of care or medical treatment, as related to an investigation or license review under this chapter, or as authorized by the resident.
 6. Not practice, condone, facilitate, or collaborate with any form of illegal discrimination on the basis of race, color, sex, sexual orientation, age, religion, national origin, marital status, political belief, or mental or physical handicap.
 7. Be willing to accept direction, advice, and suggestions concerning the care of residents from the department, county agency, or other agency representative serving a resident.
 8. Assure that residents receiving care in the home are not subjected to abuse, sexual abuse, neglect, or exploitation.
 9. Undergo a medical examination, psychological evaluation, or drug and alcohol evaluation when requested by the department or county agency when there is reason to believe that such an examination or evaluation is reasonably necessary.
 10. Authorize the release of a report of any examination or evaluation, required under subsection 9, to the department or county agency.
 11. Immediately report changes in the identity or number of persons living in the home to the department or county agency.
 12. Immediately report an inability to carry out the parts of a care plan for which the provider is responsible to the monitoring agency and placing agency or person.
 13. When requested by a supervising agency, aid the resident with activities of daily living.

14. Allow a representative of the department, or its designee, to enter the premises, examine the home and records maintained with respect to the residents, and interview the residents, provider, and caregivers in order to evaluate compliance with this chapter.
15. Cooperate with the department or county agency in inspections, complaint investigations, planning for the care of a resident, application procedures, and other necessary activities, and allow access of the department, county agency, ombudsman, or other authorized persons to the home and its residents.
16. Not retaliate against any resident, who has filed a complaint with the department or county agency, by taking away rights or privileges; threatening to take away rights or privileges; or by abusing or threatening to abuse a resident in any manner.
17. Participate in at least one hour of continuing skill development for every two hundred hours of service or care provided, up to a maximum of ten hours per year.

History: Effective May 1, 1992; amended effective May 1, 1995; March 1, 1997.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-03, 50-11-04

CHAPTER 75-03-23

75-03-23-07. Qualified service provider standards and agreements.

1. The individual or agency seeking designation as a qualified service provider shall complete and return the applicable forms supplied by the department in the form and manner prescribed. The qualified service provider shall meet all licensure and certification requirements applicable under state or federal law and departmental standards.
2. All providers shall:
 - a. Have the basic ability to read, write, and verbally communicate;
 - b. Not have been convicted of a offense in the last three years that has a direct bearing on the individual's fitness to be a direct care provider;
 - c. Not have infectious or contagious disease and shall be physically capable of performing the service; and
 - d. Practice confidentiality; and
 - e. Participate in at least one hour of continuing skill development for every two hundred hours of service or care provided, up to a maximum of ten hours per year.
3. Evidence of competency must be provided in:
 - a. The generally accepted procedure for infection control and proper handwashing methods;
 - b. The generally accepted procedure for handling and disposing of body fluids;
 - c. The generally accepted procedure for tub, shower, and bed bathing techniques;
 - d. The generally accepted procedure for hair care techniques, sink shampoo, and shaving;
 - e. The generally accepted procedure for oral hygiene techniques of brushing teeth and cleaning dentures;
 - f. The generally accepted procedure for caring for an incontinent resident;
 - g. The generally accepted procedure for feeding or assisting a resident with eating;

- h. The generally accepted procedure for basic meal planning and preparation;
 - i. The generally accepted procedure for assisting a resident with the self-administration of medications;
 - j. The generally accepted procedure for changing a dressing on noninfected sores;
 - k. The generally accepted procedures and techniques, including dusting, vacuuming, floor care, garbage removal, changing linens, and other similar tasks, for maintaining a kitchen, bathroom, and other rooms used by residents in a clean and safe condition;
 - l. The generally accepted procedures in laundry techniques, including mending, washing, drying, folding, putting away ironing, and related work;
 - m. The generally accepted procedure for assisting a resident with bill paying and balancing a check book;
 - n. The generally accepted procedure for dressing and undressing a resident;
 - o. The generally accepted procedure for assisting with toileting;
 - p. The generally accepted procedure for routine eye care;
 - q. The generally accepted procedure for proper care of nails and feet;
 - r. The generally accepted procedure for caring for skin, including giving a back rub;
 - s. The generally accepted procedure for turning and positioning a resident in bed;
 - t. The generally accepted procedure for transfer using a belt, standard sit, or bed to wheelchair;
 - u. The generally accepted procedure for assisting a resident with ambulation; and
 - v. The generally accepted procedure for making wrinkle-free beds.
4. A physician, registered nurse, occupational therapist, physical therapist, or other person with a professional degree in specialized areas of in-home care shall verify, in writing, on forms furnished by the department, that a provider is competent to perform procedures specified in subsection 3.

Verification that a provider is competent to perform a procedure is evidence of competence with respect to that procedure.

5. Competence may be demonstrated in the following ways:
 - a. A demonstration of the procedure being performed;
 - b. A detailed verbal explanation of the procedure; or
 - c. A detailed written explanation of the procedure.
6. The department shall notify the individual or the agency of its decision on designation as a qualified service provider. If the decision is not favorable, the individual or agency shall be notified why the requirements for designation as a qualified service provider were not met. If the decision is favorable, the individual's or the agency's name shall be added to the qualified service provider list for each identified county, along with the specific services, endorsements, and unit rates.
7. The county social service board shall maintain a list of qualified service providers. Once the client's need for services has been determined, the client selects a provider from the list and the county social service board issues an authorization to provide services to the selected qualified service provider.
8. A service payment may be issued only to a qualified service provider who bills the department after the delivery of authorized services.

History: Effective June 1, 1995; amended effective March 1, 1997.

General Authority: NDCC 50-06.2-03(6)

Law Implemented: NDCC 50-06.2-03(5)

AGENCY SYNOPSIS: Regarding proposed amendments to North Dakota Administrative Code Chapter 75-03-25, Ombudsman Program; North Dakota Administrative Code Chapter 75-03-21, Licensure for Adult Foster Care Homes; North Dakota Administrative Code Chapter 75-03-23, Provision of Home and Community-Based Services Under the Service Payments for Elderly and Disabled Program and the Medicaid Waiver for the Aged and Disabled Program; North Dakota Administrative Code Article 75-05, Vocational Rehabilitation.

Notices were published in the newspapers on April 16 and April 23, 1996, to initiate the public comment period for the above-listed rules. The only comments received dealt with new Chapter 75-03-25.

New Chapter 75-03-25, Ombudsman Program, is necessary to provide for a new program in the state that provides long-term care residents with ombudsman protection; the proposed amendments to North Dakota Administrative Code Chapter 75-03-21, Licensure for Adult Foster Care Homes, are necessary to provide for affidavit homes on military bases and Indian reservations and to add the requirement that providers participate in continuing skills development; the proposed amendments to Chapter 75-03-23, Provision of Home and Community-Based Services Under the Service Payments for Elderly and Disabled Program and the Medicaid Waiver for the Aged and Disabled Program, are necessary to add the requirement that providers participate in continuing skill development; the proposed amendments to Article 75-05 are necessary to conform the language with prior definitional changes.

A public hearing was conducted on June 11, 1996, in Bismarck, concerning all proposed amendments and chapters.

Written comments were received from five commentors within the comment period. Two comments were received at the public hearing. The commentors were:

1. Fred Gladden of Bismarck.
2. Jo Hildebrandt of Bismarck.
3. Stephen H. Johnson of Ashley, ND.
4. North Dakota Long Term Care Association.
5. David Peske of Bismarck.

The proposed new Chapter 75-03-25 is expected to have an impact on the regulated community in excess of \$50,000, while the proposed amendments to Chapter 75-03-21, 75-03-23, and Article 75-05 are not expected to have an impact on the regulated community in excess of \$50,000. No taking of real property is involved in these rulemaking actions.

STAFF COMMENT: Chapter 75-03-25 contains all new material but is not underscored so as to improve readability.

**CHAPTER 75-03-25
OMBUDSMAN PROGRAM**

Section	
75-03-25-01	Definitions
75-03-25-02	Appointment of the State Long-term Care Ombudsman
75-03-25-03	Duties of the State Long-term Care Ombudsman
75-03-25-04	Appointment of the Regional Long-term Care Ombudsman
75-03-25-05	Duties of the Regional Ombudsman
75-03-25-06	Appointment of the Community Ombudsman - Qualifications
75-03-25-07	Duties of the Community Ombudsman
75-03-25-08	Restrictions on Services Offered by Community Ombudsman
75-03-25-09	Reasonable Access to Long-term Care Facility, Residents, and Records
75-03-25-10	Conflict of Interest
75-03-25-11	Dismissal of an Ombudsman
75-03-25-12	Legal Counsel
75-03-25-13	Retaliation Prohibited
75-03-25-14	Resident's Right to Notice
75-03-25-15	Statewide Uniform Reporting System

75-03-25-01. Definitions. As used in this chapter:

1. "Administrative action" means an act, decision, or a failure to act or to make a decision by an owner, employee, or agent of a long-term care facility or by a public agency that affects the provision of services to a resident.
2. "Basic care facility" means any residence, not licensed under North Dakota Century Code chapter 23-16 by the state department of health, that provides room and board to five or more individuals who are not related by blood or marriage to the owner or manager of the residence and who, because of impaired capacity for independent living, require health, social, or personal care services, but do not require regular twenty-four-hour medical or nursing services.
3. "Community ombudsman" means an individual appointed by the department as an ombudsman on the community level as opposed to the regional or state level.

4. "Complaint" means a written or verbal statement of alleged violation of a statute, rule, regulation, or policy, or other alleged wrongful acts or omissions related to health, safety, welfare, personal, or civil rights of a long-term care resident.
5. "Department" means the department of human services.
6. "Designated representative" means a legal representative or any individual chosen by the long-term care resident to represent the long-term care resident.
7. "Immediate family" means an individual whose relationship by blood, marriage, or adoption to an individual is within the second degree of kinship.
8. "Legal representative" means the long-term care resident's legal counsel, an individual who possesses the resident's unlimited power of attorney or power of attorney that specifically includes the authority to release confidential information, a guardian with unlimited power, or a guardian or conservator whose grant of authority specifically includes the authority to release confidential information.
9. "Long-term care facility" means a facility defined in North Dakota Century Code chapter 50-10.1, as any skilled nursing facility, intermediate care facility, basic care facility, nursing home as defined in subsection 3 of North Dakota Century Code section 43-34-01, boardinghouse, or swing bed hospital approved to furnish long-term care services; provided, that a facility, as defined by subsection 2 of North Dakota Century Code section 25-01.2-01, providing services to developmentally disabled persons is not a long-term care facility.
10. "Medical record" means a record maintained by a long-term care facility relating to the medical and physical condition, care, and treatment of a particular long-term care resident. The medical record includes social and other information as required by the facility and the resident.
11. "Reasonable access" means the ombudsman's right to access a long-term care facility, a long-term care resident, or a long-term care resident's records, based on the ombudsman's need to know information in the provision of services.
12. "Resident" means an individual residing in and receiving personal care from a long-term care facility.

13. "Second degree of kinship" means an individual whose relationship to another individual by blood, marriage, or adoption is as spouse, sister, brother, mother, father, or aunt, or uncle.

History: Effective March 1, 1997.

General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8)

75-03-25-02. Appointment of the state long-term care ombudsman.

The executive director of the department shall appoint an individual as the state long-term care ombudsman. The state long-term care ombudsman shall serve as a full-time, classified service employee of the division of aging services and must exhibit expertise and experience in long-term care and advocacy.

History: Effective March 1, 1997.

General Authority: NDCC 50-10.1-02, 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8)

75-03-25-03. Duties of the state long-term care ombudsman. The state long-term care ombudsman shall:

1. Identify, investigate, and resolve complaints made by, or on behalf of, long-term care residents;
2. Investigate and resolve complaints involving long-term care service providers, representatives of providers, public agencies, or health and social service agencies or complaints that pertain to administrative action, inaction, or decisions that may adversely affect the health, safety, welfare, or rights of a long-term care resident, including the appointment and functions of guardians and representative payees;
3. Provide assistance to a long-term care resident in protecting the resident's health, safety, welfare, or rights;
4. Provide a long-term care resident with information and procedures to protect the long-term care resident's rights and to obtain health, safety, welfare, or rights services from long-term care service providers, public agencies, or health and social service agencies;
5. Develop and monitor the effectiveness of complaint registration and complaint resolution mechanisms that provide a long-term care resident regular and timely access to ombudsman services;
6. Represent the interests of a long-term care resident before governmental agencies;

7. Seek administrative and legal remedies to protect the health, safety, welfare, or rights of a long-term care resident;
8. Research, evaluate, comment on, and monitor the development and implementation of federal, state, and local laws, administrative rules, regulations, and other federal, state, and local policies and actions, pertaining to the health, safety, welfare, and rights of a long-term care resident;
9. Recommend changes and facilitate public comments on laws, rules, regulations, policies, actions, and decisions pertaining to the health, safety, welfare, and rights of a long-term care resident;
10. Provide training for the regional and community ombudsman and train volunteers and encourage the development of citizen organizations to take part in the ombudsman program;
11. Provide technical assistance for the development of a long-term care resident council and a resident's family council for the protection of a long-term care resident's well-being and rights; and
12. Perform other operations and projects required by federal and state aging services.

History: Effective March 1, 1997.

General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8)

75-03-25-04. Appointment of the regional long-term care ombudsman. The executive director of the department, through the director of aging services, shall designate an individual in each region to serve as the regional long-term care ombudsman. The individual designated as the regional long-term care ombudsman shall have demonstrated capability to carry out the responsibilities of the office, be free of conflicts of interest, and meet such additional requirements as the director of aging services may specify.

History: Effective March 1, 1997.

General Authority: NDCC 50-10.1-02, 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8)

75-03-25-05. Duties of the regional ombudsman. The regional ombudsman shall:

1. Investigate and resolve complaints involving long-term care service providers, or representatives of providers, public agencies, or health and social service agencies and pertaining to administrative action, inaction, or decisions that may

- adversely affect the health, safety, welfare, or rights of a long-term care resident;
2. Ensure that a long-term care resident in the regional ombudsman's service area has regular, reliable, and timely access to the regional and community ombudsman;
 3. Ensure that complaints and requests for assistance receive timely responses;
 4. Represent the interests of a long-term care resident before governmental agencies and pursue administrative and legal remedies, to protect the health, safety, welfare, and rights of a long-term care resident;
 5. Review and make necessary comments on existing and proposed statutes, rules, regulations, and other governmental policies and administrative actions pertaining to the health, safety, welfare, and rights of a long-term care resident;
 6. Facilitate the opportunity for the public to comment on federal and state statutes, rules, regulations, policies, and administrative actions pertaining to the health, safety, welfare, and rights of a long-term care resident.
 7. Advocate for and support the development of a long-term care resident and a long-term care resident's family council;
 8. Recruit and select the community ombudsman, maintain documentation of training, and investigate any complaints about the community ombudsman, in the form and manner required by the department;
 9. Conduct an annual evaluation of each community ombudsman in the form and manner required by the department; and
 10. Perform other operations and projects required by the state long-term care ombudsman.

History: Effective March 1, 1997.

General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8)

75-03-25-06. Appointment of the community ombudsman - Qualifications. With the approval of the director of aging services, the regional long-term ombudsman may designate a community ombudsman. If the community ombudsman is an individual, the individual must be at least age eighteen. If the community ombudsman is an organization, the organization must be a public or nonprofit private organization. The community ombudsman is not paid and is not an employee of the department. Each designated community ombudsman shall:

1. Have references and experiences that demonstrate the capability to fulfill comparable duties as listed in section 75-03-25-07;
2. Be free of conflicts of interest;
3. Possess any other qualifications that the state and regional long-term care ombudsman regard necessary to fulfill the duties of the position;
4. Have completed initial and ongoing training;
5. Have agreed to abide by the confidentiality statement, the conflict of interest statement, and the job description;
6. Be able to communicate with long-term care residents and facility staff;
7. Be able to communicate with residents who may be physically or mentally impaired; and
8. Understand and have the ability to advocate on behalf of residents.

History: Effective March 1, 1997.

General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8)

75-03-25-07. Duties of the community ombudsman. The community ombudsman shall:

1. Provide ombudsman services to protect the health, safety, welfare, and rights of a long-term care resident;
2. Be present at the ombudsman's assigned facility on a regular basis;
3. Maintain confidentiality in all ombudsman activities;
4. Receive and report concerns, issues, and complaints to the regional ombudsman; and
5. Assist the regional ombudsman with assessment, complaint resolution, and follow-up activities.

History: Effective March 1, 1997.

General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8)

75-03-25-08. Restrictions on services offered by community ombudsman. While in the role of the community ombudsman in an assigned long-term care facility, the community ombudsman shall not:

1. Provide direct personal care to a long-term care resident;
2. Provide transportation for a long-term care resident; or
3. Conduct personal business for a long-term care resident.

History: Effective March 1, 1997.

General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8)

75-03-25-09. Reasonable access to long-term care facility, residents, and records. The division of aging services shall ensure that the state, regional, and community ombudsmen have reasonable access to:

1. A long-term care facility and a long-term care resident;
2. Review a long-term care resident's medical records, as necessary to resolve a complaint, if the resident or the resident's legal representative gives written permission;
3. Review a long-term care resident's medical record if a court orders disclosure;
4. Open administrative records, policies, and documents of a long-term care facility; and
5. State licensure and certification records regarding long-term care facilities.

History: Effective March 1, 1997.

General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8)

75-03-25-10. Conflict of interest.

1. In the ombudsman's official capacity and in the performance of the ombudsman's official duties, an ombudsman may not serve in any protective custody capacity for a long-term care resident, unless the long-term care resident is not in a facility served by the ombudsman.
2. a. Any ombudsman or any member of the ombudsman's immediate family may not be a board member, have an ownership interest, or be employed in the long-term care facility in which the community ombudsman is assigned.

- b. If a public or nonprofit organization provides ombudsman services, an officer of the entity or any member of the officer's immediate family may not be a board member, have an ownership interest, or be employed in the long-term care facility in which the entity serves as the community ombudsman.
3. An ombudsman may not have the responsibility for licensure or certification of any long-term care facility.
4. An ombudsman may not receive or have the right to receive, directly or indirectly, any remuneration, in cash or in kind, under a compensation arrangement with an owner or operator of a long-term care facility.

History: Effective March 1, 1997.

General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8)

75-03-25-11. Dismissal of an ombudsman. Any ombudsman may be dismissed if the ombudsman:

1. Fails to perform ombudsman services in a manner consistent with the program's policies and procedures;
2. Fails to maintain confidentiality;
3. Fails to report abuse, neglect, or exploitation of a long-term care resident with or without the victim's name in accordance with the victim's preference; or
4. Communicates a known false statement.

History: Effective March 1, 1997.

General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8)

75-03-25-12. Legal counsel. Legal counsel shall be provided to any ombudsman against whom suit or other legal action is brought or threatened to be brought in connection with the performance of official ombudsman duties.

History: Effective March 1, 1997.

General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8)

75-03-25-13. Retaliation prohibited. A long-term care facility, and its agents, may not take or threaten retaliatory action against a long-term care resident, an employee, or any other individual because of the filing of a complaint by or on behalf of the long-term care

resident, or because of the provision of information to a long-term care ombudsman constituting or relating to a complaint. Examples of retaliatory actions include:

1. The discharge from or termination of employment;
2. The demotion, negative work performance evaluation, reduction of hours worked, reduction of benefits or work privileges, or reduction in remuneration for services of the employee; or
3. The restriction or prohibition of access by the employee to any place of employment or to individuals affiliated with the place of employment.

History: Effective March 1, 1997.

General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8), 50-10.1-05

75-03-25-14. Resident's right to notice. The long-term care facility shall post, in a conspicuous place in each long-term care facility, a copy of North Dakota Century Code chapter 50-10.1, a statement of the right to file a complaint concerning administrative actions which affect any long-term care resident, and the address where a complaint may be filed. The long-term care facility shall provide copies of the posted information to each long-term care resident, the long-term care resident's spouse, and any designated representative of a long-term care resident at the time the long-term care resident is admitted to the long-term care facility.

History: Effective March 1, 1997.

General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8), 50-10.1-05

75-03-25-15. Statewide uniform reporting system.

1. The department shall establish a statewide uniform reporting system to collect and analyze information on complaints and conditions in long-term care facilities.
2. The department shall conduct the following actions through the statewide uniform reporting system:
 - a. Maintain and publicize the availability of a statewide toll-free telephone number for the reporting of complaints regarding long-term care issues;
 - b. Coordinate the receipt, investigation, referral, and resolution of complaints;
 - c. Maintain statistical information;

- d. Compile and mail a statistical report to other agencies as required;
 - e. Gather and disseminate information regarding issues facing long-term care facilities;
 - f. Assist in the development of administrative and legislative proposals for improving the quality of life and care of a long-term care resident of a long-term care facility; and
 - g. File an annual report that includes a summary of cases, information and referral requests, and long-term care issues.
3. No information maintained in the statewide uniform reporting system shall be disclosed for the purpose of rating or comparing services provided by individual long-term care facilities.

History: Effective March 1, 1997.

General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8), 50-10.1-06

CHAPTER 75-03-27

[Reserved]

CHAPTER 75-03-28

[Reserved]

CHAPTER 75-03-29

[Reserved]

CHAPTER 75-03-30

[Reserved]

CHAPTER 75-03-31

[Reserved]

AGENCY SYNOPSIS: Regarding proposed amendments to North Dakota Administrative Code Chapter 75-03-32, Mill Levy, and proposed amendments to North Dakota Administrative Code Chapter 75-08, Vocational Rehabilitation; specifically Section 75-08-01-23, Order of Selection.

The North Dakota Department of Human Services is proposing to promulgate new North Dakota Administrative Code Chapter 75-03-32, Mill Levy, and amendments to North Dakota Administrative Code Chapter 75-08, Vocational Rehabilitation; specifically Section 75-08-01-23, Order of Selection. A public hearing on the rules under consideration was held on Tuesday, September 10, 1996, in Bismarck, North Dakota, in the AV room, located on the second floor of the Judicial Wing of the State Capitol. The hearing opened at 2:30 p.m. and continued until no further testimony was offered.

The proposed new North Dakota Administrative Code Chapter 75-03-32, Mill Levy, is required for the efficient and effective implementation of the mill levy and the use of those funds collected under the auspices of the mill levy in accordance with North Dakota Century Code Section 57-15-56.

The proposed amendments to North Dakota Administrative Code Section 75-08-01-23, Vocational Rehabilitation, Order of Selection, is required due to federal law changes.

Proposed North Dakota Administrative Code Chapter 75-03-32, Mill Levy, is not expected to have an impact on the regulated community in excess of \$50,000. No taking of real property is involved in the rulemaking action.

The proposed amendments to North Dakota Administrative Code Section 75-08-01-23, Vocational Rehabilitation, Order of Selection, is expected to have an impact on the regulated community in excess of \$50,000. No taking of real property is involved in the rulemaking action.

Four commentors presented oral comments on the Mill Levy at the oral hearing. No comments were presented regarding the amendments to the Vocational Rehabilitation rules.

The commentors were:

1. Charles Bosch of Mandan.
2. Arnold Hilleren of Parshall.
3. Cheryl Jongerius of Ellendale.
4. Rick Thoms of Minot.

STAFF COMMENT: Chapter 75-03-32 contains all new material but is not underscored so as to improve readability.

**CHAPTER 75-03-32
MILL LEVY**

Section	
75-03-32-01	Definitions
75-03-32-02	Senior Citizens Mill Levy Funds
75-03-32-03	Responsibilities of County or City Commissioners or Contracted Agency
75-03-32-04	Responsibilities of County or City Auditor or Contracted Agency
75-03-32-05	Responsibilities of Eligible Recipient Organization or Agency Receiving Senior Citizens Mill Levy Funds
75-03-32-06	Responsibilities of the Department

75-03-32-01. Definitions.

1. "Contracted agency" means a county council on aging or a comparable representative group in counties or cities.
2. "Counseling" means the giving of guidance and advice to individuals and groups of senior citizens.
3. "Department" means the North Dakota department of human services.
4. "Eligible recipient organization or agency" means an organization incorporated under the laws of this state as a nonprofit corporation or a government agency or organization possessing a federal tax-exempt identification number from the internal revenue service.
5. "Expense" means all funds expended by the recipient of senior citizen mill levy funds.
6. "Health" means programs and services, including screening, consultation, referral, education and health maintenance, and emotional wellness.
7. "Human service center" means a facility established in accordance with the provisions of North Dakota Century Code section 50-06-05.3.
8. "Information and referral" means a service that links the individual who has a need or question to the appropriate individual or agency. Followup is part of an information and referral service.
9. "Regional aging services program administrator" means an individual assigned the responsibility to plan, develop, implement, and assess programs under the Older Americans Act.

10. "Senior citizen" means an individual sixty years of age or older or the individual's spouse, regardless of age.
11. "Senior citizen center" means a community focal point on aging where older individuals come together for services and programs which enhance the individuals' dignity, support the individuals' independence, and encourage the individuals' involvement in and with the community.
12. "Senior citizen mill levy funds" means the total funds generated by a city or county senior mill levy and funds provided by the state to match those levies.
13. "Services and programs" means the performance of labor for the benefit of another. Examples of services include transportation, outreach, and congregate meals. Programs are generally less structured than a service and tend to be provided intermittently throughout the year. Examples of programs include nature, drama, literary, educational, music, and indoor and outdoor physical programs.
14. "Service and program audit" means review and verification of the allowability of services and document appropriate use of funds under North Dakota Century Code section 57-15-56.
15. "Unallowable services and programs" means those which are not defined under services and programs and which are deemed to be ineligible for subsidy from proceeds from the senior citizens mill levy tax.
16. "Welfare" means organized efforts for social betterment of individuals or organizational groups of senior citizens. This includes efforts listed in the services and programs definition.

History: Effective March 1, 1997.

General Authority: NDCC 57-15-56

Law Implemented: NDCC 50-06-16, 57-15-56

75-03-32-02. Senior citizens mill levy funds.

1. Mill levy funds may be spent on establishing or maintaining services and programs for senior citizens. Services and programs that are allowable include the following:
 - a. Transportation services;
 - b. Outreach services;
 - c. Congregate meals;
 - d. Home-delivered meals;

- e. Health-related services;
- f. Chore services;
- g. Educational programs;
- h. Telephone reassurance;
- i. Volunteer services;
- j. Friendly visiting with a companion;
- k. Escort services;
- l. Information and referral services;
- m. Legal services;
- n. Public information advocacy;
- o. Ombudsman services;
- p. Nutrition education and counseling;
- q. Case management;
- r. Respite care;
- s. Housing and counseling;
- t. Energy assistance;
- u. Adult day care;
- v. Insurance counseling;
- w. Senior employment;
- x. Support groups;
- y. Tax counseling; and
- z. In-home services, which means any authorized service provided in the client's home which is not otherwise listed.

2. Maintenance expenses of senior citizen centers are allowable if the senior citizen center provides services, including information, health, welfare, counseling, or referral services.

3. Senior citizen centers shall provide opportunities for an individual to contribute the individual's time and talents to

groups or organizations in the community with no monetary compensation for services delivered.

4. Expenses related to the maintenance of senior citizen center buildings may include personnel, utilities, repair, insurance, taxes, and accessibility factors.
5. Mill levy funds may be used to fund the total cost of services or may be used as match dollars together with other sources of funding to provide services.
6. Unallowable services and programs include:
 - a. Expansion of senior citizens centers;
 - b. Recreation or leisure time activities; and
 - c. Donations to other organizations not related to senior citizens.
7. Only organizations incorporated as nonprofit under state law are eligible to receive funds. The county or city commissioners may administer or contract for the distribution of funds.
8. An organization or agency must file a report of its program for the fiscal year in which funds are requested. This report must show all financial resources available and how those financial resources are budgeted or intended to be used and, specifically, how the requested senior citizens mill levy funds are to be used.
9. A recipient of senior mill levy funds must be reviewed and approved annually to receive funds by the county or city commissioners or the contracted agency.
10. Articles of incorporation as a nonprofit corporation and a copy of the county or city commissioners' contract are required to secure state bonding.
11. The amount of matching funds to be distributed by the department is determined by the legislative assembly. Distribution must be made on or before March first of each year and may be made only if a required written report has been received for the expenditure of proceeds of the tax

levied the preceding year. The county or city auditor must submit the written report to the department's aging services division by February first of each year.

History: Effective March 1, 1997.

General Authority: NDCC 57-15-56

Law Implemented: NDCC 50-06-16, 57-15-56

75-03-32-03. Responsibilities of county or city commissioners or contracted agency.

1. The county or city commissioners may retain all authority for the senior citizens mill levy funds.
2. The county or city commissioners may enter into a contract to administer distribution of funds with the county council on aging or comparable representative group in counties or cities that do not have a council on aging.
 - a. The county or city commissioners may delegate duties to the county or city auditor.
 - b. The county or city commissioners shall retain the right to final review and approval of the decisions of the contracted agency or the contracted agency's designee.

History: Effective March 1, 1997.

General Authority: NDCC 57-15-56

Law Implemented: NDCC 50-06-16, 57-15-56

75-03-32-04. Responsibilities of county or city auditor or contracted agency. An audit may be called by a county or city auditor when it is deemed appropriate. An audit must be conducted once every two years and a report must be completed and presented to the county commissions or governing body of a city, as appropriate. The county or city auditor or contracted agency shall:

1. Specifically identify mandatory programmatic responsibilities;
2. Assure that senior citizens mill levy funds are distributed to clubs or organizations that serve the eligible public and are not exclusively for members only;
3. Receive appeals and resolutions from an eligible applicant relative to senior citizen mill levy funding decisions;
4. Provide application forms and instructions to those requesting funds;
5. Assure that applicants qualify for funds, have nonprofit status, and serve senior citizens;

6. Assure that grant applications are complete, are received on time, are approved by membership, contain only allowable expenses, and determine if service and program audits are acceptable;
7. Send notices to all applicants stating the action taken, including approval, denial, reduction of funds, and the amount of funds;
8. Assure fiscal audits have been completed;
9. Submit a unified county budget to the state tax department;
10. Send a property tax abstract for senior citizens mills and dollar values to the department's aging services division;
11. Assemble and compile reports and submit reports to the department's aging services division; and
12. Disburse funds to approved agencies or organizations.

History: Effective March 1, 1997.

General Authority: NDCC 57-15-56

Law Implemented: NDCC 50-06-16, 57-15-56.

75-03-32-05. Responsibilities of eligible recipient organization or agency receiving senior citizens mill levy funds.

1. An eligible recipient organization or agency receiving senior citizens mill levy funds shall:
 - a. Develop a budget;
 - b. Present the budget to members for approval and recording in the minutes;
 - c. Submit an approved budget to the county or city commission or contracted agency;
 - d. Set up a recordkeeping system that:
 - (1) Maintains a separate fund;
 - (2) Disburses monies by check;
 - (3) Requires receipts for each disbursement;
 - (4) Assures timely deposits;
 - (5) Accounts for income generated by services funded with mill levy money; and

- (6) Assures internal control procedures, including two signatures on all checks and board or financial committee approval of all bills;
- e. Provide a formal written budget revision and submit an explanation if line items vary by one thousand dollars or fifty percent of the line item, whichever is greater. Revision requests must be approved by the members and reflected in the minutes;
- f. Spend dollars only on services and programs for senior citizens;
- g. Retain the following financial and programmatic records:
 - (1) A checkbook;
 - (2) Bank statements and all canceled and voided checks;
 - (3) Receipts;
 - (4) Ledgers and journals;
 - (5) Approved budgets;
 - (6) Minutes; and
 - (7) Fiscal and program audit reports;
- h. Provide a method to record and report the number of services provided using senior citizen mill levy funds;
- i. Submit end-of-year reports to commissions or the contracted agency;
- j. Submit an annual report to members; and
- k. Have fiscal and programmatic records available for review by the department's staff and designees of the county or city commission.

History: Effective March 1, 1997.

General Authority: NDCC 57-15-56

Law Implemented: NDCC 50-06-16, 57-15-56

75-03-32-06. Responsibilities of the department.

1. The department's aging services division shall:
 - a. Receive abstracts from auditors;
 - b. Determine resource allocation;

- c. Assure reports have been received from county or city auditors;
 - d. Disburse funds to county or city auditors;
 - e. Assemble a unified annual report;
 - f. Have available statistical data for legislators; and
 - g. Provide support services for regional aging services program administrators.
2. Regional aging services program administrators shall:
- a. Provide educational and technical assistance to county or city auditors, commissioners, or the contracted agency; and
 - b. Perform program audits as needed.

History: Effective March 1, 1997.

General Authority: NDCC 57-15-56

Law Implemented: NDCC 50-06-16, 57-15-56

CHAPTER 75-05-03

75-05-03-03. Extended care services.

1. 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 at least two of the following options:

(1) SMI group care.

(a) SMI group care facilities 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 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~~ SMI group care facility shall:

[1] Assure that the client's individual plan includes input from the community home counselors and the residential treatment team.

[2] Maintain an inventory of the client's personal belongings when the client enters the ~~transitional--living~~ SMI group care facility.

(c) A brochure of client rights according to section 75-05-01-10 must be given to all new residents of the ~~transitional~~ SMI group care facility upon admission.

(2) Semi-independent living arrangement.

(a) The human service center shall develop policies and procedures that facilitate conformance with all local building and fire safety codes to encourage that safe and sanitary conditions are maintained.

(b) Human service center staff shall develop policies and procedures to ensure that ~~supportive~~ semi-independent living services are being provided in the client's residence.

(c) An evaluation of the client's progress in ~~supportive~~ semi-independent living services must be documented in the client's record on at least 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 must occur daily.

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 illness 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 at least monthly.
 3. Case management and aftercare services for an individual with serious mental 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 an individual with serious mental illness must be identified on the client's individual plan and must be documented in the progress notes.
 - c. Aftercare services must be 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 shall, through case management services, ensure that extended services are provided for an individual with serious mental illness who 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.
 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.
 - b. The program must include:
 - (1) Designation of an individual to serve as the community supportive care supervisor;
 - (2) Assignment of responsibility to the community supportive care supervisor for the recruitment, scheduling, and training of all community supportive caregivers; and
 - (3) Provision of companionship services for an individual with serious mental illness who has been referred by a multidisciplinary staff. These services may include: transportation; assisting in meal preparation; leisure activities; and assisting in

shopping for food, clothes, and other essential items by community supportive caregivers.

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;
 - (3) Be located in an ADA accessible location in the community which provides a minimum of 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 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 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; March 1, 1997.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

CHAPTER 75-05-04

75-05-04-05. Individual plan review. 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. For vocational rehabilitation services, the vocational rehabilitation counselor and the client must review and evaluate the individual written rehabilitation program at least every twelve months. 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; March 1, 1997.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

CHAPTER 75-05-05

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 the reports are assessed in accordance with North Dakota Century Code chapters 50-25.1 and 75-03-19;
 - b. Determine if the 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 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. Ensure county access to a multidisciplinary child protection team;
 - g. Ensure that child abuse and neglect information is entered into the department's data base;
 - h. Provide or arrange for an orientation in children's services for appropriate county social service board 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 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 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 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, approve and issue the license, or deny the license and provide appropriate notice to the applicant;
 - k. 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, 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 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 special health services, the regional representative shall:
 - a. Provide technical assistance to county social service staff in the administration of ~~crippled~~ children's special health services; and
 - b. Assist in and coordinate with the department's division of ~~crippled~~ children's special health services and the county social service boards for the provision of all ~~crippled~~ ~~children~~ children's special health 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, approve and issue the license, or deny the license and provide timely notice to applicant;
 - b. 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; March 1, 1997.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

AGENCY SYNOPSIS: Regarding proposed amendments to North Dakota Administrative Code Chapter 75-08, Vocational Rehabilitation; specifically Section 75-08-01-23, Order of Selection.

The North Dakota Department of Human Services is proposing to promulgate new North Dakota Administrative Code Chapter 75-03-32, Mill Levy, and amendments to North Dakota Administrative Code Chapter 75-08, Vocational Rehabilitation; specifically Section 75-08-01-23, Order of Selection. A public hearing on the rules under consideration was held on Tuesday, September 10, 1996, in Bismarck, North Dakota, in the AV room, located on the second floor of the Judicial Wing of the State Capitol. The hearing opened at 2:30 p.m. and continued until no further testimony was offered.

The proposed new North Dakota Administrative Code Chapter 75-03-32, Mill Levy, is required for the efficient and effective implementation of the mill levy and the use of those funds collected under the auspices of the mill levy in accordance with North Dakota Century Code Section 57-15-56.

The proposed amendments to North Dakota Administrative Code Section 75-08-01-23, Vocational Rehabilitation, Order of Selection, is required due to federal law changes.

Proposed North Dakota Administrative Code Chapter 75-03-32, Mill Levy, is not expected to have an impact on the regulated community in excess of \$50,000. No taking of real property is involved in the rulemaking action.

The proposed amendments to North Dakota Administrative Code Section 75-08-01-23, Vocational Rehabilitation, Order of Selection, is expected to have an impact on the regulated community in excess of \$50,000. No taking of real property is involved in the rulemaking action.

Four commentors presented oral comments on the Mill Levy at the oral hearing. No comments were presented regarding the amendments to the Vocational Rehabilitation rules.

The commentors were:

1. Charles Bosch of Mandan.
2. Arnold Hilleren of Parshall.
3. Cheryl Jongerius of Ellendale.
4. Rick Thoms of Minot.

CHAPTER 75-08-02

75-08-01-23. Order of selection.

1. An individual applying for services, including those an individual receiving extended evaluation, must receive all services necessary to determine eligibility for vocational rehabilitation services and an order of selection priority classification. These services must be provided on a timely basis in accordance with federal law.
2. Each individual must be informed of the individual's priority category and the individual's right to appeal the assigned category when the individual is notified of eligibility. If the individual's priority category cannot be determined at the time of eligibility, a comprehensive needs assessment must be conducted. After the results of the comprehensive needs assessment, the individual must be notified of the priority category and the individual's right to appeal.
3. If services cannot be provided, ~~due to a lack of resources,~~ to all eligible individuals who apply due to a lack of resources, an order of selection procedure must be implemented.
 - a. ~~After completion of a comprehensive assessment to determine rehabilitation needs, vocational rehabilitation shall assign an eligible individual with disabilities a priority.~~
 - b. ~~All services, including postemployment services, must be available to an individual receiving services under a priority.~~
 - c. An individual receiving services under an individual written rehabilitation plan must continue to receive all required services. An individual requiring or receiving postemployment services must be considered to be under an individual written rehabilitation plan. An individual described in paragraphs 1 through 4 3 of subdivision b must be assigned a priority in the order in which the paragraphs are listed. Where a category is divided into a subcategory, an individual described in the category must be assigned a priority in the order in which the subcategories are listed.
 - b. Any public safety officer injured in the line of duty shall be given first priority in all categories.

(1) Category 1:

(a) An individual determined eligible for services and who has an individualized written rehabilitation program in effect; or

(b) An individual who can be provided services without the expenditure of vocational rehabilitation funds.

(2) Category 2:

(a) An individual determined to have a most severe disability and who is a public safety officer injured in the line of duty;

(b) An individual determined to have a most severe disability and whose projected employment outcome could remove or reduce the amount of public support available to the individual;

(c) An individual determined to have a most severe disability and who is being served through a cooperative program, including vision services and transition; or

(d) Other individuals with a most severe disability.

(3) (2) Category 3: 2:

(a) An individual with severe disabilities and who is a public safety officer injured in the line of duty;

(b) An individual with severe disabilities and whose projected employment outcome could remove or reduce the amount of public support available to the individual;

(c) An individual with severe disabilities and who is being served through a cooperative program, including vision services and transition; or

(d) Other individuals with a severe disability.

(4) (3) Category 4-3:

(a) An individual with nonsevere disabilities and who is a public safety officer injured in the line of duty;

(b) An individual with nonsevere disabilities and whose projected employment outcome could remove or reduce the amount of public support available to the individual;

(e)--An--individual--with--nonsevere-disabilities-and
who--is--being--served--through--a--cooperative
program,-such-as-vision-services-and-transition;
or

(d)--Other--individuals--with--nonsevere-disabilities-

History: Effective October 1, 1995; amended effective March 1, 1997.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06-16, 50-06.1-04

MAY 1997

CHAPTER 75-02-01.1

AGENCY SYNOPSIS: Amendments to North Dakota Administrative Code Chapter 75-02-01.1, Aid to Families with Dependent Children, include an amendment to section 75-02-01.1-44, Deductions for Voluntary or Required Payments of Current Support. This amendment ended, effective October 1, 1996, the practice of "passing through" up to \$50 of current child support. The effect of this amendment is to effectively reduce benefits available to an eligible family, through the AFDC program, by up to \$50 per month.

75-02-01.1-44. Deductions for voluntary or required payments of current support.

- 1: When determining the amount of aid to families with dependent children, the county agency shall deduct ~~the lesser of fifty dollars or~~ the amount of current child or spousal support actually paid, of any payment made, prior to the approval of the application for benefits, by an absent parent to any member of the assistance unit ~~as current child or spousal support.~~
- 2: ~~Except as provided in subsection 1, when determining the amount of aid to families with dependent children, the county agency shall deduct the lesser of fifty dollars or the amount actually paid, of any payment made by an absent parent~~

pursuant--to--any--judicial--or--administrative--order--for--the
payment--of--child--support--or--spousal--support,--to--any--member--of
the--assistance--unit.

3.--If--two--or--more--absent--parents--pay--child--support--or--spousal
support--to--members--of--the--assistance--unit,--no--more--than--a
total--of--fifty--dollars--may--be--deducted--under--this--section.

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

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 50-06-05.1, 50-09

JULY 1997

AGENCY SYNOPSIS: New North Dakota Administrative Code chapter 75-02-01.2, Training, Education, Employment, and Management Program, establishes a demonstration project to combine the benefits provided under the state's Aid to Families with Dependent Children, Fuel Assistance, and Food Stamp programs.

The demonstration project must provide for uniform and consistent treatment of income and assets in determining eligibility; provide for the creation of a uniform method of budgeting and computing benefits, a consistent certification period for the receipt of benefits, and uniform reporting requirements; provide for necessary child care to allow a participant to meet educational and employment goals; and provide for universal employment and training to assist individuals in becoming self-sufficient.

STAFF COMMENT: Chapter 75-02-01.2 contains all new material but is not underscored so as to improve readability.

**CHAPTER 75-02-01.2
TRAINING, EDUCATION, EMPLOYMENT, AND MANAGEMENT PROGRAM**

Section	
75-02-01.2-01	Definitions
75-02-01.2-02	Demonstration Project - Department to Determine Participants
75-02-01.2-03	Request for Benefits
75-02-01.2-04	Applicant's or Guardian's Duty to Establish

Eligibility

75-02-01.2-05 Verification

75-02-01.2-06 Selection of Primary Individual

75-02-01.2-07 Presumptive Eligibility

75-02-01.2-08 Notification of Program Requirements

75-02-01.2-09 Decision and Notice

75-02-01.2-10 Monthly Report - Must be Complete and Timely

75-02-01.2-11 Good Cause for Failure to Submit Complete
and Timely Monthly Report

75-02-01.2-12 Determining Claims of Good Cause

75-02-01.2-13 Residence

75-02-01.2-14 Deprivation of Parental Support or Care

75-02-01.2-15 Continued Absence of a Parent

75-02-01.2-16 Unemployment of the Principal Wage Earner -
Pay After Performance

75-02-01.2-17 Death of a Parent

75-02-01.2-18 Incapacity of a Parent

75-02-01.2-19 Legal Custody

75-02-01.2-20 Eligibility Throughout Month

75-02-01.2-21 Asset Considerations

75-02-01.2-22 Asset Limits

75-02-01.2-23 Exempt Assets

75-02-01.2-24 Lump Sums Received by a Member of the Training,
Education, Employment, and Management Household

75-02-01.2-25 Good Faith Effort to Sell Real Property

75-02-01.2-26 Disqualifying Transfers

75-02-01.2-27 Social Security Numbers

75-02-01.2-28 Eligibility for Aliens

75-02-01.2-29 Ineligibility Due to Participation in Strikes

75-02-01.2-30 Limitation on Benefits to Pregnant Women

75-02-01.2-31 Age of Parent - Effect on Eligibility

75-02-01.2-32 Value of Benefit

75-02-01.2-33 Assignment of Right to Support

75-02-01.2-34 Good Cause for Failure or Refusal to Cooperate
in Obtaining Support or Establishing Paternity

75-02-01.2-35 Combined Requirements

75-02-01.2-36 Determining Membership in Training, Education,
Employment, and Management Household

75-02-01.2-37 Determining Membership of the Aid to Families
With Dependent Children Filing Unit

75-02-01.2-38 Determining Membership of the Food Stamp
Filing Unit

75-02-01.2-39 Determining Membership of the Low Income Home
Energy Assistance Program Filing Unit

75-02-01.2-40 Combined Supplemental Security Income and Aid to
Families with Dependent Children Households

75-02-01.2-41 Recipients Living Out of State

75-02-01.2-42 Grant Amount in Whole Dollars

75-02-01.2-43 Benefits Less Than One Dollar

75-02-01.2-44 Income Described

75-02-01.2-45 Excluded Income

75-02-01.2-46 Gross Income Test

75-02-01.2-47 Budgeting Process

75-02-01.2-48	Net Income Test
75-02-01.2-49	Income Considerations
75-02-01.2-50	Earned Income Considerations
75-02-01.2-51	Disregarded Income
75-02-01.2-52	Voluntary Quit or Refusal of Employment
75-02-01.2-53	Deduction for Dependent Care
75-02-01.2-54	Unearned Income Considerations
75-02-01.2-55	Reinstatement Following Suspension or Case Closing
75-02-01.2-56	Computing Payment for First and Second Months of Eligibility
75-02-01.2-57	Computing Payment for Months Following the Second Month of Eligibility
75-02-01.2-58	Computing Payment Where Individuals are Added to the Training, Education, Employment, and Management Household
75-02-01.2-59	Computing Payments Where Individuals Leave the Training, Education, Employment, and Management Household
75-02-01.2-60	Computing Payment Where Stepparent or Alien Parent Income is Deemed
75-02-01.2-61	Computing Benefits When an Individual's Needs are Deleted From the Training, Education, Employment, and Management Benefit
75-02-01.2-62	Computing Payment for a Child in Boarding School
75-02-01.2-63	Budgeting in Unusual Circumstances
75-02-01.2-64	Essential Services
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75-02-01.2-67	Child Restraint Systems
75-02-01.2-68	Presidential High School Graduate Incentive Payment
75-02-01.2-69	Unrestricted Payment of Benefits - Exceptions
75-02-01.2-70	Payee
75-02-01.2-71	Making Payment - Correcting Overpayments and Underpayments
75-02-01.2-72	Intentional Program Violation - Disqualification Penalties
75-02-01.2-73	Health Tracks
75-02-01.2-74	Assessment and Case Plan
75-02-01.2-75	Training, Education, Employment, and Management Contract
75-02-01.2-76	Initial Contract
75-02-01.2-77	Annual Reassessment
75-02-01.2-78	Mandatory Contract Requirements
75-02-01.2-79	Sanctions Under the Training, Education, Employment, and Management Program Contract
75-02-01.2-80	Conciliation
75-02-01.2-81	Timely Notice for Failure to Complete Training, Education, Employment, and Management Program Contract
75-02-01.2-82	Job Opportunities and Basic Skills Program - Definitions

75-02-01.2-83	Job Opportunities and Basic Skills Program and Work Registration - Basic Requirements
75-02-01.2-84	Job Opportunities and Basic Skills Program - Participation Requirements in Households Receiving Unemployed Parent Benefits
75-02-01.2-85	Job Opportunities and Basic Skills Program - Components
75-02-01.2-86	Job Opportunities and Basic Skills Program - Tribal Program
75-02-01.2-87	Job Opportunities and Basic Skills Program and Work Registration - Exemptions From Participation
75-02-01.2-88	Job Opportunities and Basic Skills Program - Referral
75-02-01.2-89	Job Opportunities and Basic Skills Program - Orientation, Assessment, and Employability Planning
75-02-01.2-90	Job Opportunities and Basic Skills Program - Supportive Services
75-02-01.2-91	Job Opportunities and Basic Skills Program - Educational Activities Related to Secondary Education, Basic and Remedial Education, or Education in English Proficiency
75-02-01.2-92	Job Opportunities and Basic Skills Program - Job Skills Training
75-02-01.2-93	Job Opportunities and Basic Skills Program - Job Readiness Activities
75-02-01.2-94	Job Opportunities and Basic Skills Program - Job Search
75-02-01.2-95	Job Opportunities and Basic Skills Program - Job Development and Job Placement Activities
75-02-01.2-96	Job Opportunities and Basic Skills Program - Postsecondary Education
75-02-01.2-97	Job Opportunities and Basic Skills Program - Self-Initiated Education Activities
75-02-01.2-98	Job Opportunities and Basic Skills Program - Community Work Experience Program
75-02-01.2-99	Job Opportunities and Basic Skills Program - Alternate Work Experience
75-02-01.2-100	Job Opportunities and Basic Skills Program - On-the-Job Training
75-02-01.2-101	Job Opportunities and Basic Skills Program - Work Supplementation Program
75-02-01.2-102	Job Opportunities and Basic Skills Program - Failure or Refusal to Participate
75-02-01.2-103	Job Opportunities and Basic Skills Program - Work Registration - Good Cause for Failure or Refusal to Participate
75-02-01.2-104	County Administration and Share of Assistance Cost

75-02-01.2-01. Definitions. For the purposes of this chapter:

1. "Aid to families with dependent children" means a program administered under North Dakota Century Code chapter 50-09 and title IV-A of the Social Security Act [42 U.S.C. 601 et seq.].
2. "Aid to families with dependent children filing unit" means any dependent child, the natural or adoptive parent of any dependent child, and all brothers and sisters of any dependent child, whether by whole blood or half-blood, or adoption, but not including:
 - a. Any child, parent of an eligible dependent child, or other caretaker relative who:
 - (1) Receives supplemental security income benefits;
 - (2) Is an alien who does not meet citizen and alienage requirements;
 - (3) Is an alien and is ineligible because of the application of sponsor-to-alien deeming;
 - (4) Is ineligible as a result of the imposition of a sanction; or
 - (5) Is ineligible as a result of the imposition of an intentional program violation disqualification.
 - b. Roomers or boarders; or
 - c. Household members who are not legal dependents of a member of the filing unit.
3. "Applicant" means an individual who is seeking a benefit under this chapter.
4. "Asset" means any kind of property or property interest, whether real, personal, or mixed, whether liquid or illiquid, and whether or not presently vested with possessory rights.
5. "Base month" means the month, immediately before the processing month, about which the income and circumstances of the training, education, employment, and management household are evaluated to determine the amount of any training, education, employment, and management benefits to be paid during the benefit month.
6. "Benefit month" means the calendar month immediately following the processing month.
7. "Bona fide funeral arrangement" means a written agreement between a member of the training, education, employment, and management household and a funeral service practitioner, licensed funeral establishment, or cemetery association

whereby the contractor promises to provide burial services or merchandise to a member of the training, education, employment, and management household in exchange for funds paid by a member of the training, education, employment, and management household, but does not mean any contract of insurance.

8. "Burial plot" means a conventional gravesite, mausoleum, or any other repository customarily and traditionally used for the bodily remains of a deceased individual.
9. "Caretaker relative" means the relative so designated by the training, education, employment, and management household who:
 - a. Lives with an eligible dependent child;
 - b. Is a pregnant woman, caretaker relative to no dependent child, in the last trimester of her pregnancy; or
 - c. Lives with a dependent child, under age eighteen and receiving supplemental security income benefits, who is the last child in the home.
10. "Child support agency" means any entity created by a county agency or any combination of county agencies, in execution of the county agency's duties under subsection 5 of North Dakota Century Code section 50-09-03.
11. "County agency" means the county social service board.
12. "Department" means the North Dakota department of human services.
13. "Dependent child" means a needy child:
 - a. Who lives in the home of a relative by birth, marriage, or adoption;
 - b. Who has been deprived of parental support or care by reason of:
 - (1) The continued absence of a parent from the home, other than absence occasioned solely by reason of the performance of active duty in the uniformed services of the United States;
 - (2) The death of a parent;
 - (3) The unemployment of the parent who is the principal wage earner; or
 - (4) The physical or mental incapacity of a parent; and

c. Who is:

- (1) Under the age of eighteen; or
 - (2) Under the age of nineteen and a full-time student in a secondary school or the equivalent (secondary school) level in a vocational school, or technical school, if, before the end of the calendar month in which the student attains age nineteen, the student may reasonably be expected to complete the program of such school.
14. "Earned income" means income currently received as wages, salaries, commissions, or profits from activities in which a training, education, employment, and management household member is engaged through either employment or self-employment. There must be an appreciable amount of personal involvement and effort, on the part of the training, education, employment, and management household, for income to be considered earned.
15. "Eligible caretaker relative" means a caretaker relative who:
- a. If, related to an eligible dependent child as a brother or sister, is not under sixteen years of age;
 - b. If deprivation of parental support or care is by reason of the unemployment of the parent who is the principal wage earner or incapacity of a parent, is the unemployed or incapacitated parent or the eligible dependent child's other parent, but not stepparent;
 - c. If deprivation of parental support or care is by reason of the death or continued absence of a parent, is the eligible dependent child's other parent, but not stepparent;
 - d. Is not a recipient of supplemental security income benefits; and
 - e. Is in financial need; or
 - f. Is a pregnant woman, caretaker relative to no other dependent child, who or whose husband is incapacitated.
16. "Family" includes an individual or group of related individuals within a household whose needs are recognized in a grant of benefits through aid to families with dependent children, the parents of any dependent child and all brothers and sisters of any dependent child, whether by whole blood, half-blood, or adoption, any child, parent of an eligible dependent child, or other caretaker relative who receives supplemental security income benefits. Family includes an

alien who does not meet citizen and alienage requirements, an alien who is ineligible for aid to families with dependent children benefits because of the application of sponsor-to-alien deeming, an individual who is ineligible for aid to families with dependent children benefits as the result of the imposition of a sanction, an individual who was eligible for aid to families with dependent children benefits, but who became ineligible due to the receipt of lump sum income, or an individual who is a household member who is a legal dependent of a member of the filing unit, but does not include roomers and boarders.

17. "Food stamp filing unit" means all members residing in the household, but not including:

a. Any individual who:

- (1) Is an alien and does not meet citizenship and alienage requirements;
- (2) Is an alien and is ineligible because of the application of sponsor-to-alien deeming;
- (3) Is ineligible as a result of the imposition of a sanction; or
- (4) Is ineligible as a result of the imposition of an intentional program violation disqualification.

b. Roomers or boarders.

18. "Full calendar month" means the period that begins at midnight on the last day of the previous month and ends at midnight on the last day of the month under consideration.

19. "Full-time student" means a student who:

- a. If in a secondary school, is enrolled in classes which, if completed, will earn the student four or more units of credit;
- b. If in a vocational or technical school under state operation, a college, or a university, is enrolled in classes that, if completed, will earn the student twelve or more semester hours of credit during a regular term or six or more semester hours of credit during a summer term at an educational facility operating on a semester system, or twelve or more quarter hours of credit at an educational facility operating on a quarter system;
- c. If in a private vocational or technical school, is enrolled in classes which, according to a written

statement from school officials, constitutes full-time enrollment;

- d. If enrolled in an accredited alternative high school or adult basic education, attends class a minimum of twenty hours per week; or
 - e. Is an individual participating in job corps, whether an adult or a child.
20. "Ineligible caretaker relative" means a caretaker relative who is not an eligible caretaker relative.
21. "Living in the home of a relative" means a circumstance that arises when a relative assumes and continues responsibility for the day-to-day care and control of a child in a place of residence maintained by the relative (whether one or more) as the relative's own home. It includes situations in which the child or the relative requires medical treatment that requires a special living arrangement. It also includes situations, provided that the child is not absent from the home for a full calendar month, when the child:
- a. Physically resides in the home, but is under the jurisdiction of a court and is receiving probation services or protective supervision;
 - b. Receives education while in an educational boarding arrangement in another community if needed specialized services or facilities are unavailable in the home community or if transportation problems make school attendance near home difficult or impossible;
 - c. Receives physical or speech therapy at Camp Grassick during the summer months;
 - d. Receives special education at the school for the deaf or school for the blind, whether as a day student or a boarding student, except that a boarding student's needs are limited to those maintenance items that are not provided by the school; or
 - e. Receives education at a federal boarding school in another community, provided that the child was not placed in that setting following removal from the child's home by court order following a determination that the child was abused, neglected, or deprived, except that the child is entitled to a clothing and personal needs allowance only if that allowance is made available for the child's use on a regular basis.
22. "Low income home energy assistance filing unit" means all members residing in the household, but not including:

- a. Any individual who:
 - (1) Is an alien who does not meet citizenship and alienage requirements;
 - (2) Is an alien and is ineligible because of the application of sponsor-to-alien deeming;
 - (3) Is ineligible as a result of the imposition of a sanction; or
 - (4) Is ineligible as a result of the imposition of an intentional program violation disqualification;
 - b. Roomers or boarders; or
 - c. Residents of a housing unit where the cost is subsidized by the federal government.
23. "Make an assistance payment" means, in the context of two-month retrospective budgeting, an activity that occurs on the date the department deposits an assistance payment check in the United States mail.
24. "Monthly income" means income from any source, either earned or unearned, which is computed and reduced to monthly units for the purpose of determining eligibility and benefits. Income may be received weekly, monthly, intermittently, or annually, but is computed and considered monthly.
25. "Needy" means:
- a. A training, education, employment, and management household, otherwise eligible under this chapter, whose countable income, less any applicable disregards, is less than the income identified in the basic requirements table for a family of the size and composition of the training, education, employment, and management household;
 - b. An unwed parent or pregnant woman, resident of the Oppen Home, with an income of less than forty-five dollars per month; or
 - c. A child resident of a boarding school with an income of less than forty-five dollars per month.
26. "Nonlegally responsible relative" means a relative who is not the child's parent.
27. "Parent" means the child's mother or father, whether by birth or adoption, but does not mean:

- a. An individual whose parental rights have been terminated with respect to that child; or
 - b. A stepparent.
28. "Part-time student" means an individual enrolled in a secondary school, vocational school, technical school, college, or university who is not a full-time student.
29. "Principal wage earner" means the parent in a two-parent household who earned the greater amount of verified income over the twenty-four-month period immediately preceding the month when application was made for benefits under the aid to families with dependent children program for unemployed parents; or, if both parents have earned identical amounts of income or no income in that twenty-four-month period, the parent so designated by the county agency.
30. "Processing month" means the month, immediately after the base month, and immediately before the benefit month, in which the county agency determines eligibility for, and the amount of, any training, education, employment, and management benefit to be paid during the benefit month.
31. "Prospective budgeting" means:
- a. The determination, made only with respect to the initial month of eligibility and the month immediately after the initial month of eligibility, based on the county agency's best estimate of the income and circumstances of the training, education, employment, and management household in those months, of the amount of any grant of assistance in those two months; and
 - b. The determination, made in all months, based on the county agency's best estimate of the circumstances of the training, education, employment, and management household, of whether the circumstances anticipated for the benefit month, and the month immediately following the benefit month, will cause the training, education, employment, and management household to be eligible in those two months.
32. "Recipient" means an individual who receives a benefit under this chapter.
33. "Regulation", as used in 45 CFR 205.10(a)(4)(i)(B) and (a)(15), includes any written statement of federal or state law or policy, including federal and state constitutions, statutes, regulations, rules, policy manuals or directives, policy letters or instructions, and relevant controlling decisions of federal or state courts.

34. "Relative by birth, marriage, or adoption" means an individual related to the dependent child by birth, whether by blood or half-blood, by marriage including a marriage that has been terminated by death or divorce, or by adoption, as father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, or first cousin.
35. "Retrospective budgeting" means a determination, made by the county agency during the processing month, based on income and circumstances of the training, education, employment, and management household, during the base month, of the amount of any grant of assistance in the benefit month.
36. "Standard employment expense allowance" means the twenty-seven percent required by training, education, employment, and management waiver terms and conditions to be first disregarded from the earned income of any child, relative applying for benefits under this chapter, or other individual whose needs are taken into account in determining eligibility under this chapter, but whose earned income is not required to be wholly disregarded as the income of a child who is a full-time student or a part-time student who is not a full-time employee.
37. "Stepparent" means a person, ceremonially married to a parent of a child, but who is not also a parent of that child by either birth or adoption.
38. "Supplemental security income" means a program administered under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].
39. "The Act" means the Social Security Act [42 U.S.C. 301 et seq.].
40. "Title II" means title II of the Social Security Act [42 U.S.C. 401 et seq.].
41. "Title IV-A" means title IV-A of the Social Security Act [42 U.S.C. 601 et seq.].
42. "Title IV-D" means title IV-D of the Social Security Act [42 U.S.C. 651 et seq.].
43. "Training, education, employment, and management benefits" means a single cash grant which consists of aid to families with dependent children, food stamps, and low income home energy assistance program benefits.
44. "Training, education, employment, and management household" means an individual or group of individuals who reside together which includes at least one aid to families with

dependent children filing unit and may include a food stamp filing unit and low income home energy assistance filing unit.

45. "Unearned income" means income that is not earned income.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-02. Demonstration project - Department to determine participants. The training, education, employment, and management program is a demonstration project, established under waivers authorized by North Dakota Century Code section 50-06-01.8. Individuals within some counties, and some individuals within Cass County, may be required to participate in the training, education, employment, and management program, while individuals in other counties, and other individuals in Cass County, may be permitted to participate only in aid to families with dependent children, food stamp, and low income home energy assistance programs. The department may by order determine the counties in which individuals, and the method by which individuals in Cass County, may apply for training, education, employment, and management program benefits. The department may by order determine the order in which cases in each county are converted from participation in aid to families with dependent children, food stamps, and low income home energy assistance programs to participation in the training, education, employment, and management program.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-03. Request for benefits.

1. All individuals wishing to request training, education, employment, and management program benefits shall have the opportunity to do so, without delay.
2. A request for benefits is a written request made by an individual desiring assistance under the training, education, employment, and management program, or by a proper individual seeking such assistance on behalf of another individual, to a county agency. A proper individual means any individual of sufficient maturity and understanding to act responsibly on behalf of the applicant.
3. A request for benefits must be in writing and signed on a prescribed application form.
4. A prescribed request for benefits form must be signed by the applicant if the applicant is physically and mentally able to

do so. An application made on behalf of an applicant adjudged incompetent by a court must be signed by the guardian.

5. Information concerning eligibility requirements, available services, and the rights and responsibilities of applicants and recipients must be furnished to all who require it.
6. The date of the request for benefits is the date the applicant-signed form is received in the county agency. If the household chooses not to participate in the training, education, employment, and management program or is determined ineligible for training, education, employment, and management benefits, the application date for regular program assistance benefits would also be the date when the signed request for benefits form is received in the county agency.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-04. Applicant's or guardian's duty to establish eligibility. It is the responsibility of the applicant or guardian of the applicant for the training, education, employment, and management program to provide information sufficient to establish the eligibility of each individual for whom assistance is requested, including the furnishing of a social security number, and the establishment of age, identity, residence, citizenship, medical and social information to be used for any necessary incapacity determination, and financial eligibility.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-05. Verification. While eligibility for the training, education, employment, and management program is determined in large measure on information supplied by the applicant or recipient, aspects of eligibility that must be supported by conclusive, documenting evidence include:

1. The existence of conditions requiring professional examinations or judgments to establish the existence of incapacity or pregnancy;
2. The amount and source of all income;
3. The equity value of assets whenever available information or the prudent person concept suggests that the equity value may exceed program limitations;
4. The basis for special need requests;

5. The relationship between any dependent child, caretaker relative, and any other member of the household whose presence, assets, or income may affect the composition, eligibility, or benefits of the training, education, employment, and management household;
6. School attendance of any child sixteen or older;
7. Citizenship or alien status of household members;
8. The identity of each member of the training, education, employment, and management household;
9. Proof of or application for a social security number;
10. Information sufficient to determine the need to participate in the job opportunity and basic skills program; and
11. Any other factor of eligibility for which available information is lacking, questionable, or inconclusive, and which suggests to a prudent person that further inquiry or documentation is necessary.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-06. Selection of primary individual.

1. Each training, education, employment, and management household shall have a primary individual. The primary individual must be identified among the household members, with one of the following relationships to a dependent child member of the household, using the following order of priority:
 - a. A natural or adoptive parent;
 - b. An adult relative, within the fifth degree of kinship;
 - c. A stepparent;
 - d. A spouse of any person identified in subdivision a, b, or c, whether or not that marriage is terminated by death or divorce;
 - e. A minor brother, sister, half-brother, half-sister, stepbrother, or stepsister who is at least sixteen years of age.
2. The primary individual may be eligible or ineligible for the aid to families with dependent children portion of the training, education, employment, and management benefit. An

ineligible caretaker who receives supplemental security income benefits must be included in the food stamp and low income home energy assistance program portions of the training, education, employment, and management benefit, but may not be included in the aid to families with dependent children portion of that benefit.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-07. Presumptive eligibility.

1. Definitions. As used in this section:

- a. "Destitute household" means a migrant or seasonal farm worker household:
 - (1) Whose only income received during the month of application is received before the date of the request for benefits and is from a terminated source; or
 - (2) Whose only income during the month of application is from a new source and if no more than twenty-five dollars from the new source is received by the tenth calendar day after the date of request for benefits;
- b. "Expedited service" means the issuance of training, education, employment, and management benefits no later than seven days following the request for benefits for households determined eligible for expedited service;
- c. "Migrant household" means a household that travels away from the household's usual residence on a regular basis to seek employment in an agriculture-related activity, even if a household member secures employment of a nonagricultural nature;
- d. "Presumptive eligibility" means a household deemed eligible to receive training, education, employment, and management benefits based on waived verifications;
- e. "Seasonal farm worker" means an individual who:
 - (1) Is employed seasonally, but not on a yearly basis, on farms or ranches;
 - (2) Does not migrate from one area of the country to another seeking that employment;

- (3) May have income other than from seasonal farm work;
and
 - (4) If not currently employed as a seasonal farm worker,
has previously been employed as a seasonal farm
worker and intends to return to seasonal farm work;
and
 - f. "Waived verification" means a selected factor of
eligibility criteria not required to be verified for
households eligible for expedited service for the first
and second benefit months.
2. A household may receive training, education, employment, and
management presumptive eligibility determinations and
expedited service if:
- a. It has less than one hundred fifty dollars in monthly
gross earned and unearned income when the nonexempt liquid
assets do not exceed one hundred dollars;
 - b. It consists of a destitute migrant or seasonal farm worker
with liquid assets not exceeding one hundred dollars;
 - c. It is a household in which all members are homeless and
meet the monthly training, education, employment, and
management gross income test and whose assets are within
training, education, employment, and management program
limits; or
 - d. It is a household with combined nonexempt monthly gross
income and nonexempt liquid assets of less than the
household's monthly costs for utilities and rent or
mortgage.
3. Training, education, employment, and management presumptive
eligibility must be determined for a household meeting any one
of the four criteria in subsection 2 by waiving the following
mandatory verification factors for the initial and second
benefit month only:
- a. Gross nonexempt earned and unearned income;
 - b. Citizenship or alien status;
 - c. Social security number or proof that an application for
social security has been filed;
 - d. Identity for household members other than the primary
individual;
 - e. Nonexempt assets; and

- f. Deductions from earned or unearned income.
4. A destitute household must have eligibility determined and benefit amount calculated for the month in which the request for benefits is filed by considering only income received between the first day of the month and the date of the request for benefits. Any income from a new source received after the date of the request for benefits may not be counted in determining eligibility and benefit amount.
 5. Application procedures must be designed to identify a household eligible for presumptive eligibility determination and expedited service at the time a household completes a request for benefits. The county agency must screen each request for benefits when submitted and each individual inquiry about program eligibility, when made.
 6. The household may receive expedited benefits only for the month in which the request for benefits is filed. Benefits for the initial month must be issued no later than the seventh calendar day following the date of the request for benefits.
 7. Once expedited benefits have been issued, the household may not again receive expedited benefits until the household establishes eligibility under provisions applicable to cases in which presumptive eligibility does not exist.
 8. Holidays, weekends, and other nonwork days may not prevent a household determined presumptively eligible for expedited service from receiving training, education, employment, and management benefits by the seventh calendar day after the date of the request for benefits.
 9. Expedited benefits to eligible households may consist of a benefit based only on the training, education, employment, and management standard of need for the appropriate household size and may not include special items of need or job opportunities and basic skills program supportive services. No recoupment of expedited benefits for the initial month may be made if a previous overpayment exists.
 10. An overpayment must be established if, subsequent to presumptive eligibility determination and issuance of expedited benefits, a household is determined ineligible for benefits. Intentional program violation must be explored in all instances in which subsequent ineligibility is determined.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-08. Notification of program requirements. All applicants for training, education, employment, and management benefits must be notified of generally applicable program requirements and of related services through the provision of brochures and through the provision of responses to inquiries made by applicants concerning program requirements. Applicants and recipients are responsible to call attention to their particular circumstances, and to inquire as to the effect of those circumstances on eligibility.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-09. Decision and notice.

1. A decision as to eligibility must be made promptly on applications, within thirty days, except in unusual circumstances.
2. A decision as to eligibility on redeterminations must be made within thirty days.
3. Immediately upon an eligibility determination, whether eligibility can be found, ineligibility can be found, or eligibility cannot be determined, training, education, employment, and management program applicants or recipients shall be notified by the county agency. Adequate notice of any decision terminating or reducing training, education, employment, and management benefits must be sent at the time required by section 75-01-03-08 for aid to families with dependent children.
4. The effective date a case is closed or suspended is the last calendar day of the month identified in the notice. The effective date of a transfer to medicaid-only status is the first day of the next month.
5. Errors made by public officials and delays caused by the actions of public officials do not create eligibility or additional benefits for an applicant or recipient who is adversely affected.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-10. Monthly report - Must be complete and timely.

1. When the county agency receives a completed monthly report, it shall process the payment only if all eligibility conditions are met. The county agency shall notify the training,

education, employment, and management household of any changes from a payment made in the month immediately past. If payment is being reduced or assistance terminated as a result of information provided in the monthly report, the county agency shall send an adequate notice, mailed to arrive no later than the resulting payment or in lieu of the payment. The training, education, employment, and management household may be reinstated to the payment amount made in the month immediately past if an appeal of the decision described in the notice is made within ten days of the date of the notice.

2. A county agency may terminate assistance if it has received no timely monthly report or has received only an incomplete report. The county agency shall send an adequate notice, mailed to arrive no later than the date it would have made payment if the agency had received a timely and complete monthly report. If the training, education, employment, and management household notifies the county agency and files a complete report within ten days of the date of the notice, the county agency may accept the replacement report and provide for payment based on the report only if the information indicates that the training, education, employment, and management household is still eligible but, unless the county agency determines that good cause exists for failing to file a timely report, without consideration of otherwise available earned income disregards. If, based on the replacement report, the training, education, employment, and management household is found ineligible or eligible for an amount less than the payment amount made in the month immediately past, the county agency shall promptly notify the training, education, employment, and management household of the right to a fair hearing and, if a hearing is requested within ten days of the date of the notice, the right to have payment reinstated to the payment amount made in the month immediately past.
3. A monthly report is timely, for purposes of avoiding loss of earned income disregards, if it is received by the county agency by the fifteenth day of the month or on the first working day after the fifteenth day of the month if that day falls on a Saturday, Sunday, or holiday and, for all other purposes, if it is received by the county agency by the fifth day of the month.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-11. Good cause for failure to submit complete and timely monthly report. Good cause for failure to submit a complete and timely monthly report exists only if:

1. The monthly report form was unavailable to the training, education, employment, and management household because none was sent or it was lost in the mail;
2. The monthly report form was returned to the sender due to lack of sufficient postage;
3. The caretaker relative and all other responsible members of the training, education, employment, and management household were absent from their usual place of residence, due to a death or serious illness in the family or the relocation of the training, education, employment, and management household, during all the days between the day the report form was provided and the day it was to be returned;
4. Weather conditions prevented mailing by the training, education, employment, and management household, delivery by the postal service, or receipt by the county agency;
5. The training, education, employment, and management household was unable, despite reasonable efforts, to obtain necessary verification documents;
6. The county agency determines that the report form was incomplete due to the recipient's misinterpretation or misunderstanding of the form; or
7. The county agency determines, for some other reason, that the training, education, employment, and management household could not reasonably have submitted a timely and complete report.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-12. Determining claims of good cause. Determinations concerning claims of good cause require the use of decisionmaking principles. These principles must be applied to the individual's statements and information to determine if the requirements of good cause are met. The decisionmaking principles are:

1. The individual claiming good cause is responsible to show that good cause exists.
2. Uncorroborated statements of fact are less believable than corroborated statements.
3. Statements by persons with a reputation for being untruthful are less believable than similar statements by persons without that reputation.

4. A reputation for being untruthful exists if the files maintained by the department, the county agency, or the job opportunities and basic skills program coordinator's agency contain evidence of untruthful statements made by the individual, or if the individual has made untruthful statements that are a matter of public record.
5. Statements by individuals with a reputation for failures or delays in furnishing information necessary for official action are less believable than similar statements by individuals without that reputation.
6. A reputation for failures or delays in furnishing information necessary for official action exists if the files maintained by the department, the county agency, or the job opportunities and basic skills program coordinator's agency contain evidence of any failure or delay (without good cause) to furnish reports (including monthly reports) or necessary verifications, or a failure or delay in attending meetings or interviews intended to secure information necessary for official action.
7. A statement of fact, made by an individual with something to gain if that statement is regarded as true, is less believable than a similar statement made by an individual with little or nothing to gain.
8. An individual's explanations or reasons for claiming good cause must be judged by a reasonable person standard. A reasonable person is one who exercises those qualities of attention, knowledge, intelligence, and judgment that society requires of its members for protection of their own interests and the interests of others.
9. Statements of fact made by the individual claiming good cause, or by other individuals who support or oppose the claim of good cause, are not presumed to be either truthful or untruthful. Rather, statements of fact must be evaluated to determine if they are more likely than not or less likely than not to be true.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-13. Residence.

1. There is no durational state residence required for eligibility for training, education, employment, and management benefits.

2. No individual who is otherwise eligible may be denied assistance under the training, education, employment, and management program if the individual resides in the state and in a county determined by the department to be a demonstration county under section 75-02-01.2-02.
3. A resident of the state is one who:
 - a. Is living in the state voluntarily with the intention of making the person's home there and not for a temporary purpose; or
 - b. At the time of application, is living in the state, is not receiving assistance from another state, and entered the state with a job commitment or seeking employment in the state, whether or not currently employed.
4. For purposes of establishing the aid to families with dependent children filing unit, a child is a resident of the state in which the child is living other than for a temporary basis. For all other purposes of this chapter, a child is a resident of the state in which the child is living.
5. Residence may not depend upon the reason for which the individual entered the state, except insofar as it may bear upon whether the individual is there voluntarily or for a temporary purpose.
6. Residence is retained until abandoned. Temporary absence from the state, with subsequent returns or intent to return when the purposes of the absence have been accomplished, must not interrupt continuity of residence.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-14. Deprivation of parental support or care. A dependent child must be shown to be both "deprived of parental support or care" and "needy", although a causal relationship between the two need not exist. The phrase encompasses the situation of any child who is in need and otherwise eligible, and whose parent has died, is continually absent from the home, is physically or mentally incapacitated, or is designated as principal wage earner and is unemployed. The requirement applies whether the parent was the chief breadwinner or devoted himself or herself primarily to the care of the child and whether or not the parents were married to each other. The determination that a child has been deprived of parental support or care is made in relation to the child's natural or adoptive parents.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

75-02-01.2-15. Continued absence of a parent.

1. For purposes of this chapter:
 - a. "Deprived of parental support or care by reason of the continued absence of a parent" means a situation that occurs when all of the following factors are present:
 - (1) The parent is physically absent from the home;
 - (2) The nature of the parent's absence is such as to interrupt or terminate the parent's functioning as a provider of maintenance, physical care, or guidance for the child; and
 - (3) The known or indefinite duration of the absence precludes relying on the parent to perform the parent's functions in planning for the present support or care of the child.
 - b. A "parent's absence is such as to interrupt or terminate the parent's functioning as a provider of maintenance, physical care, or guidance for the child" only if one of these three functions is totally interrupted or finally terminated.
2. A determination that a parent's absence has or has not interrupted or terminated the parent's functioning must be supported by information provided by the applicant or otherwise available to the county agency.
3. Except as provided in subsection 4, if all three of the conditions for showing deprivation by reason of the continued absence of a parent are met, the reason for the parent's absence and the length of the parent's absence is immaterial.
4. A parent who is performing active duty in uniformed service is "absent from the home" only if there is evidence that continued absence would have existed irrespective of the parent's serving in uniformed service. Acceptable evidence that such an absence exists includes proof of legal separation, desertion, or divorce, either final or in process. If there has been no legal action taken, some indication of how the parent came to be absent must be provided.
5. A parent temporarily living apart from the child or children while attending school or vocational training or working or seeking work in another community does not meet the requirements for continued absence as long as the parent

continues to function as a parent, even if the level of support or care is deficient or diminished.

6. Types of parental absences frequently giving rise to dependency in children include:
 - a. Divorce. The continued absence of a parent may be established as the result of divorce.
 - b. Separation. Legal separation is an arrangement by which a husband and wife live apart, subject to a court order that may divide the parties' property, provide for spousal or child support, and provide for custody and visitation of children, but remain married. Such court orders may be temporary or permanent. Separation by mutual consent or agreement involves the discontinuance of the marital relationship without legal action. Continued absence of a parent as a result of this arrangement can be established if there is no collusion between the parents to render the family eligible for aid to families with dependent children.
 - c. Imprisonment. Imprisonment of a parent is a type of parental absence that creates dependency among children. A parent who is a convicted offender, but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday, is deemed absent from the home. Continued absence exists only if the parent is sentenced to and serves a thirty-day or longer term of incarceration or community service unless:
 - (1) The term actually served is less than the sentence imposed;
 - (2) The term served is shortened by order of the court; and
 - (3) Assistance has been issued before information about the shortened term is received by the county agency.
 - d. Unmarried parenthood. A child born out of wedlock is deprived of parental support by reason of continued absence of a parent if the child's parents do not reside together.
 - e. Desertion. Desertion is the voluntary and willful abandonment, by a parent, of the parent's child or children without making adequate provision for the care and support of the child or children.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

75-02-01.2-16. Unemployment of the principal wage earner - Pay after performance.

1. For purposes of this section:
 - a. "Paid employment" means employment for which the employee is paid, at or above the federal minimum hourly wage, at least once each calendar month, in lawful money of the United States or with checks drawn on banks convenient to the place of employment.
 - b. "Work", except as the term is used in subsection 6, means on-the-job training, work supplementation, alternative work experience, community work experience, or paid employment or any combination of those activities.
2. A principal wage earner must verify that the principal wage earner is not unemployed by reason of conduct or circumstances that result or would result in disqualification for unemployment compensation.
3. Benefits under this section are furnished on a calendar month basis.
4. Unemployed parent benefits under the aid to families with dependent children program are available only if all aspects of eligibility required under this chapter are established. Unemployed parent benefits are provided with a goal of encouraging families to become self-supporting as rapidly as possible.
5. Unemployed parent benefits are available only if both parents are living in the household. The parents are not required to be married to each other, but at least one child in the household must be the child of both parents. The parentage of that child must be adjudicated, established by marriage, or acknowledged by the father.
6. The principal wage earner must have had a prior connection with the labor force verified under either subdivision a or b.
 - a. Within a one-year period prior to the date of eligibility, the principal wage earner must have received or been qualified for job insurance benefits under the laws of the state or of the United States. For purposes of this subdivision, railroad unemployment benefits are job insurance benefits. A principal wage earner is treated as qualified for job insurance benefits if the principal wage earner would have been eligible to receive benefits upon application or if the principal wage earner performed work

which, had it been covered, would, together with any covered work, have made the principal wage earner eligible for job insurance benefits. To determine if a principal wage earner was qualified for job insurance benefits, for purposes of this subdivision, the total amount of earnings during the base period must be established. The base period is the first four quarters in the last five completed quarters prior to the quarter of application. The principal wage earner must have had earnings in at least two quarters in the base period; total base period earnings must be at least one and one-half times the highest quarter earnings in the base period; and base period earnings must be at least two thousand seven hundred ninety-five dollars.

- b. The principal wage earner must have had six or more quarters of work within any thirteen calendar quarter period ending within one year prior to the quarter of application for benefits. A "quarter of work" means a period of three consecutive calendar months ending March thirty-first, June thirtieth, September thirtieth, or December thirty-first in which the principal wage earner:
 - (1) Received earned income of not less than fifty dollars, including work study income;
 - (2) Participated in a community work experience program, work incentive program, or job opportunities and basic skills program, but not a tribal work experience program; or
 - (3) Attended, full time, an elementary school, a secondary school, or a vocational or training course designed to prepare the individual for gainful employment, or participated in an educational or training program under the Job Training Partnership Act of 1982, provided that no more than four quarters of activity under this paragraph may be treated as a quarter of work.
7. The principal wage earner, once designated, remains the principal wage earner for each month the household receives benefits under the program for unemployed parents, has such benefits suspended, or does not receive benefits solely because it has already received benefits for six months in a twelve-month period. If the case is closed and the household is without such benefits for at least one full calendar month, a new application must be made and a new designation of the principal wage earner is required.
8. In determining which parent is the principal wage earner, the county agency shall:

- a. Consider the verified earnings of each parent;
 - b. Use the best information available to designate the principal wage earner if reliable verification of earnings cannot be secured; and
 - c. Designate the principal wage earner if both parents earned identical amounts of income or earned no income.
9. Eligibility for unemployed parent benefits may be established for no more than six months in any twelve-month period. The six months of potential eligibility need not be consecutive. For purposes of applying this limitation, a month is a benefit month if:
- a. Eligibility is established at any time during that month;
 - b. The household actually receives benefits even though the family is totally ineligible;
 - c. The household is eligible for benefits of less than one dollar; or
 - d. The household is eligible but receives benefits in excess of those for which it was eligible.
10. No aid to families with dependent children filing unit may be found eligible under this section unless, within seven working days after the county agency initiates a referral to the job opportunities and basic skills program, both parent members of that unit:
- a. Verify a current application for employment is on file at an office of job service North Dakota;
 - b. Verify application for any unemployment benefits that may be due either parent;
 - c. Sign and return to the county agency a statement acknowledging the parent's duties and responsibilities; and
 - d. Verify beginning and continuing a job search satisfactory to that parent's job opportunities and basic skills program coordinator.
11. a. Except as provided in subdivision b, both parents in a recipient aid to families with dependent children filing unit must comply with this subsection.
- (1) A parent engaged in paid employment at least thirty-two hours per week need not engage in job search or unpaid work.

- (2) A parent engaged in paid employment of at least twenty-four hours per week but less than thirty-two hours per week must engage in at least eight hours of job search per week.
 - (3) A parent engaged in paid employment of less than twenty-four hours per week must engage in at least eight hours of job search per week, at least eight hours of unpaid work per week, and a total of at least forty hours per week of a combination of paid employment, job search, and unpaid work.
 - (4) A parent not engaged in paid employment must engage in at least eight hours of job search per week and at least thirty-two hours of unpaid work per week.
 - (5) A parent under age twenty-five who has neither completed high school nor earned a general equivalency diploma, and who is making satisfactory progress in either of those educational activities, may substitute that progress for up to thirty-two hours of unpaid work per week, but must engage in at least eight hours of job search per week.
- b. If one parent complies fully with subdivision a, the second parent shall engage in unpaid work, job search, and educational activities only at times necessary child care is made available at the expense of the department and is not required to engage in those activities for more than twenty hours per week.
12. a. No benefits under this section may be provided for the calendar month of application until the aid to families with dependent children filing unit complies with subsection 10.
- b. No benefits under this section may be provided for the calendar month immediately after the month of application unless:
- (1) Benefits are provided in the month of application;
 - (2) The aid to families with dependent children filing unit continues the job search; and
 - (3) For any period, beginning seven calendar days after the day notice of approval is issued and ending on the nineteenth day of that month, the aid to families with dependent children filing unit complies with subsection 11.

- c. No benefits under this section may be provided for the third and subsequent calendar months after the month of application unless:
 - (1) Benefits were provided in the month of application and the month immediately following the month of application; and
 - (2) For a period, beginning on the twentieth day of the month two months before the benefit month and ending on the nineteenth day of the month before the benefit month, the aid to families with dependent children filing unit complies with subsection 11.
- 13. A parent who is required to perform an activity shall verify either the performance of the required activity or good cause for failure to perform.
- 14. Good cause for failure to perform the required activity exists only if good cause would exist for failure or refusal to participate in the job opportunities and basic skills program, except:
 - a. If the parent is too ill to participate or refuses major medical care, the other parent in the household shall perform;
 - b. Good cause may not be based on a claim that the designated work program assignment does not meet appropriate work or training criteria; and
 - c. A claim of good cause must be such as would preclude any reasonable employee, of ordinary ability and responsibility, from working, considering the totality of circumstances, and particularly considering the efforts of the parent to overcome the obstacle to participation.
- 15. If the principal wage earner fails to perform activities required under this section, shows good cause for that failure to perform, or establishes an exemption under subdivisions b through d of subsection 1 of section 75-02-01.1-81, the second parent must perform the required activities, subject to all provisions of this section, and may not show good cause or establish an exemption.
- 16. A household is entitled to adequate notice of a determination that a parent failed without good cause to perform activities required under this section. The notice must inform the household that it may be reinstated if an appeal of the decision described in the notice is made within ten days of the date of the notice.

17. Household members subject to this section who are native Americans residing in the service area of a tribal job opportunities and basic skills program, and who are, or upon application would be, eligible for services through that program, must verify participation in all activities required under this section that are made available through that program.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-17. Death of a parent. A child, if otherwise eligible for aid to families with dependent children, may be deprived of parental care by reason of the death of a parent. The applicant shall verify that the deceased individual is the parent of the child.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-18. Incapacity of a parent.

1. A child, if otherwise eligible for aid to families with dependent children, is deprived of parental support or care when the child's parent has a physical or mental defect, supported by current competent medical testimony, of such a debilitating nature as to reduce substantially or eliminate the parent's capacity either to earn a livelihood or to discharge the parent's responsibilities as a homemaker and provider of child care for a period of thirty days or more. In making a determination of incapacity to earn a livelihood, the department shall take into account the limited employment opportunities of disabled persons.
2. The incapacity must be such that it reduces substantially or eliminates employment in the parent's usual occupation or another occupation to which a parent may be able to adapt. The fact that a parent may have to change occupation or work location does not establish incapacity or limited employment opportunities for a disabled parent. It does not matter whether a parent was employed or fulfilled the role of homemaker prior to the onset of the asserted incapacity. Incapacity is established either when the person is unable to earn a livelihood or to act as a homemaker. A parent may also establish incapacity by demonstrating that the parent has reached age sixty-five.
3. A determination that a parent is disabled or blind, made by the social security administration, constitutes adequate substantiation of incapacity for purposes of this section.

4. A parent continues to be incapacitated, for purposes of this section, if the incapacity is not reasonably subject to remediation, or if the parent makes reasonable progress towards remediation of the incapacity. For purposes of this section, reasonable progress towards remediation of the incapacity means cooperation with medical practitioners who prescribe a course of treatment intended to remediate or limit the effect of the incapacity, including physical therapy, counseling, use of prosthesis, drug therapy and weight loss, cooperation with vocational practitioners, cooperation with vocational and functional capacity evaluations, and reasonable progress in a course of training or education intended to qualify the parent to perform an occupation which, with that training or education, the parent would have the capacity to perform.
5. A parent who engages in activities inconsistent with the claimed incapacity may be determined to not be incapacitated.
6. The department may require a parent to demonstrate reasonable progress towards remediation of the incapacity, and may set reasonable deadlines for the demonstrations.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-19. Legal custody. Courts may enter orders in child custody matters that place legal custody of a child with either parent or with both parents (joint custody), and may provide for visitation between a parent and child, which results in the visiting parent and child occupying the same place of residence. While intended to help children maintain relationships with both parents, these arrangements sometimes complicate the aid to families with dependent children eligibility determination process. For example, courts may order custody to shift from one parent to the other in alternating weeks, months, or other prescribed periods or that the child live with a given parent only on weekends or during the summer months. On occasion, the child's home may remain fixed and the parents take turns in occupying that home with the child. Such orders have little or no bearing on whether or not a child is deprived as the result of a parent's absence from the home. It is the child's physical presence, rather than legal custody, that is relevant. The facts of each situation must be carefully evaluated. If deprivation is found to exist, one residence must be established for purposes of determining eligibility. The child's caretaker relative is the relative in whose home the child ordinarily spends the greater time. Both parents may not be certified as caretaker relatives for the same child for the same period of time. The state's policy and practice are not intended to interfere with the absent parent's wish to maintain a continuing relationship with the absent parent's children. On the contrary, reasonable visits are to be encouraged. Visitations between absent parent and child can

occasionally be so frequent as to raise doubts about whether there has been a disruption of parental functioning.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-20. Eligibility throughout month.

1. In the first month in which eligibility is established, based on any one application, the benefit amount is that pro rata portion of the monthly benefit amount equal to the percentage of the month remaining after the later of the first day of eligibility or the date of application, except:
 - a. In the case of a family that has entered North Dakota from a state which issues grants twice a month, the benefit amount is that pro rata portion of the monthly benefit amount equal to the percentage of the month remaining after the later of the date coverage in the other state ends or the date of application;
 - b. The benefit amount may be adjusted to correct an underpayment or overpayment arising out of previous periods of eligibility; and
 - c. In the case of a training, education, employment, and management household which includes members who were eligible for and receiving medicaid benefits at the time the unit requests aid to families with dependent children, if the training, education, employment, and management household provides all necessary verification and a completed application within forty-five days or by the end of the month following the month of request, whichever is less, the benefit amount in the month of request is that pro rata portion of month remaining after the date of request.
2. In the second and subsequent months in which eligibility is established, based on any one application, if the monthly reporting requirements are met, and, where applicable, the requirements of section 75-02-01.1-16, concerning unemployed parent cases are met, the household continues to be eligible throughout the month if eligible for any portion of the month.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-21. Asset considerations.

1. a. All assets that are actually available must be considered. Assets are actually available when at the disposal of a member of the training, education, employment, and management household; when a member of the training, education, employment, and management household has a legal interest in a liquidated sum and has the legal ability to make the sum available for support or maintenance; or when a member of the training, education, employment, and management household has the lawful power to make the asset available or to cause the asset to be made available. A determination that an asset is deemed available is a determination that the asset is actually available.
- b. Assets must be reasonably evaluated.
- c. All assets owned individually or jointly by members of a training, education, employment, and management household are deemed available to the household. Assets owned by a training, education, employment, and management household who is not included in the aid to families with dependent children filing unit must be counted when determining eligibility for the food stamp and low income home energy assistance program portions of the training, education, employment, and management benefit, but not the aid to families with dependent children portion.
- d. Assets owned jointly by a member of the training, education, employment, and management household and an individual who is a member of a separate household, but has a legal obligation to support a member of the training, education, employment, and management household, are presumed available to the training, education, employment, and management household unless the applicant can show that the assets are in fact not available.
- e. If the training, education, employment, and management household can demonstrate that only a portion of an asset is available, only that portion may be considered.
- f. An asset is not available if it cannot be practically subdivided or sold.
- g. A stepparent's assets, whether owned exclusively by the stepparent or jointly with the parent, are deemed available in their entirety to the parent. Because the aid to families with dependent children filing unit must include the parent, if technically eligible, the equity value of all assets, including the stepparent's assets, must fall within program asset limitations or the unit is ineligible.

- h. An asset may be temporarily unavailable while the training, education, employment, and management household is taking reasonable measures to overcome a legal impediment.
 - i. Assets ordinarily available to the training, education, employment, and management household may be rendered temporarily unavailable to members of such a unit who are being served by shelters for abused persons and families while the legal ramifications of the circumstances that led to the need for such services are explored.
 - j. As in all instances in which there is a question of ownership, the training, education, employment, and management household must be given the opportunity to present evidence in rebuttal of the presumption that a joint account is an available asset. A successful rebuttal may result in a finding that the funds in the joint account are in fact not owned by the training, education, employment, and management household. For example, when the funds are clearly available to the family only in the event of the coowner's death, access is restricted and the funds are therefore not an asset. The funds are likewise not an asset to the family if withdrawals from the account are possible only with the surrendering of the passbook, which is not accessible to the applicant or recipient, or with dual signatures and the coowner may not sign.
 - k. An asset may be sold or exchanged for another asset. An asset acquired in an exchange or with the proceeds from a sale continues to be treated as an asset subject to the asset limits, exemptions, and exclusions applicable to the type of asset acquired. This subdivision does not supersede other provisions of this chapter which describe or require specific treatment of assets, or which describe specific circumstances that require a particular treatment of assets.
2. The financial responsibility of any individual for any applicant or recipient of aid to families with dependent children is limited to members of the aid to families with dependent children filing unit. Such responsibility is imposed upon applicants or recipients as a condition of eligibility. Except as otherwise provided in this section, the assets of the members of the aid to families with dependent children filing unit are deemed available to an applicant or recipient, even if those assets are not actually contributed. For purposes of this subsection, biological and adoptive parents, but not stepparents, are treated as parents.
 3. Training, education, employment, and management benefits, and any income, earned or unearned, which is taken into account in

determining the amount of a grant for a particular month, may not be treated as an asset in that month.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-22. Asset limits. No person may be found eligible for training, education, employment, and management benefits unless the value of the training, education, employment, and management household's assets, not specifically excluded under this chapter, does not exceed five thousand dollars for a training, education, employment, and management household consisting of one person, or eight thousand dollars for training, education, employment, and management households consisting of two or more persons. In all instances, including determination of equity, property must be realistically evaluated in accord with current market value. Any reasonable costs associated with liquidation of excess assets must be taken into account.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-23. Exempt assets. The following assets are exempt from consideration in determining eligibility for training, education, employment, and management benefits:

1. The home occupied by the training, education, employment, and management household including trailer homes being used as living quarters, and the land upon which the home stands, up to twenty contiguous acres [8.09 hectares], if rural, and up to two acres [.81 hectares], if located within the established boundaries of a city;
2. Personal effects, wearing apparel, household goods, and furniture;
3. One motor vehicle of any equity value;
4. Indian trust or restricted lands, the proceeds from the sale thereof so long as those proceeds are impressed with the original trust, and the proceeds from the lease thereof so long as those proceeds are not commingled with other funds;
5. For the month of receipt and the following month, any refund of federal income taxes made to a member of the training, education, employment, and management household by reason of 25 U.S.C. 32, relating to earned income tax credit, and any payment made to a member of the training, education, employment, and management household by an employer under 26

U.S.C. 3507, relating to advance payment of earned income tax credit;

6. Real property that the training, education, employment, and management household is making a good faith effort to sell;
7. Indian per capita funds and judgment funds awarded by either the Indian claims commission or the court of claims after October 19, 1973, interest and investment income accrued on such Indian per capita or judgment funds while held in trust, and purchases made using interest or investment income accrued on such funds while held in trust. The funds must be identifiable and distinguishable from other funds. Commingling of per capita funds, judgment funds, and interest and investment income earned on those funds, with other funds, results in loss of the exclusion;
8. The equity value of all assets owned by a member of the training, education, employment, and management household who is a recipient of supplemental security income; and
9. The equity value of the assets, jointly owned by a training, education, employment, and management program household member and a recipient of supplemental security income.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-24. Lump sums received by a member of the training, education, employment, and management household.

1. All nonrecurring lump sum payments must be considered as an asset beginning the month following the month of receipt. For that month, the remaining lump sum amount is included with all other nonexempt assets in determining eligibility.
2. For purposes of this section, "lump sum income or payment" includes retroactive monthly benefits provided under title II of the Social Security Act and other retroactive monthly benefits, payments in the nature of windfall, such as lottery or gambling winnings or inheritances, judgments, or settlements for injuries to person or property to the extent that the payment is not earmarked and used for the purpose for which it was paid such as burial costs, and repair or replacement of lost or damaged assets, and workers' compensation awards.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-25. Good faith effort to sell real property. A good faith effort to sell is demonstrated only if the property owner:

1. Arranges for regular advertising, including classified advertisements in newspapers, post "for sale" signs, and marketing efforts made by real estate agencies;
2. Makes sales efforts including contacts with persons who respond to advertising efforts, persons known to be potential purchasers of property of the type offered, and entry into a listing agreement with a real estate agency;
3. Sets and publishes an asking price likely to result in a sale; and
4. Accepts any offer that meets or exceeds seventy-five percent of the published asking price.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-26. Disqualifying transfers.

1. The transfer of an asset, without adequate consideration, disqualifies the training, education, employment, and management household from receipt of benefits for a period beginning with the month in which the transfer took place and continuing for a number of months equal to the result of dividing the training, education, employment, and management household's total equity value in the transferred asset by the standard of need applicable to the training, education, employment, and management household.
2. Notwithstanding subsection 1, a transfer is not disqualifying if:
 - a. It is made by a person, who is not a responsible relative, by removing the name of a member of the training, education, employment, and management household from a jointly owned account to which no member of the training, education, employment, and management household contributed, provided that the name of the household member is removed:
 - (1) If the existence of the account is discovered by the county agency while the training, education, employment, and management household is in the process of applying for assistance, before the initial payment is certified; or

- (2) If the existence of the account is discovered by the county agency while the training, education, employment, and management household is receiving training, education, employment, and management benefits, within thirty days after that discovery; or
- b. When transferred the asset was excluded for any reason other than a good faith effort to sell real property.
3. If the training, education, employment, and management household member who caused the household's ineligibility due to a disqualifying transfer leaves the household, the remaining household members are no longer subject to the disqualification penalty only if the transferred asset was owned solely by the departing household member. Effective the month following the month in which the individual left the training, education, employment, and management household, the remaining members may apply for training, education, employment, and management benefits. If the transferred asset was jointly owned with any remaining member of the training, education, employment, and management household, the disqualification period must continue as initially calculated.
4. If the training, education, employment, and management household member who caused the disqualification moves to another training, education, employment, and management household, the previous period of ineligibility does not remain in effect. When an individual who incurred a disqualification due to transferring an asset moves to a different training, education, employment, and management household, the new household may be disqualified from the receipt of benefits for a period beginning with the month in which the original transfer took place and continuing for a number of months equal to the result of dividing the individual's total equity value in the transferred asset by the standard of need applicable to the new training, education, employment, and management household.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-27. Social security numbers. Before the needs of an individual may be included in the training, education, employment, and management benefit, the individual shall furnish a social security number or proof that one has been applied for. An individual may not be initially included in or added to a training, education, employment, and management benefit, including newborn children, until the individual's social security number or proof of application has been received.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-28. Eligibility for aliens.

1. Except as provided in subsection 3, an alien who is lawfully admitted for permanent residence under color of law is eligible for training, education, employment, and management benefits if all other requirements for eligibility are met.
2. An alien may be lawfully admitted for a temporary or specific period of time. Such aliens are not eligible for training, education, employment, and management benefits because they do not meet the requirement that residence be permanent. Examples include aliens with student visas, visitors, tourists, some workers, and diplomats.
3. a. A sponsored alien is ineligible for training, education, employment, and management benefits for a three-year period, beginning with the alien's entry into the United States, unless the sponsor:
 - (1) No longer exists; or
 - (2) Is unable to meet the alien's financial needs.
- b. A sponsored alien who applies for training, education, employment, and management benefits within three years following entry into the United States shall, as a condition of eligibility, provide the county agency with information and verification sufficient to determine the portion of the sponsor's income and assets that may be deemed available to the alien.
- c. The sponsor and the sponsored alien are both liable for the amount of any overpayment of training, education, employment, and management benefits that results from the failure of either to provide information and verification sufficient to allow the county agency to correctly determine the portion of the sponsor's income and assets that may be deemed available to the alien.
- d. For purposes of this section:
 - (1) "Sponsor" means an individual, public organization, or private organization who executed an affidavit of support or similar agreement on behalf of an alien, who is not the child of the sponsor or the sponsor's spouse, as a condition of the alien's entry into the United States.

- (2) "Sponsored alien" means an alien whose entry into the United States was conditioned on the execution of an affidavit of support or similar agreement by a sponsor who is not a parent or the spouse of a parent of the alien.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-29. Ineligibility due to participation in strikes.

1. No filing unit of a training, education, employment, and management household is eligible for benefits under this chapter for any month in which any member of that training, education, employment, and management filing unit participates in a strike. If it is discovered that a filing unit member participated in a strike during a month in which a training, education, employment, and management benefit has already been paid for that month, the county agency shall consider that amount as an overpayment subject to recovery.
2. For purposes of this section:
 - a. "Participating in a strike" means actual refusal, in concert with others, to provide services to one's employer.
 - b. "Strike" means a work stoppage, including a work stoppage due to the expiration of a collective bargaining agreement or a deliberate slowdown or interruption of operations by a body of workers to enforce compliance with demands made on an employer.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-30. Limitation on benefits to pregnant women.

1. A pregnant woman, not made ineligible by any other provision of this chapter, who is caretaker relative to no child, may receive aid to families with dependent children based upon the standard of need for one adult, without consideration of any additional pregnancy-related needs, no earlier than the sixth month of pregnancy. In addition to medical verification of the pregnancy, the applicant shall verify the approximate date on which the pregnant woman is expected to deliver.

2. An individual may be eligible for the early intervention program during the first two trimesters of the pregnancy. Early intervention program eligibility does not constitute aid to families with dependent children eligibility and does not make the individual eligible for training, education, employment, and management unless the individual is living with other aid to families with dependent children eligible household members.
3. If the individual eligible for the early intervention program is living in a training, education, employment, and management household, the individual's income and assets must be considered for the food stamp and low income home energy assistance program portion of the training, education, employment, and management benefit. The early intervention program benefit to the individual must be paid separately from the training, education, employment, and management benefit, but must be considered as unearned income for the food stamp and low income home energy assistance program portion of the training, education, employment, and management benefit calculation.
4. Beginning in the sixth month of the verified pregnancy, the early intervention program case may be converted to a training, education, employment, and management case. Training, education, employment, and management benefits must begin the first day of the sixth month of the verified pregnancy. Two-month retrospective budgeting may continue if there is no break in assistance of at least one benefit month.
5. The individual shall complete the training, education, employment, and management case assessment process and a training, education, employment, and management contract within two months of the beginning of training, education, employment, and management benefits.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-31. Age of parent - Effect on eligibility.

1. For purposes of this section:
 - a. "Adult parent" means a parent who is not a minor parent.
 - b. "Minor parent" means an individual, under the age of eighteen years, who has never been married and who:
 - (1) Is the parent of a dependent child living in the same household; or

- (2) Is eligible as a pregnant woman who is a caretaker relative to no child.
2. A minor parent who lives with the minor parent's own parent (grandparent) or legal guardian is eligible only if eligibility may be established after consideration of the income, but not the assets, of any grandparent, with whom the minor parent lives, applying the following disregards:
 - a. The first twenty-seven percent of earned income of each employed grandparent, for work expenses.
 - b. An amount equal to the aid to families with dependent children portion of the training, education, employment, and management standard of need, not including special allowances, applicable to a household consisting of the grandparent or grandparents and any other individuals living in the household, who are or could be claimed as dependents of the grandparents for federal income tax purposes, but who are not members of the aid to families with dependent children filing unit;
 - c. Amounts paid by the grandparent or grandparents, to support individuals who are not member of the household or the aid to families with dependent children filing unit, who are or could be claimed as dependents of the grandparent or grandparents for federal income tax purposes;
 - d. Amounts paid by the grandparent or grandparents, as child support or spousal support, to individuals who are not members of the household or the aid to families with dependent children filing unit.
 3. An adult parent, who lives with the adult parent's own parent (grandparent) or legal guardian, if eligible, is eligible without consideration of the income or assets of any grandparent with whom the adult parent lives, except that regular contributions of money made by such grandparent to any member of the aid to families with dependent children filing unit must be considered.
 4. For purposes of this section, a minor parent who becomes an adult parent while living with the minor parent's own parents or legal guardian is treated as an adult parent, effective the first day of the month in which the minor parent reaches age eighteen.
 5. For purposes of this section, a minor parent who ends residency with the minor parent's own parent (grandparent) is treated as having ended residency on the first day of the month in which the minor parent left the grandparent's home.

6. For purposes of this section, a minor parent who resumes residency with the minor parent's own parent (grandparent) is treated as having resumed that residency on the first day of the month after the month in which the minor parent resumed residency with the grandparent.
7. A minor parent who does not live with either of the minor parent's own parents (grandparents), if eligible, is eligible without consideration of the income or assets of the grandparents except that regular contributions of money made by a grandparent to any member of the aid to families with dependent children filing unit must be considered. The grandparents remain legally responsible for the minor parent's support. The matter must be referred to the child support agency for the purpose of securing support from the grandparents for the minor parent as well as for the purpose of securing support for the minor parent's child from the child's absent parent.
8. No aid to families with dependent children filing unit may include the child of a minor parent, living with that minor parent, during any time when the minor parent is living in a foster home or child care institution and receiving a foster care maintenance benefit. Any amount reasonably necessary to the maintenance of such a child of the minor parent is included in the minor parent's foster care maintenance benefit.
9. Except as provided in subsection 10, a minor parent must live in the home of the minor parent's own parent (grandparent), legal guardian, or other adult relative, or in an adult supervised supported living arrangement.
10. A minor parent may show there is good cause to live in a place other than required in subsection 9. Good cause exists if, based on evidence provided to the county agency:
 - a. The minor parent has no living parent or legal guardian;
 - b. No parent or legal guardian of the minor parent will allow the minor parent to live in the home of the parent or legal guardian;
 - c. The physical or emotional health or safety of the minor parent or the minor parent's child would be jeopardized if they lived with the minor parent's parent or legal guardian;
 - d. The minor parent lived apart from the minor's parent or legal guardian for at least one year before the earlier of the birth of the dependent child or the minor parent's application for aid to families with dependent children;

- e. The minor parent has earned a high school diploma or general equivalency diploma and is participating in postsecondary education under an approved job opportunities and basic skills program employability plan; or
- f. Some other reason exists which, in the judgment of the county agency, makes independent living more conducive to the well-being of the minor parent and the minor parent's child than does living in a place required under subsection 9.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-32. Value of benefit.

1. The reasonable value of the physical and custodial care or support that has been furnished to the child or children of a noncustodial parent by the training, education, employment, and management program is, for each month such child or children are eligible, the amount of the aid to families with dependent children benefit received multiplied by the number of children of the noncustodial parent in the aid to families with dependent children filing unit and divided by the total number of children in the aid to families with dependent children filing unit.
2. Stepparents cannot be legally required to support their stepchildren, but when they are able and willing to do so, should be encouraged to support to the extent of their ability.
3. In cases where a stepparent is eligible to receive training, education, employment, and management program benefits, the reasonable value of the physical and custodial care or support which has been furnished to the child or children of a noncustodial parent by the training, education, employment, and management program is, for each month such child or children are eligible, the amount of the aid to families with dependent children benefit received multiplied by the number of children of the noncustodial parent in the aid to families with dependent children filing unit and divided by one plus the total number of children in the aid to families with dependent children filing unit.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-33. Assignment of right to support.

1. The child support agency must be notified, no later than two working days after the mailing of the initial training, education, employment, and management benefit to a training, education, employment, and management household, of any child who is a member of the training, education, employment, and management household and whose eligibility for benefits is based on the continued absence of the child's parent from the home.
2. The applicant and, upon request, any member of the training, education, employment, and management household for whom aid to families with dependent children is requested, as a condition of eligibility shall:
 - a. Execute all necessary documents to protect the right of any member of the aid to families with dependent children filing unit, and the agency, to child support from the absent parent of such member;
 - b. Cooperate in obtaining support and in establishing paternity of any child in the aid to families with dependent children filing unit with respect to whom paternity has not been established.
3. The requirement for the assignment of rights to support from absent parents continues through the month in which the latest of the following occurs:
 - a. The child reaches age eighteen.
 - b. The child graduates from high school, provided that graduation does not occur after the month of the child's nineteenth birthday.
 - c. Child support obligations, imposed by a court for periods after the child reaches age eighteen, are terminated.
4. For purposes of this section:
 - a. "Cooperate in obtaining support and in establishing paternity" includes:
 - (1) Appearing at a state or local office designated by the department or county agency to provide information or evidence relevant to the case;
 - (2) Appearing as a witness at a court or other proceeding;
 - (3) Providing information, or attesting to lack of information, under penalty of perjury;

- (4) Paying to the department any support funds received that are covered by the assignment of rights; and
 - (5) Taking any other reasonable steps to assist in establishing paternity and securing child support.
5. An individual shall cooperate in establishing paternity of a child born out of wedlock for whom the individual can legally assign rights, and obtaining child support and payments for the individual and any other individual for whom the individual can legally assign rights, unless cooperation is waived by the county agency for good cause.
 6. The custodian who refuses to cooperate in obtaining support, including establishing paternity, is ineligible to receive training, education, employment, and management. If the custodian continues to refuse to cooperate, the entire household shall become ineligible for training, education, employment, and management.
 - a. The first time the custodian fails to cooperate, that individual's needs must be removed from the benefit calculation for a minimum period of one month. The sanctioned individual is ineligible for all training, education, employment, and management benefits. The sanctioned individual may cure the noncooperation and have benefits restored at any time after the minimum one-month period of ineligibility by participating as required under the terms of the training, education, employment, and management contract. If at the end of six months of the sanction the sanctioned individual continues to refuse to cooperate, the entire training, education, employment, and management household is ineligible for training, education, employment, and management. A household found ineligible for training, education, employment, and management benefits as a result of a sanction may apply for food stamp, medicaid, child care assistance, or low income home energy assistance program benefits.
 - b. The second time the custodian fails to cooperate, that individual's needs must be removed from the benefit calculation for a minimum period of two months. The sanctioned individual shall lose eligibility for all training, education, employment, and management benefits. The sanctioned individual may cure the noncooperation and have benefits restored at any time after the minimum two-month period of ineligibility by participating as required under the terms of the training, education, employment, and management contract. If at the end of four months of the sanction the sanctioned individual continues to refuse to cooperate, the entire training, education, employment, and management household is ineligible for training, education, employment, and

management. A household found ineligible for training, education, employment, and management benefits as a result of a sanction may apply for food stamp, medicaid, child care assistance, or low income home energy assistance program benefits.

- c. The third and subsequent times the custodian fails to cooperate, that individual's needs must be removed from the benefit calculation for a minimum period of three months. The sanctioned individual shall lose eligibility for all training, education, employment, and management benefits. The sanctioned individual may cure the noncooperation and have benefits restored at any time after the minimum three-month period of ineligibility by participating as required under the terms of the training, education, employment, and management contract. If at the end of four months of the sanction the sanctioned individual continues to refuse to cooperate, the entire training, education, employment, and management household is ineligible for training, education, employment, and management. A household found ineligible for training, education, employment, and management benefits as a result of a sanction may apply for food stamp, medicaid, child care assistance, or low income home energy assistance program benefits.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-34. Good cause for failure or refusal to cooperate in obtaining support or establishing paternity.

1. The county agency, for good cause, may waive the requirement that an individual cooperate in obtaining support and establishing paternity if it determines that cooperation is against the best interests of the child. A county agency may determine that required cooperation is against the best interests of the child only if:
 - a. The individual's cooperation in establishing paternity or securing child support is reasonably anticipated to result in:
 - (1) Physical harm to the child for whom support is to be sought;
 - (2) Emotional harm to the child for whom support is to be sought;
 - (3) Physical harm to the parent or caretaker relative with whom the child is living which reduces that

individual's capacity to care for the child adequately; or

(4) Emotional harm to the parent or caretaker relative with whom the child is living, of such nature or degree that it reduces that individual's capacity to care for the child adequately; or

b. At least one of the following circumstances exists, and the county agency believes that because of the existence of that circumstance, in the particular case, proceeding to establish paternity or secure child support would be detrimental to the child for whom support would be sought:

(1) The child for whom support is sought was conceived as a result of incest or forcible rape;

(2) Legal proceedings for the adoption of the child are pending before a court of competent jurisdiction; or

(3) The individual, otherwise required to cooperate, is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep or relinquish the child for adoption, and the discussions have not gone on for more than three months.

2. Physical harm and emotional harm must be of a serious nature in order to justify a waiver.

3. A waiver due to emotional harm may only be based on a demonstration of an emotional impairment that substantially impairs the individual's functioning. In determining a waiver, based in whole or in part upon the anticipation of emotional harm to the child, the parent, or the caretaker relative, the county agency shall consider:

a. The present emotional state of the individual subject to emotional harm;

b. The emotional health history of the individual subject to emotional harm;

c. Intensity and probable duration of the emotional impairment;

d. The degree of cooperation to be required; and

e. The extent of involvement of the child in the paternity establishment or support enforcement activity to be undertaken.

4. In all cases in which the county agency has determined that good cause exists based on a circumstance subject to change, a determination to grant a waiver must be reviewed no less frequently than every six months to determine if the circumstances which led to the waiver continue to exist.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-35. Combined requirements.

1. The department shall establish combined requirements for the training, education, employment, and management standard of need that represent amounts of income, by household size, necessary for a standard of living compatible with decency and health. The requirements represent one hundred percent of need.
2. The six basic items of need considered in the training, education, employment, and management benefit are: shelter; food; clothing; personal needs such as combs, toothbrushes, and toothpaste, razor blades, sanitary supplies, and haircuts; household supplies such as cooking utensils, laundry, beddings, and towels; and fuel and utilities.
3. The department shall secure approval of training, education, employment, and management program waiver terms and conditions respecting combined requirements.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-36. Determining membership in training, education, employment, and management household. The training, education, employment, and management household includes the members of a family and others who live under the same roof, provided at least one member is in receipt of aid to families with dependent children. The training, education, employment, and management household includes all other household members who would be eligible for food stamp or low income home energy assistance program benefits, based on sections 75-02-01.2-38 and 75-02-01.2-39. The training, education, employment, and management benefit is a single cash payment for aid to families with dependent children, food stamp, and low income home energy assistance program benefits. Aid to families with dependent children eligibility and benefit amount is determined by counting the income and assets of those members of the household included in the aid to families with dependent children filing unit, based on section 75-02-01.2-37. Food stamp and low income home energy assistance program eligibility and benefit

amounts are based on the income and assets of all persons residing in the household.

1. If the primary individual in the training, education, employment, and management household does not provide all pertinent data necessary for the county agency to make an eligibility determination, the entire household is ineligible for training, education, employment, and management. If an ineligible, nonlegally responsible individual chooses not to participate in the training, education, employment, and management project, no individual in the household may receive the food stamp or low income home energy assistance program portion of the training, education, employment, and management benefit.
2. Individuals required to be members of the aid to families with dependent children, food stamp, or low income home energy assistance program filing units within the training, education, employment, and management household, but whose needs are deleted from the unit because of a sanction, are not eligible for training, education, employment, and management benefits. The income and assets of sanctioned household members must be considered in determining eligibility and benefits for the remaining members of the training, education, employment, and management household.
3. If a household identified as a training, education, employment, and management household elects not to participate in training, education, employment, and management, the household may apply for food stamp, low income home energy assistance program, and child care assistance benefits, but may apply for aid to families with dependent children benefits.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-37. Determining membership of the aid to families with dependent children filing unit.

1. The aid to families with dependent children filing unit must include at least one eligible child unless:
 - a. The only child receives supplemental security income benefits; or
 - b. The aid to families with dependent children filing unit includes a pregnant woman in the last trimester of her pregnancy.

2. Any parent of a dependent child who resides in the home must be included in the aid to families with dependent children filing unit.
3. If the aid to families with dependent children filing unit includes a parent and a needy dependent child, any other child who resides in the home, for whom assistance is sought, and to whom the parent is a relative by birth, marriage, or adoption, must be included in the aid to families with dependent children filing unit.
4. If the training, education, employment, and management household includes a parent and the parent's nonneedy dependent child or children, any other needy dependent child or children to whom the parent is a relative by birth, marriage, or adoption, must be included in an aid to families with dependent children filing unit which consists only of the needy dependent child or children.
5. If the training, education, employment, and management household includes a parent, the parent's needy dependent child or children, and other dependent children to whom the parent is a relative by birth, marriage, or adoption, an aid to families with dependent children filing unit must include the parent and the parent's needy dependent child or children, and may include any needy dependent child or children to whom the parent is a relative by birth, marriage, or adoption, but exclude any nonneedy dependent child or children who is not the parent's child but to whom the parent is a relative by birth, marriage, or adoption, and who is not a brother or sister, whether by the whole or half-blood or by adoption, to a needy dependent child.
6. A minor parent who lives in the home of a parent of the minor parent is treated as a dependent child in an aid to families with dependent children filing unit that includes a parent of the minor parent unless:
 - a. The minor parent is married or formerly married and divorced, but not formerly married in an annulled marriage;
 - b. The minor parent has resided with the other parent of the minor parent's child; or
 - c. The minor parent has lived separately and apart from the minor parent's parent or lawful guardian, with the consent or acquiescence of the minor parent's parent or lawful guardian, while managing the minor's own financial affairs regardless of the source of income, so long as it is not from any activity declared to be a crime by the laws of North Dakota or the United States.

7. Training, education, employment, and management household members who are receiving supplemental security income benefits may not be included in the aid to families with dependent children filing unit.
8. Training, education, employment, and management household members who are ineligible for aid to families with dependent children benefits because of a sanction imposed under this chapter must be included in the aid to families with dependent children filing unit for the purpose of consideration of income and assets of the sanctioned training, education, employment, and management household member.
9. Training, education, employment, and management household members who are ineligible for aid to families with dependent children benefits because they do not meet citizenship or alienage requirements imposed under this chapter must be included in the aid to families with dependent children filing unit for the purpose of consideration of income and assets of those training, education, employment, and management household members.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-38. Determining membership of the food stamp filing unit.

1. The food stamp filing unit shall include all individuals residing in the training, education, employment, and management household.
2. Training, education, employment, and management household members who are ineligible for food stamps because of a sanction or disqualification imposed under this chapter must be included in the food stamp filing unit for the purpose of considering the income and assets of the sanctioned training, education, employment, and management household member.
3. Training, education, employment, and management household members who are ineligible for food stamps because they do not meet citizenship or alienage requirements imposed under this chapter must be included in the food stamp filing unit for the purpose of consideration of income and assets of those training, education, employment, and management household members.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-39. Determining membership of the low income home energy assistance program filing unit.

1. The low income home energy assistance filing unit shall include all individuals residing in the training, education, employment, and management household unless the training, education, employment, and management household resides in housing subsidized by the federal government.
2. Training, education, employment, and management household members who are ineligible for low income home energy assistance program benefits because of a sanction or disqualification imposed under this chapter must be included in the low income home energy assistance filing unit for the purpose of considering the income and assets of the sanctioned training, education, employment, and management household member.
3. Training, education, employment, and management household members who are ineligible for low income home energy assistance program benefits because they do not meet citizenship or alienage requirements imposed under this chapter must be included in the low income home energy assistance program filing unit for the purpose of consideration of income and assets of those training, education, employment, and management household members.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-40. Combined supplemental security income and aid to families with dependent children households.

1. With respect to the same month, no individual may receive benefits through both the supplemental security income program and the aid to families with dependent children program.
2. An individual who is receiving supplemental security income benefits may be a member of a training, education, employment, and management household that includes members who are also members of an aid to families with dependent children filing unit, and may be an ineligible caretaker relative for a child in an aid to families with dependent children filing unit.
3. Assets or income owned solely by the recipient of supplemental security income benefits, including that portion of income disregarded in determining eligibility for supplemental security income benefits, may not be considered available to the members of the aid to families with dependent children filing unit.

History: Effective December 9, 1996.
General Authority: NDCC 50-06-01.8
Law Implemented: NDCC 50-06-01.8

75-02-01.2-41. Recipients living out of state. An individual who receives training, education, employment, and management benefits is free to travel without a loss of eligibility so long as the individual remains a resident of the state. An individual living out of state who remains a resident of North Dakota is subject to the same standards and procedures for eligibility determinations and budgeting as a similarly situated individual present in the state.

History: Effective December 9, 1996.
General Authority: NDCC 50-06-01.8
Law Implemented: NDCC 50-06-01.8

75-02-01.2-42. Grant amount in whole dollars. Training, education, employment, and management benefits are granted in whole dollar amounts. In calculating benefit amounts, numbers are rounded down to the nearest whole dollar.

History: Effective December 9, 1996.
General Authority: NDCC 50-06-01.8
Law Implemented: NDCC 50-06-01.8

75-02-01.2-43. Benefits less than one dollar. No benefit payment may be issued if the calculated training, education, employment, and management benefit is less than one dollar, but the training, education, employment, and management household must be treated for all other purposes of this chapter, including the application of the retrospective budgeting cycle, as a training, education, employment, and management household to which the department makes a benefit payment.

History: Effective December 9, 1996.
General Authority: NDCC 50-06-01.8
Law Implemented: NDCC 50-06-01.8

75-02-01.2-44. Income described.

1. All income that is actually available must be considered. Income is actually available when it is at the disposal of an applicant or recipient; when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make the sum available for support or maintenance; or when the applicant or recipient has the lawful power to make the income available or to cause the income to be made available. In specific circumstances, income available to persons other than the applicant or recipient is deemed available. This subsection does not supersede other provisions of this chapter

which describe or require specific treatment of income, or which describe specific circumstances that require a particular treatment of income.

2. Income may be earned, unearned, or deemed. It may be received regularly, irregularly, or in lump sums. Income may be counted or excluded. It may be disregarded for some purposes, but not for others. Other sections of this chapter explain those treatments.
3. Each training, education, employment, and management program household member must accept any unemployment compensation benefits to which entitled. Each training, education, employment, and management program household member must provide verification, from job service North Dakota, as to whether the training, education, employment, and management program household member is qualified for unemployment compensation benefits; and, if qualified, must make application for unemployment compensation benefits. Assistance must be denied to the entire training, education, employment, and management household for any month in which the principal wage earner in an unemployed parent case is eligible for unemployment compensation, but refuses to apply for or accept such benefits.
4. Earned income includes:
 - a. Wages, salaries, commissions, bonuses, or profits received as a result of holding a job or being self-employed;
 - b. Earnings from on-the-job training provided by the Job Training Partnership Act or the job opportunities and basic skills program;
 - c. Wages received as the result of participation in the mainstream and green thumb programs;
 - d. Earnings of recipients employed by schools under title I of the Elementary and Secondary Schools Act [20 U.S.C. 236 et seq.];
 - e. Wages received from sheltered workshop employment;
 - f. Sick leave pay or loss-of-time private insurance paid for the loss of employment due to illness or injury;
 - g. Compensation for jury duty;
 - h. Tips;
 - i. Income from boarders;
 - j. Income from room rentals;

- k. Income from participation in job corps; and
 - l. Income from internship or stipends.
5. Unearned income includes:
- a. Social security, veterans benefits of any kind, private pensions, pensions provided to former employees of public entities, workers' compensation, unemployment benefits, union compensation during strikes, and military allotments;
 - b. Rents paid without an appreciable amount of personal involvement and effort provided as a service to the tenant, mineral lease rentals, bonus payments and royalties, dividends, and interest paid;
 - c. Cash contributions from relatives provided to training, education, employment, and management household for living expenses;
 - d. Cash gifts;
 - e. Poor relief or general assistance payments made to any member of the training, education, employment, and management household by a county agency or the bureau of Indian affairs;
 - f. Refugee assistance payments;
 - g. Early intervention program benefits; or
 - h. Any other form of income that is not earned income.
6. Deemed income includes:
- a. In the case of income deemed from a stepparent or alien parent, that stepparent's or alien parent's entire gross income less:
 - (1) The twenty-seven percent standard employment expense allowance;
 - (2) An additional amount for the support of the stepparent or alien parent and any other individuals living in the home whose needs are not taken into account in making the eligibility determination and who are or could be claimed by the stepparent or alien parent as dependents for federal income tax purposes, but not including any sanctioned individuals or individuals who are required to be included in the training, education, employment, and management household, but have failed to cooperate,

equal to the standard of need amount for a family group of the same composition and size as the stepparent or alien parent and those other individuals described in this paragraph;

- (3) Spousal support and child support payments actually being made to or on behalf of persons not living in the home; and
 - (4) Amounts actually being paid to individuals not living in the home who are or could be claimed by the stepparent or alien parent as dependents for federal income tax purposes.
- b. In the case of income deemed from the sponsor of a sponsored alien, the entire gross income of the sponsor and the sponsor's spouse, less:
- (1) Twenty percent of the total monthly earned income of the sponsor and the sponsor's spouse or one hundred seventy-five dollars, whichever is less;
 - (2) An amount equal to the training, education, employment, and management standard of need amount for a family group of the same composition and size as the sponsor and those other individuals living in the sponsor's household who are or could be claimed by the sponsor as dependents for federal income tax purposes, but whose needs are not taken into account in making an eligibility determination under this chapter;
 - (3) Spousal support and child support payments actually being made by the sponsor to or on behalf of individuals not living in the sponsor's household; and
 - (4) Amounts actually being paid by the sponsor to individuals not living in the sponsor's household who are or could be claimed by the sponsor as a dependent for federal income tax purposes.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-45. Excluded income.

1. The following income must be excluded in determining eligibility for training, education, employment, and management benefits:

- a. All earned income of any child, except a minor parent, attending elementary or high school full time;
- b. Earned income of any child derived from a program carried out under the Job Training Partnership Act, as enacted before August 22, 1996 [29 U.S.C. 1501 et seq.];
- c. Payments made to any member of the training, education, employment, and management household under title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended [Pub. L. 91-646; 42 U.S.C. 4601 et seq.];
- d. Per capita payments made to members of Indian tribes under the Indian Tribal Judgment Funds Use and Distribution Act [25 U.S.C. 1407 et seq.], including all interest and investment income accrued on such funds while held in trust pursuant to a plan approved under the provisions of that Act pursuant to a plan approved by Congress prior to January 12, 1983, and any purchases made with such payments for so long as the payment is not commingled with other funds;
- e. Income derived from submarginal lands held in trust for Indians, to the extent required by Pub. L. 94-114 [25 U.S.C. 459e], for so long as the income is not commingled with other funds;
- f. Up to two thousand dollars per year of income received by an individual Indian derived from that Indian's interests in trust or restricted lands, as required by 25 U.S.C. 1408, for so long as the income is not commingled with other funds;
- g. A loan from any source that is subject to a written agreement requiring repayment by the recipient;
- h. Agent orange settlement payments;
- i. Payments made under the Radiation Exposure Compensation Act [Pub. L. 101-426; 104 Stat. 920; 42 U.S.C. 2210 (note) (1993 Supp.)], for so long as the payment is not commingled with other funds;
- j. The value of any supplemental food assistance received under the Child Nutrition Act of 1966, as amended [42 U.S.C. 1771 et seq.], and the special food service program for children provided under the National School Lunch Act, as amended [42 U.S.C. 1751 et seq.];
- k. Payments received by any member of the training, education, employment, and management household, from the child nutrition and food distribution unit of the North

Dakota department of public instruction, in reimbursement of the cost of furnishing meals and snacks by any member of the training, education, employment, and management household who provides child care in the home, provided that the child care provider is licensed under North Dakota Century Code chapter 50-11.1, and is sponsored by a public or nonprofit private organization;

- l. Income received as a housing allowance through any program sponsored by the United States department of housing and urban development and rent supplements or utility payments provided through the housing assistance program;
- m. The value of surplus commodities provided through the United States department of agriculture;
- n. Payments for supporting services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aids or senior companions, or to individuals serving in the service corps of retired executives, active corps of executives, and any other programs under title II of the Domestic Volunteer Services Act of 1973 [Pub. L. 93-113; 42 U.S.C. 5001 et seq.];
- o. Payments made to volunteers in service to America under title I of the Domestic Volunteer Services Act of 1973 [Pub. L. 93-113; 42 U.S.C. 4951 et seq.];
- p. Any payment made as a result of the Alaska Native Claims Settlement Act, which is made tax exempt under Public Law 92-203 [43 U.S.C. 1601 et seq.];
- q. The value of benefits received under the supplemental food program for women, infants, and children [Pub. L. 94-105; 42 U.S.C. 1786];
- r. The value of general assistance benefits provided in voucher form by any county agency or the bureau of Indian affairs;
- s. Assistance payments from other programs, agencies, or organizations that:
 - (1) Do not serve the same purposes as training, education, employment, and management benefits; or
 - (2) Provide goods or services that are not included in the standard of need;
- t. Scholarships, grants, and awards for educational purposes, which are given because of need or achievement by the bureau of Indian affairs, other federal sources, state

sources, civic, fraternal, and alumni organizations, or relatives, to undergraduate-level and graduate-level students;

- u. Work study program income earned by an undergraduate-level or graduate-level student;
 - v. Family subsidy program payments made by the department;
 - w. Returned deposits from rentals and from utility companies;
 - x. Adoption assistance payments;
 - y. Foster care payments and payments received as a retainer for services as an emergency shelter foster home;
 - z. Small irregular cash, contributions, or gifts, which total, in any month, less than thirty dollars per training, education, employment, and management household;
 - aa. Any refund or federal income taxes received as an earned income tax credit pursuant to 26 U.S.C. 32, and any payments made by an employer as an advance payment of earned income tax credit pursuant to 26 U.S.C. 3507; and
 - bb. Payments of education award money and living allowance moneys to an individual enrolled in AmeriCorps under the National and Community Service Act, as amended [42 U.S.C. 12571 et seq.].
2. For purposes of this section, "child" means an individual:
- a. Under age eighteen; or
 - b. Age eighteen and a full-time student in elementary or high school, or in an equivalent level of vocational or technical training, if, before attaining age nineteen, such student may reasonably be expected to complete the high school or vocational training curriculum.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-46. Gross income test.

1. When determining training, education, employment, and management eligibility for the initial two months only, the gross income, earned and unearned, of all members of the training, education, employment, and management household, exempting the earned income of dependent children attending elementary or high school full time, may not exceed one

hundred six percent of the training, education, employment, and management standard of need including special items of need. After eligibility is determined for the initial two months, the gross income eligibility test is not performed for training, education, employment, and management households on an ongoing monthly basis. Beginning the third benefit month, gross earnings less a standard employment expense allowance of twenty-seven percent and appropriate employment incentives plus all unearned income is tested against the training, education, employment, and management standard of need and special items of need for the appropriate household size.

2. The gross income test is performed for applicant training, education, employment, and management households as well as for new applicants added to an existing training, education, employment, and management household if that new applicant did not receive assistance for the previous month.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-47. Budgeting process.

1. Budgeting is the process by which a training, education, employment, and management household's need is determined. Through the process available, income is matched against the training, education, employment, and management standard of need.
2. If nonexcluded income exceeds the training, education, employment, and management standard of need, the training, education, employment, and management household is not needy, for purposes of the training, education, employment, and management program, and the household is ineligible for program benefits.
3. For training, education, employment, and management households that meet the gross income test, if nonexcluded income is less than the training, education, employment, and management standard of need, the household is subject to the net income test.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-48. Net income test. If the gross income test is passed, the applicant or applicant household is subject to a net income test. The net income test compares the training, education, employment, and management standard of need, personal needs allowance for

out-of-home aid to families with dependent children eligible individuals, and special items of need to the adjusted net income. If the adjusted net income is less than the training, education, employment, and management standard of need, personal needs allowance, and special items of need, the household passes the net income test and the benefit amount is calculated.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-49. Income considerations.

1. All income must be considered in establishing eligibility and in determining the training, education, employment, and management benefit amount.
2. Income must be reasonably evaluated. A determination that income is deemed available is a determination that the income is actually available.
3. Income from wages, or any other source, must be considered received in the month in which it was actually received or considered to be available. Wages held at the request of an employee must be considered income in the month in which the wages would otherwise have been paid by the employer.
4. A member of a training, education, employment, and management household who receives regular income, other than on a monthly basis, may occasionally receive an extra check which causes the unit to become ineligible in the month of receipt. If the receipt of additional income is anticipated to result in ineligibility for only one month, the case may be suspended, rather than closed.
 - a. If the additional income is received in the month of application (the first month of prospective budgeting), the application must be denied.
 - b. If the additional income is received in the month after the month of application (the second month of prospective budgeting), the case must be prospectively suspended, and all income, except income derived from the last check received in that month, from the source of regular income, must be retrospectively budgeted.
 - c. If the additional income is received in any month except the month of application or the month after the month of application, all income must be retrospectively budgeted.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

75-02-01.2-50. Earned income considerations.

1. Earned income must be verified and documented in the case record. Earned income may be received from a variety of sources.
2. Net earned income is determined by adding monthly net income from self-employment to other monthly earned income and subtracting the applicable deductions.
3. Except as provided in subsection 4, "monthly net income from self-employment" means:
 - a. In the case of a self-employed individual whose business does not require the purchase of goods for sale or resale, seventy-five percent of gross monthly earnings from self-employment.
 - b. In the case of a self-employed individual whose business requires the purchase of goods for sale or resale, seventy-five percent of the result determined by subtracting cost of goods purchased from gross receipts, determined monthly.
 - c. In the case of a business that furnishes room and board, monthly gross receipts less one hundred dollars per room and board client.
 - d. In the case of a self-employed individual in a service business that requires the purchase of goods or parts for repair or replacement, twenty-five percent of gross monthly earnings from self-employment.
 - e. In the case of a self-employed individual who receives income other than monthly, if the most recently available federal income tax return accurately predicts income, twenty-five percent of gross annual income, plus the gain or minus the loss resulting from the sale of capital items, plus ordinary gains or minus ordinary losses, divided by twelve. If the most recent available federal income tax return does not accurately predict income because the business has been recently established, because the business has been terminated or subject to severe reversal, because the applicant or recipient makes a convincing showing that actual net income is substantially less than twenty-five percent of gross profit, or because the county agency determines for any reason that actual net profits are substantially greater than twenty-five percent of gross profit, an amount determined by the county agency to represent the best

estimate of monthly net income from self-employment must be used. A self-employed individual shall provide, on a monthly basis, the best information available on income and cost of goods. Income statements, when available, must be used as a basis for computation. If the business is farming or any other seasonal business, the annual net income, divided by twelve, is the monthly net income.

4. A self-employed individual who shows that gross income from self-employment, less the cost of purchased goods and building or equipment rental, is less than net income from self-employment, as calculated under subsection 3, may rely on the lesser amount. This calculation is not intended to recognize expenses that require no out-of-pocket payment, such as depreciation, which create an asset, such as equipment or property purchases or loan payments, or which are otherwise treated in this chapter, such as the personal employment expenses of payroll taxes, lunches, and transportation.
5. If earnings from more than one month are received in a lump sum payment, the payment must be divided by the number of months in which the income was earned, and the resulting monthly amounts are attributed to each of the months with respect to which the earnings were received.
6. Income received on a contractual basis is allocated equally to each of the months covered by the contract, regardless of when the contract payments are actually received, and is deemed available to be received in the months to which income is allocated.
7. The standard employment expense allowance recognizes all costs associated with employment, including transportation, uniforms, social security contributions, and income tax withholding. This standard allowance applies to adult household members and nonstudent dependent children who are employed either full time or part time.
8. The standard employment expense allowance is twenty-seven percent of gross earned income per month. This standard employment expense allowance applies to all individuals who receive an employment expenses allowance, including stepparents and parents of minor parents.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-51. Disregarded income.

1. The department shall establish an employment incentive, and an employment incentive limit, to reasonably encourage training,

education, employment, and management household members to earn income.

2. If permitted under subsection 3, income must be disregarded, as an employment incentive, in determining the training, education, employment, and management benefit.
 - a. Twenty-seven percent of the household's monthly gross earned income, except earnings of any child who is a full-time elementary or high school student, is disregarded as a standard work expense. The amount remaining is net earned income.
 - b. Any net earned income that exceeds the income incentive limit is treated as countable earned income.
 - c. A portion of net earned income that is equal to or less than the income incentive limit may be disregarded, under this subdivision, in determining countable earned income.
 - (1) If an applicant has earned income in the month of application or the month after the month of application, at least fifty percent of the net earned income that is equal to or less than the income incentive limit may be disregarded for eight months beginning the month in which the applicant first has earned income.
 - (2) If a recipient has earned income, at least fifty percent of the net earned income that is equal to or less than the income incentive limit may be disregarded for eight months beginning the month earned income is first budgeted retrospectively.
 - (3) If a recipient has earned income, at least thirty percent of the net earned income that is equal to or less than the income incentive limit may be disregarded for the ninth and tenth months after the month earned income is first budgeted retrospectively.
 - (4) If a recipient has earned income, at least ten percent of net earned income that is equal to or less than the income incentive limit may be disregarded for the eleventh and twelfth months after the month earned income is first budgeted retrospectively.
 - (5) If a recipient has earned income, no net earned income may be disregarded under this subdivision after the twelfth month after the month earned income is first budgeted retrospectively.

- d. An employed training, education, employment, and management household member who is receiving an employment incentive disregard and who becomes unemployed for a period of four consecutive months is, upon reemployment, provided employment incentive disregards of at least fifty percent for the first eight months after reemployment, at least thirty percent for months nine and ten, at least ten percent for months eleven and twelve, and none thereafter.
 - e. An employed training, education, employment, and management household member who is receiving an employment incentive disregard and who becomes unemployed for a period less than four consecutive months is, upon reemployment, provided the employment incentive disregards the member would have received if the first month of reemployment followed immediately after the last month of the previous employment.
 - f. If an employed training, education, employment, and management household member, who is receiving the employment incentive disregard, voluntarily terminates employment and is unable to show good cause for failure or refusal to participate, the employment incentive disregard cycle continues as if the training, education, employment, and management household member was employed.
 - g. If any nondisregarded income remains, a medicare premium, if applicable may be disregarded.
 - h. If any nondisregarded income remains, child and dependent care costs may be disregarded as follows:
 - (1) For aid to families with dependent children filing units, only employment-related child or adult dependent care costs; and
 - (2) For food stamp and low income home energy assistance program filing units, employment and school or training-related child and adult dependent care costs.
3. An income disregard is available only if:
- a. The training, education, employment, and management household passes the gross income test without benefit of the income disregards; or
 - b. The eligible employed individual previously received training, education, employment, and management benefits, but has not completed the twelve-month earned income employment incentive disregard cycle, including months in which the earned income disregard was unavailable because:

- (1) No payment was made because the calculated training, education, employment, and management benefit was less than one dollar;
 - (2) The training, education, employment, and management household voluntarily requested termination of assistance for the primary purpose of avoiding completion of the earned income employment incentive disregard cycle or any part of that cycle;
 - (3) The training, education, employment, and management household failed, without good cause, to file a signed and completed monthly report form by the fifteenth day of the month in which the report was due;
 - (4) A member of the training, education, employment, and management household terminated or reduced employment, without good cause, in the thirty days preceding the month in which the earned income employment incentive disregard was unavailable; or
 - (5) A member of the training, education, employment, and management household refused a bona fide job offer, without good cause, in the thirty days preceding the month in which the earned income employment incentive disregard was unavailable.
4. If, in any month, additional income received from a recurring source causes the training, education, employment, and management household to be suspended as ineligible for one month, the month of suspension does not count as a month for purposes of this section.
 5. Nonhousehold member deduction for stepparent and minor parent budgeting, if applicable, may be made.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-52. Voluntary quit or refusal of employment. No training, education, employment, and management household member, except a dependent child, may refuse a bona fide offer of employment or training for employment, or terminate employment, without good cause, within thirty days before the date of application.

1. If an offer of employment or training was made through job service North Dakota, job service North Dakota shall determine if a bona fide offer was made and if there was good cause for refusing it.

2. If an offer of employment or training was made other than through job service North Dakota, the county agency shall determine if a bona fide offer was made and if there was good cause for refusing it, considering the following factors:
 - a. Whether there was a definite offer of employment at wages meeting any applicable minimum wage requirements and that are customary for such work in the community;
 - b. Whether there were any questions as to the physical or mental ability of the training, education, employment, and management household member to engage in the offered employment or training for employment;
 - c. Whether there were any questions of the working conditions such as risks to health, safety, or lack of workers' compensation protection;
 - d. Whether the training, education, employment, and management program household member had a way to get to or from the particular job, including evidence the training, education, employment, and management program household member reasonably attempted to arrange for transportation;
 - e. Whether, as a condition of being employed, the training, education, employment, and management program household member would be required to join a company union, or to resign or refrain from any bona fide labor organization, or would be denied the right to retain membership in and observe the lawful rules of any such organization;
 - f. Whether the position offered is vacant directly due to a strike, lockout, or other labor dispute;
 - g. Whether the work is at an unreasonable distance from the training, education, employment, and management program household member's residence, provided one-way traveltime of one hour or less may not be treated as an unreasonable distance;
 - h. Whether gross wages are less than the allowable employment expense and child care or adult dependent care; and
 - i. Whether an individual's substantially continuous presence in the household is necessary to care for another individual in the household to whom the individual owes a legal duty to provide care, who has a condition, verified by reliable medical evidence, which does not permit self-care or care by another household member.
3. If it is determined that a bona fide offer of employment or training was refused by a training, education, employment, and management program household member without good cause:

- a. In the case of a recipient training, education, employment, and management household, the member who voluntarily refuses a bona fide offer of employment or training for employment is ineligible for the benefit month in which the refusal occurred; and
 - b. In the case of an applicant training, education, employment, and management household, the filing unit containing the member is ineligible in each of the thirty days following the actual date of refusal or termination of employment.
4. If it is determined that a recipient training, education, employment, and management household member voluntarily quits employment without good cause, that member is ineligible in the benefit month in which the job quit occurred, and may not receive the twenty-seven percent standard employment expense allowance, or any employment incentive disregard, in the month the income is budgeted.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-53. Deduction for dependent care.

1. A deduction for a member of an aid to families with dependent children filing unit who is an employed caretaker relative or for a caretaker relative of a food stamp or low income home energy assistance program filing unit who is employed or attending school or training may be made for the cost of necessary care of a child or incapacitated adult who is a member of the training, education, employment, and management household, living in the home, and receiving benefits.
2. The deduction may not be made for the cost of dependent care provided by the caretaker relative's child or stepchild who is under twenty-one years of age, unless:
 - a. The provider of dependent care does not live in the home occupied by the training, education, employment, and management household;
 - b. The provider of dependent care is eighteen years of age;
 - c. The provider of dependent care was not claimed as a dependent on the most recent federal income tax return filed by the caretaker relative;
 - d. A bona fide relationship of employer and employee exists between the caretaker relative and the provider of dependent care; and

- e. The provider of dependent care is not a member of the caretaker relative's training, education, employment, and management household.
3. The deduction may not be made for the cost of dependent care provided to a child by that child's stepparent or parent who lives in the home occupied by the training, education, employment, and management household.
4. The deduction is for the actual cost of care limited to:
 - a. In the case of a child under age two, two hundred dollars per month;
 - b. In the case of an incapacitated adult, two hundred dollars per month; or
 - c. In the case of a child two years of age or older, one hundred seventy-five dollars per month.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-54. Unearned income considerations.

1. Unearned income must be verified and documented in the case record.
2. All unearned income must be treated as available in the month in which the income is received unless the income is disregarded. Unearned income must be applied to determine eligibility for, and the monthly benefit of, training, education, employment, and management.
3. All nonexempt unearned income must be considered available in the month in which it is received. Unearned income is usually received at fixed intervals and at regularly scheduled dates. State or federal assistance payments such as supplemental security income or social security received on a recurring basis must be treated as received once per month, even if mailing cycles may cause two payments to be received in one month and none received in another month.
4. Unearned income received annually or received in regular annual totals, but in irregular intervals, must be considered available, in each month, in an amount equal to one-twelfth of the annual total. The twelve-month period may be a calendar year or other twelve-month fiscal period appropriate to the nature of the payment. Sources of income appropriate for this treatment include:

- a. Nonexcluded lease payment income deposited in and disbursed through individual Indian moneys accounts maintained by individual Indians by the bureau of Indian affairs as proceeds from the lease of lands held by the federal government in trust for the Indian;
- b. Lease payments made to persons for the use of lands occupied or owned by those persons unless the lease specifically provides for monthly payments or unless the lease is for a total term of less than one year;
- c. Mineral lease payments, however denominated, except initial leasing bonus payments.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-55. Reinstatement following suspension or case closing.

1. If training, education, employment, and management benefits are reinstated after a suspension of one month, all factors of eligibility must be considered to determine eligibility. If eligibility exists, the amount of the training, education, employment, and management benefit is determined based on two-month retrospective budgeting.
2. If the aid to families with dependent children filing unit is for any reason ineligible in the month following the month of a suspension, the case must be closed.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-56. Computing payment for first and second months of eligibility.

1. If an applicant training, education, employment, and management household has not received aid to families with dependent children benefits or food stamp benefits in the preceding calendar month:
 - a. Benefits for the aid to families with dependent children and food stamp filing units must be prorated based on the date of request or the date of eligibility, whichever is later; and
 - b. The county agency shall compute benefits for the aid to families with dependent children and food stamp filing

units for the initial month of eligibility and the month following using prospective budgeting.

2. If the applicant training, education, employment, and management household received aid to families with dependent children benefits and food stamp benefits in another state in the preceding calendar month:
 - a. Benefits for the aid to families with dependent children and food stamp filing units must be determined effective the first day of the month of request or prorated from the date of eligibility, whichever is later; and
 - b. The county agency shall compute benefits for the aid to families with dependent children and food stamp filing units for the initial month of eligibility and the month following using prospective budgeting.
3. If the applicant training, education, employment, and management household received aid to families with dependent children benefits and food stamp benefits in North Dakota in the preceding calendar month:
 - a. Benefits for the aid to families with dependent children and food stamp filing units must be determined effective the first day of the month of request or prorated from the date of eligibility, whichever is later; and
 - b. The county agency shall compute benefits for the aid to families with dependent children and food stamp filing units for the initial month of eligibility and the month following by continuing the aid to families with dependent children budget methodology which was used in the preceding month.
4. If the applicant training, education, employment, and management household received aid to families with dependent children benefits, but not food stamp benefits, in another state in the preceding month:
 - a. Benefits for the aid to families with dependent children filing unit must be determined effective the first day of the month of request or prorated from the date of eligibility, whichever is later, unless:
 - (1) The other state pays aid to families with dependent children benefits two times each month;
 - (2) One-half of the aid to families with dependent children benefit has been paid by the other state during the month of request; and

- (3) The applicant household is determined eligible by the sixteenth day of the month;

In which case, aid to families with dependent children benefits in North Dakota must be paid at a one-half pro rata share for the initial month of eligibility; and

- b. Benefits for the food stamp filing unit must be prorated based on the date of request or date of eligibility, whichever is later.
5. If the applicant training, education, employment, and management household received food stamp benefits, but not aid to families with dependent children benefits, in another state in the preceding calendar month:
 - a. Benefits for the aid to families with dependent children filing unit must be prorated based on the date of request or the date of eligibility, whichever is later;
 - b. Benefits for the food stamp filing unit must be determined effective the first day of the month of request or the date of eligibility, whichever is later; and
 - c. The county agency shall compute benefits for the aid to families with dependent children and food stamp filing units for the initial month of eligibility and the month following by using prospective budgeting.
 6. If the applicant training, education, employment, and management household received aid to families with dependent children benefits, but not food stamp benefits, in North Dakota in the preceding calendar month:
 - a. Benefits for aid to families with dependent children filing unit must be determined effective the first day of the month of request or the date of eligibility, whichever is later;
 - b. Benefits for the food stamp filing unit must be prorated based on the date of request or the date of eligibility, whichever is later; and
 - c. The county agency shall compute benefits for the aid to families with dependent children and food stamp filing units for the initial month of eligibility and the month following by continuing the aid to families with dependent children budget methodology which was used in the preceding month.
 7. If the applicant training, education, employment, and management household received food stamp benefits, but not aid

to families with dependent children benefits in North Dakota in the preceding calendar month:

- a. Benefits for the aid to families with dependent children filing unit must be prorated based on the date of request or date of eligibility, whichever is later;
- b. Benefits for the food stamp filing unit must be determined effective the first day of the month of request or date of eligibility, whichever is later; and
- c. The county agency shall compute benefits for the aid to families with dependent children and the food stamp filing units for the initial month of eligibility and the month following by using prospective budgeting.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-57. Computing payment for months following the second month of eligibility. The county agency shall compute payment for months following the second month of eligibility through two-month retrospective budgeting.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-58. Computing payment where individuals are added to the training, education, employment, and management household.

1. If the individual being added to a training, education, employment, and management household did not receive training, education, employment, and management benefits in the previous month, benefits for the added individual are based on the pro rata portion of the additional monthly benefit amount increase equal to the percentage of the month remaining after:
 - a. The date of birth of a newborn, provided that the request for the newborn is made within ten days of the date of birth and the newborn's social security number or application for social security number is furnished within thirty days of the request; and
 - b. In all other cases, the later of the date of the request or the date the individual becomes eligible.
2. If the individual being added to an existing training, education, employment, and management household has not

received aid to families with dependent children benefits or food stamp benefits in the preceding calendar month:

- a. The added individual's aid to families with dependent children and food stamp benefits must be prorated based on the date of request or the date of eligibility, whichever is later; and
 - b. The county agency shall compute the added individual's aid to families with dependent children and food stamp benefits for the added individual for the initial month of eligibility and the month following using prospective budgeting.
3. If the individual being added to an existing training, education, employment, and management household received aid to families with dependent children and food stamp benefits in another state in the preceding calendar month:
- a. The added individual's aid to families with dependent children and food stamp benefits must be determined effective the first day of the month of request or prorated from the date of eligibility, whichever is later; and
 - b. The county agency shall compute the added individual's aid to families with dependent children and food stamp benefits for the initial month of eligibility and the month using prospective budgeting.
4. If the individual being added to an existing training, education, employment, and management household received aid to families with dependent children and food stamp benefits in North Dakota in the preceding calendar month:
- a. The added individual's aid to families with dependent children and food stamp benefits must be determined effective the first day of the month of request or prorated from the date of eligibility, whichever is later; and
 - b. The county agency shall compute the added individual's aid to families with dependent children and food stamp benefits for the initial month of eligibility and the month following by continuing the aid to families with dependent children budget methodology which was used in the preceding month.
5. If the individual being added to an existing training, education, employment, and management household received aid to families with dependent children benefits, but did not receive food stamp benefits in another state in the preceding month:

- a. The added individual's aid to families with dependent children benefits must be determined effective the first day of the month of request or prorated from the date of eligibility, whichever is later, unless:
 - (1) The other state pays aid to families with dependent children benefits two times each month;
 - (2) One-half of the aid to families with dependent children benefit has been paid by the other state during the month of request; and
 - (3) The added individual is determined eligible by the sixteenth day of the month;

In which case, aid to families with dependent children benefits in North Dakota must be paid at a one-half pro rata share for the initial month of eligibility for the added individual; and

- b. The added individual's food stamp benefits must be prorated based on the date of request or date of eligibility, whichever is later.
6. If the individual being added to an existing training, education, employment, and management household received food stamp benefits, but not aid to families with dependent children benefits in another state in the preceding calendar month:
 - a. The added individual's aid to families with dependent children benefits must be prorated based on the date of request or the date of eligibility, whichever is later;
 - b. The added individual's food stamp benefits must be determined effective the first day of the month of request or the date of eligibility, whichever is later; and
 - c. The county agency shall compute the added individual's aid to families with dependent children and food stamp benefits for the initial month of eligibility and the month following by using prospective budgeting.
 7. If the individual being added to an existing training, education, employment, and management household received aid to families with dependent children benefits, but not food stamp benefits in North Dakota in the preceding calendar month:
 - a. The added individual's aid to families with dependent children benefits must be determined effective the first day of the month of request or the date of eligibility, whichever is later;

- b. The added individual's food stamp benefits must be prorated based on the date of request or the date of eligibility, whichever is later; and
 - c. The county agency shall compute the added individual's aid to families with dependent children and food stamp benefits for the initial month of eligibility and the month following by continuing the aid to families with dependent children budget methodology which was used in the preceding month.
8. If the individual being added to the existing training, education, employment, and management household received food stamp benefits, but not aid to families with dependent children benefits in North Dakota in the preceding calendar month:
- a. The added individual's aid to families with dependent children benefits must be prorated based on the date of request or date of eligibility, whichever is later;
 - b. The added individual's food stamp benefits must be determined effective the first day of the month of request or date of eligibility, whichever is later; and
 - c. The county agency shall compute the added individual's aid to families with dependent children and food stamp benefits for the initial month of eligibility and the month following by using prospective budgeting.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-59. Computing payments where individuals leave the training, education, employment, and management household.

- 1. If an individual who was a training, education, employment, and management household member leaves the household during a benefit month, the individual is included in the training, education, employment, and management household during that month.
- 2. The county agency shall determine eligibility for the remaining members of the training, education, employment, and management household, in the month following the month in which the former training, education, employment household member left, through retrospective budgeting.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-60. Computing payment where stepparent or alien parent income is deemed.

1. The amount of an aid to families with dependent children benefit must be reduced by the deemed income of a stepparent or an alien parent who lives in the home occupied by the aid to families with dependent children filing unit, but who is not a member of the aid to families with dependent children filing unit.
2. To encourage marriage among single-parent families and assist those families when the primary individual in a training, education, employment, and management household marries, the income of the stepparent whose needs were not previously included in the aid to families with dependent children filing unit must be disregarded in determining the aid to families with dependent children portion of the training, education, employment, and management benefit for the first six months, effective the month of the marriage. The stepparent's income is counted in determining the food stamp and low income home energy assistance program portion of the training, education, employment, and management benefit. This subsection applies to training, education, employment, and management recipients only, but not to applicants. No six-month disregard of stepparent income is allowed in situations where a primary individual marries before receiving training, education, employment, and management benefits.

History: Effective December 9, 1996.
General Authority: NDCC 50-06-01.8
Law Implemented: NDCC 50-06-01.8

75-02-01.2-61. Computing benefits when an individual's needs are deleted from the training, education, employment, and management benefit. If an individual is subject to the sanction of deletion of that individual's needs from the training, education, employment, and management benefit, that individual's income and assets must be considered in determining the eligibility and needs of the remaining members of the training, education, employment, and management household.

History: Effective December 9, 1996.
General Authority: NDCC 50-06-01.8
Law Implemented: NDCC 50-06-01.8

75-02-01.2-62. Computing payment for a child in boarding school.

1. If a child leaves the residence occupied by the aid to families with dependent children filing unit to attend boarding school, the child is treated as having left on the

first day of the month following the month in which the child actually left.

2. If a child returns from boarding school to the residence occupied by the aid to families with dependent children filing unit and the caretaker relative notifies the county agency of the return or anticipated return by the fifth day of the month of actual return, the child is treated as having returned on the first day of the month of actual return, but is otherwise treated as having returned on the first day of the month following the month of actual return.
3. Payment for any month in which a child who is a member of the aid to families with dependent children filing unit is in boarding school, or is treated as in boarding school, is, with respect to that child, limited to an allowance for clothing and personal needs.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-63. Budgeting in unusual circumstances.

1. Except as provided in subsection 3, if an eligible child lives in the home of a relative who is not the child's parent, the relative is ineligible if the relative's spouse also lives in the home.
2. If an eligible child lives in the home of a relative who is not the child's parent, and the spouse of that relative does not also live in the home, the relative:
 - a. Must be excluded from the aid to families with dependent children filing unit if the relative's income and assets would cause the aid to families with dependent children filing unit to be ineligible; and
 - b. May be included in the aid to families with dependent children filing unit if the relative requests inclusion in the aid to families with dependent children filing unit and the relative's income and assets do not cause the aid to families with dependent children filing unit to be ineligible.
3. Except as provided in subsection 5, if an eligible child lives in the home of a relative who is not the child's parent, but who is, and could in the absence of that child be, a member of an aid to families with dependent children filing unit which includes the spouse of the relative, the eligible child must be added as a member of the aid to families with dependent children filing unit of the relative.

4. Except as provided in subsection 5, if two or more eligible children are living in the home of an ineligible relative who is not a parent of either child, all eligible children must be included in a single aid to families with dependent children filing unit.
5. An individual who is a caretaker relative in an aid to families with dependent children filing unit may act as a temporary payee for a child who is a member of another aid to families with dependent children filing unit and with respect to whom the individual is a relative, while that child lives temporarily with the individual, to preserve the child's usual living arrangement with that child's caretaker relative who is:
 - a. Hospitalized; or
 - b. Incarcerated for ninety days or less.
6. If two or more relatives, who are each eligible caretakers for one or more children, but who are not married to each other and who have no children in common living in the household, live together, each caretaker and the child or children with respect to whom that caretaker is a relative must be budgeted as an aid to families with dependent children filing unit.
7. If a child lives with a relative who receives supplemental security income benefits, budgeting is based on the number of eligible individuals in the aid to families with dependent children filing unit.
8. If a child lives with a parent whose needs are deleted from the aid to families with dependent children filing unit due to the parent's failure to cooperate in obtaining support and in establishing paternity or in the job opportunities and basic skills program, the parent's income and assets must be considered in determining eligibility for the remaining members of the aid to families with dependent children filing unit. The income of the parent is subject to any applicable income disregards.
9. If an eligible caretaker leaves a child in the care of another individual while the caretaker pursues an educational program in another community, budgeting for the aid to families with dependent children filing unit must be done as if the unit resided together.
10. a. If a member of a training, education, employment, and management household is hospitalized or residing in a halfway house, and there is a medical plan that the individual may return to the training, education, employment, and management household:

- (1) No benefit reduction may be made for the first three months if the individual receives an aid to families with dependent children portion of the training, education, employment, and management benefit, but the needs of the individual must be reduced thereafter;
 - (2) Effective the first day of the month following admission to a hospital or halfway house, the needs of an individual who receives only the food stamp and low income home energy assistance program portions of the training, education, employment, and management benefit must be reduced; and
 - (3) Effective the first day of the month following the date of admittance to the institution, the needs of a training, education, employment, and management household member admitted to a veterans administration hospital, the North Dakota state hospital, or any other state institution must be deleted.
- b. If the needs of a primary individual are reduced or deleted from the training, education, employment, and management household, the case must be closed and a new primary individual may reapply on behalf of the household.
 - c. For periods when the needs of an individual must be reduced, the patient's share of the training, education, employment, and management benefit is limited to the amount for clothing and personal needs, effective with the first month the benefit reduction may be made. This budgeting arrangement must continue as long as the medical plan calls for the individual to return to the training, education, employment, and management household.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-64. Essential services.

1. The county agency may determine that a service, which the family cannot perform independently because of infirmity or illness, is essential to the well-being of the aid to families with dependent children filing unit.
2. "Essential service" includes housekeeping services and child care during a caregiver's illness or hospitalization, attendant services, and extraordinary costs of accompanying a member of the family to a distant medical or rehabilitation facility, arising out of a special need or condition of a

member of the aid to families with dependent children filing unit or an ineligible caretaker who is not a parent of a child in the aid to families with dependent children filing unit and who is not receiving supplemental security income benefits.

3. The cost of essential services:

- a. May be provided for in the training, education, employment, and management benefit only if the cost has been established through negotiations with the provider of the services; and
- b. Must be budgeted and paid retrospectively or by supplemental payments.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-65. Catastrophic events. The county agency may authorize vendor payments for the replacement of food, clothing, furniture, household equipment, and supplies, at a level comparable to that maintained by the aid to families with dependent children filing unit prior to a flood, fire, storm, or other disaster, if:

1. The availability of replacements, at no or nominal cost to the aid to families with dependent children filing unit, from sources such as the American red cross, has been determined and assistance with replacements coordinated; and
2. The loss of items for which replacement is sought has been determined.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-66. Medical insurance premiums.

1. The county agency may authorize payment for the cost of premiums for health insurance carried by the aid to families with dependent children filing unit. Payment may be made for only one policy of health insurance. If the policy covers individuals who are not members of the aid to families with dependent children filing unit, payment is limited to:
 - a. If the aid to families with dependent children filing unit or insurer provides information that describes the manner in which the insurance company allocates premium charges between the insureds, the allocation attributable to the

members of the aid to families with dependent children filing unit; or, if that allocation is unavailable;

- b. The total premium amount, divided by the number of individuals covered, and then multiplied by the number of covered members of the aid to families with dependent children filing unit.
2. For purposes of this section, "premiums for health insurance" includes payments made for insurance, health care plans, or nonprofit health service plan contracts that provide benefits for hospital, surgical, and medical care, but do not include payments made for coverage that is:
 - a. Limited to disability or income protection coverage;
 - b. Automobile medical payment coverage;
 - c. Supplemental to liability insurance;
 - d. Designed solely to provide payments on a per diem basis, daily indemnity, or nonexpense-incurred basis;
 - e. Credit accident and health insurance; or
 - f. Dental or vision insurance.
 3. Payment for the cost of premiums for health insurance:
 - a. May be provided in the training, education, employment, and management benefit only if the cost or pro rata cost has been established; and
 - b. Must be budgeted and paid in the month in which the county agency is informed of the insurance and receives verification of the cost.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-67. Child restraint systems. The county agency may authorize payment for members of the aid to families with dependent children filing unit for the verified cost of an approved child restraint system designed to secure a child while riding in a passenger vehicle.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-68. Presidential high school graduate incentive payment. The county agency may authorize a one-time payment of five hundred dollars to each teen parent in the aid to families with dependent children filing unit upon completion of high school or receipt of general education development diploma. For purposes of this section, a parent is a teen parent through the month of that parent's twentieth birthday.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-69. Unrestricted payment of benefits - Exceptions.

1. The usual method of providing benefits under this chapter is through payments in cash, check, or warrant, immediately redeemable at par, made to the caretaker relative or legal guardian at regular intervals, with no restrictions on the use of the funds. This practice is followed because recipients of benefits do not, by virtue of their need for benefits, lose the capacity to select how or when the needs of the training, education, employment, and management household must be met. If the caretaker relative or other members of the household manage funds in a manner that is clearly detrimental to members of the training, education, employment, and management household, or if the caretaker relative is subject to sanction for nonconformance to program requirements, protective payments may be used to assist the training, education, employment, and management household in financial management.
2. a. A determination that there is a detrimental mismanagement of funds may be based on:
 - (1) Continued failure to plan for and make necessary expenditures during periods for which benefits are provided;
 - (2) Continued failure to provide children in the aid to families with dependent children filing unit with proper food, clothing, or housing so as to threaten the chances of those children for healthy growth and development;
 - (3) Persistent failure to pay the cost of rent, food, utilities, school supplies, or other essentials;
 - (4) Repeated loss of housing due to nonpayment of housing costs; or
 - (5) Repeated failure to pay debts that result in attachments of or levies against current income.

- b. The fact that debts are not paid on a timely basis may not be the sole basis for a determination that there is detrimental mismanagement of funds unless relevant factors, including the following, have been considered:
 - (1) Whether the family has experienced an emergency or extraordinary event that reasonably required the expenditure of funds ordinarily used to meet the needs of the aid to families with dependent children filing unit;
 - (2) Whether reasonable payments on necessarily incurred debt exceeds the family's income; or
 - (3) Whether the family has withheld payment on a debt as a part of a legitimate dispute concerning the amount of the debt or the terms or performance of a contract out of which the debt arises.
3. a. The county agency may select, appoint, and remove a protective payee to receive and manage an assistance unit's benefits. In making a selection, the county agency shall consider any individual nominated by the caretaker relative.
- b. The protective payee is a fiduciary responsible for assuring that the benefits are expended to achieve the maximum reasonable benefit for the assistance and for working cooperatively with the county agency.
- c. The protective payee may be furnished information about the aid to families with dependent children filing unit, from the county agency's records, sufficient to allow the protective payee's role to be carried out. The information furnished to the protective payee under this section remains confidential information subject to the provisions of North Dakota Century Code section 50-06-15.
- d. The status of a training, education, employment, and management household for which a protective payee has been appointed must be reviewed by the county agency as often as necessary, but no less often than every six months, to determine if:
 - (1) The protective payee is performing satisfactorily;
 - (2) The aid to families with dependent children filing unit should be restored to unrestricted money payment status; and

- (3) Some other arrangement should be sought for the care of children who are members of the aid to families with dependent children filing unit.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-70. Payee. Each training, education, employment, and management household shall have a designated payee who must be the primary individual unless there is a protective payee.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-71. Making payment - Correcting overpayments and underpayments.

1. A payment of training, education, employment, and management benefits is deemed to be complete as of 12:01 a.m. on the first day of the month for which it is issued.
2. Except as provided in subsection 3, a payment check must be endorsed by the payee, or an attorney-in-fact for the payee, with a signature, written in ink, in the same form as the indicated payee.
 - a. If the payee is a guardian, the endorsement must so indicate and must name the ward.
 - b. If the endorsement is by an attorney-in-fact of the payee, the endorsement must so indicate and must name the attorney-in-fact.
3. If the payee dies or becomes absent before a properly issued check has been endorsed, an endorsement may be made:
 - a. By the payee's spouse or surviving spouse, if that spouse has been living with the payee, and, if there is no such spouse;
 - b. By a temporary payee, and, if there is no such spouse or temporary payee;
 - c. By the director of the county agency.
4. A payment check endorsed under subsection 3 must include, immediately below the endorsement, a statement of approval dated and signed by the director of the county agency.

5. A payment check may be issued to replace a lost or destroyed payment check only if:
 - a. An indemnity bond is executed by the payee and delivered to the department's finance office; and
 - b. A stop-payment order is placed against the payment check alleged to be lost or destroyed.
6. Any overpayment, whether resulting from recipient or administrative error, or from assistance granted pending a decision on an appeal adverse to the appellant, and whenever made, is subject to recovery. Except as provided in subsection 7, an overpayment must be collected from any training, education, employment, and management household that includes a member who benefited from, or who was responsible for, the overpayment, by reducing the training, education, employment, and management benefits, to that training, education, employment, and management household, by an amount equal to ten percent of the standard of need.
7. If a court order, entered in a matter that considered the circumstances leading to the overpayment, requires restitution of an amount less than the amount of the overpayment, or requires periodic payments of restitution greater or less than the monthly amount determined under subsection 6, the amount of restitution and periodic payments so ordered must be used to calculate reduction, in the training, education, employment, and management benefit amount, used to recover an overpayment.
8. Unless the overpayment was the result of fraud, including fraud involving the crimes of theft and making false statements in a governmental matter, the county agency may suspend efforts to collect overpayments when no individual who benefited from, or was responsible for, the overpayment is a member of a training, education, employment, and management household:
 - a. If the amount of the overpayment is less than thirty-five dollars; or
 - b. When recovery is determined not to be cost effective after an effort to recover has failed, including, at a minimum, a written communication describing the amount and basis for the overpayment, and requesting repayment.
9. The county agency shall promptly correct any underpayment for a current member of a training, education, employment, and

management household, or to an individual who would be a current member of a training, education, employment, and management household but for the error that led to the underpayment.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-72. Intentional program violation - Disqualification penalties.

1. An individual who, on any basis, is found to have committed an intentional program violation by a state administrative disqualification proceeding or by a federal or state court must be subject to the penalties provided in this section.
2. An individual who waives the individual's right to appear at an intentional program violation hearing must be subject to the penalties provided in this section.
3. During any period of disqualification:
 - a. The individual's needs may not be taken into account when determining the training, education, employment, and management household's need and amount of assistance;
 - b. All assets and income of the disqualified individual, including gross earned income, must be considered available to the training, education, employment, and management household;
 - c. Income disregards may be provided for the disqualified individual when determining if the remaining household members are eligible; and
 - d. The overpayment is recovered through a reduction, at the rate of twenty percent of the training, education, employment, and management standard of need, including special items of need.
4. The duration of the penalty described in this section must be:
 - a. Six months for the first offense;
 - b. Twelve months for the second offense; and
 - c. Permanent for the third and any subsequent offense.
5. Any period of disqualification must remain in effect, without possibility of an administrative stay, unless and until the finding upon which the penalty was based is subsequently

reversed by a court of appropriate jurisdiction, but in no event may the duration of the period for which the penalty was imposed be subject to review.

6. In cases where a disqualification penalty and other sanctions or penalties apply:
 - a. The disqualification penalties in this section must be in addition to, and may not be substituted for, any other sanctions or penalties that may be imposed for the same offense; and
 - b. The disqualification penalties imposed under this section affect only the individual concerned and cannot substitute for other sanctions imposed under this chapter.
7. A disqualification penalty imposed on an individual by another state may be continued in this state and may be used to determine the appropriate duration of a disqualification penalty imposed under this section.
8. A disqualification penalty period must begin no later than the first day of the second month that follows the date of notice of imposition of the penalty.
9. The department shall issue a written notice informing the individual of the period of disqualification and the amount of assistance the training, education, employment, and management household may receive during the disqualification period.
10. Overpayments must be recovered from the assistance unit which was overpaid, any assistance unit of which a member of the overpaid assistance unit has subsequently become a member, or any individual members of the overpaid assistance unit whether or not currently a recipient.
11. If a court has ordered an amount of recovery different than that provided under this section, the amount ordered by the court must be the amount recovered. If the court orders restitution in an amount that is less than the total overpayment, the court's order must be followed.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-73. Health tracks.

1. All members of a training, education, employment, and management household, under age twenty-one, must participate in health tracks screening services at the time of application and at least annually thereafter, unless excepted under

subsection 2. Failure to participate results in a seven percent reduction in the net training, education, employment, and management benefit after recoupments have been calculated. This reduction in benefits remains in effect until health tracks requirements in the training, education, employment, and management contract are met.

2. An eligible member need not participate in the health tracks requirements if the member:
 - a. Is a caretaker under age twenty-one who is at least age twenty years, ten months;
 - b. Is an individual who has received a complete screening within the last six months performed by an enrolled health tracks provider; or
 - c. Establishes good cause for not participating in health tracks.
3. Good cause for failure or refusal to participate in health tracks exists if:
 - a. The child and the child's caretaker are believers in a faith with a clergy verified doctrinal opposition to participation in health tracks; or
 - b. The child or the child's caretaker suffers from a medically verified acute illness.
4. Good cause for not participating in health tracks screening must be the responsibility of the health tracks program service manager. The health tracks program service manager must be responsible to determine good cause, must set the end dates for good cause, and must be responsible for conciliation.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-74. Assessment and case plan. Assessment is an ongoing process in the training, education, employment, and management program. The primary tool used in assessment is the knowledge based assessment instrument that all training, education, employment, and management households complete with the training, education, employment, and management program manager. The assessment may result in goals for the household. The training, education, employment, and management program manager and household prioritize the goals to develop a case plan. This case plan identifies issues to be resolved, tasks for completing the goals, and times to complete the tasks. Agencies or services that can assist in reaching goals are identified and referrals

to agencies are made when the case plan is formalized. The case plan is the basis for the training, education, employment, and management contract developed with the training, education, employment, and management household.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-75. Training, education, employment, and management contract. The training, education, employment, and management contract is an agreement, signed by the training, education, employment, and management household, that documents the goals and tasks identified in the assessment, and records times for the completion of those tasks. The training, education, employment, and management contract is negotiated between the training, education, employment, and management program manager and the training, education, employment, and management household. Each training, education, employment, and management household must develop and sign a contract, by the end of the second benefit month, as a condition of continued eligibility. The training, education, employment, and management household must comply with the terms of the contract. The training, education, employment, and management contract is subject to change as conditions warrant. It must be reviewed and updated with the training, education, employment, and management household on at least an annual basis. A training, education, employment, and management contract must:

1. Address immediate health and safety needs that are mutually identified by the training, education, employment, and management household and training, education, employment, and management program manager;
2. Specify what the responsibilities of the training, education, employment, and management household and the training, education, employment, and management program manager may be;
3. Establish realistic goals, reflective of the training, education, employment, and management household's capabilities and the resources available to assist in meeting goals;
4. Clearly identify tasks required for continued training, education, employment, and management participation;
5. Establish specific times for the accomplishment of tasks; and
6. Provide a means to evaluate progress towards meeting identified goals and tasks.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-76. Initial contract.

1. The initial training, education, employment, and management contract must be completed and signed by the end of the second benefit month. The contract must be signed by the primary individual in the training, education, employment, and management household and the training, education, employment, and management program manager. Ten days before the end of the second benefit month, a written statement must be sent reminding the training, education, employment, and management household that the household is ineligible for a third month's benefits if a training, education, employment, and management contract is not signed.
2. If a training, education, employment, and management household becomes ineligible under subsection 1 because the contract is not signed and reapplies within a one-year period from their original training, education, employment, and management application date, a training, education, employment, and management cash benefit may not be issued until the household completes a training, education, employment, and management assessment and signs a training, education, employment, and management contract.
3. If a training, education, employment, and management household becomes ineligible under subsection 1 because the contract is not signed and reapplies more than one year after the household's last training, education, employment, and management application date, the application may be treated as a new application.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-77. Annual reassessment. The training, education, employment, and management contract must be reviewed and updated annually based on a reassessment of the household. A reassessment may be made when there has been a significant change to the training, education, employment, and management household. Addition or deletion of an adult family member is a significant change.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-78. Mandatory contract requirements. Unless an exemption or good cause is determined, the training, education, employment, and management contract must require:

1. Cooperation with child support enforcement when appropriate deprivation reasons exist;
2. Cooperation with the health tracks program;
3. Cooperation with job opportunities and basic skills program for targeted members of the aid to families with dependent children unit; and
4. Cooperation with work registration for eligible training, education, employment, and management household members not a part of the aid to families with dependent children unit.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-79. Sanctions under the training, education, employment, and management program contract.

1. Training, education, employment, and management participants must sign and comply with a training, education, employment, and management contract as a condition of eligibility. Each household member may be required to comply with certain requirements under the contract. Failure to comply or cooperate with the requirements of the contract may result in a sanction being applied against the responsible individual.
 - a. All sanctions under the training, education, employment, and management contract are first imposed against the responsible individual. If the individual does not cure the sanction by cooperating or participating as required under the contract, the sanction may progress to include the entire training, education, employment, and management household.
 - b. Except as provided in subdivision c, if the individual sanction progresses to the training, education, employment, and management household, the household is ineligible for training, education, employment, and management until the responsible individual cures the sanction.
 - c. If the sanction is imposed due to noncooperation with the health tracks program requirement, the household may be eligible for, but subject to a seven percent reduction in, the net training, education, employment, and management benefit until the requirements are met.
2. A household found ineligible for training, education, employment, and management may apply for regular food stamps, low income home energy assistance program benefits, medicaid,

or child care assistance, but is ineligible for aid to families with dependent children.

3. Training, education, employment, and management household members who fail, without good cause, to comply with the terms of the training, education, employment, and management contract, are subject to the sanctions described in this subsection.
 - a. For the first sanction, the individual who has not cooperated is ineligible for a period of one month for all training, education, employment, and management benefits. After this required period of ineligibility, the sanctioned individual may cure the noncooperation by participating as required under the training, education, employment, and management contract. If at the end of the sixth month of the sanction the individual continues to refuse to cooperate, the entire training, education, employment, and management household becomes ineligible for training, education, employment, and management.
 - b. For the second sanction, the individual who has not cooperated is ineligible for all training, education, employment, and management benefits for a minimum of two months. After this required period of ineligibility, the sanctioned individual may cure the noncooperation by participating as required under the training, education, employment, and management contract. If at the end of the fourth month of the sanction the individual continues to refuse to cooperate, the entire training, education, employment, and management household becomes ineligible for training, education, employment, and management.
 - c. For the third and subsequent sanctions, the individual who has not cooperated is ineligible for all training, education, employment, and management benefits for a minimum of three months. After this required period of ineligibility, the sanctioned individual may cure the noncooperation by participating as required under the training, education, employment, and management contract. If at the end of the fourth month of the sanction the individual continues to refuse to cooperate, the entire training, education, employment, and management household becomes ineligible for training, education, employment, and management.
 - d. If a sanctioned individual cures a sanction during a minimum sanction period, the individual is eligible for training, education, employment, and management, provided all other factors of eligibility are met, effective the first day of the benefit month following the minimum sanction period.

- e. If a sanctioned individual cures a sanction at any time following a minimum sanction period, but before the sanction has progressed to household ineligibility, the individual is eligible for training, education, employment, and management, provided all other factors of eligibility are met:
 - (1) Effective the first day of the month of the cure if the cure occurs before the sixteenth day of the month; and
 - (2) Effective the first day of the month following the month of the cure if the cure occurs on or after the sixteenth day of the month.
4. A sanction may be imposed for no more than twelve months. The individual whose noncooperation caused the sanction may demonstrate cooperation within twelve months from the sanction start date to regain training, education, employment, and management eligibility for the household. After twelve months, a reapplication for training, education, employment, and management benefits made on behalf of the household is treated as a new application.
5. Sanctions under training, education, employment, and management follow a noncooperating individual who moves from one training, education, employment, and management county to another training, education, employment, and management county. The sanction remains in effect for the specified sanction period or until cured by the responsible individual. Job opportunities and basic skills program sanctions may not follow a sanctioned individual from a training, education, employment, and management county to an aid to families with dependent children county or from an aid to families with dependent children county to a training, education, employment, and management county, but the progressive sanction number must be counted.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-80. Conciliation.

1. Conciliation is a process used to intervene in situations in which individuals in training, education, employment, and management households may be sanctioned. Actions or failures to act that may result in sanctions include:
 - a. Not completing a training, education, employment, and management contract;

- b. Not signing a training, education, employment, and management contract;
 - c. Not completing the goals on a training, education, employment, and management contract; and
 - d. Not cooperating with an agency providing services to meet goals identified on the training, education, employment, and management contract, including goals identified as mandatory referrals and goals that are nonmandatory and identified in the assessment.
2. Except with respect to a sanction imposed for failure to cooperate in obtaining support or establishing paternity, conciliation must be offered before sanctions are imposed. During conciliation, there must be a continuing effort to resolve the dispute with the effort coordinated by the training, education, employment, and management program manager.
- a. If the individual refuses to complete the training, education, employment, and management contract or refuses to sign the training, education, employment, and management contract, the training, education, employment, and management program manager and the individual must participate in the conciliation.
 - b. If the individual is not cooperating with a service agency, a representative of that agency may be included in the conciliation effort, along with the training, education, employment, and management program manager and the individual.
3. Within ten days following the date of a failure or a refusal to participate that may result in a sanction, the training, education, employment, and management program manager or appropriate provider shall send a written notice to the individual to offer and schedule a conciliation appointment.
- a. An initial conciliation notice must state:
 - (1) The time and place for conciliation;
 - (2) The responsibility of the individual to participate in conciliation;
 - (3) The consequences, including sanctions, which may be imposed if the individual fails or refuses to participate in the training, education, employment, and management program; and

- (4) The requirements the individual shall meet to show good cause for a failure or refusal to participate in that program.
- b. A second and any subsequent conciliation notice may be made in any manner that effectively communicates with the individual, including verbal notice given in person or telephonically, and must state:
- (1) The time and place for conciliation;
 - (2) The responsibility of the individual to participate in conciliation;
 - (3) The consequences, including sanctions, which may be imposed if the individual fails or refuses to participate in the training, education, employment, and management program; and
 - (4) The requirements the individual shall meet to show good cause for a failure or refusal to participate in that program.
4. If a training, education, employment, and management individual refuses to participate in conciliation without good cause, or if the conciliation is unsuccessful, the training, education, employment, and management program manager shall notify the individual of the sanction.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-81. Timely notice for failure to complete training, education, employment, and management program contract. Failure of the primary individual to sign or cooperate in the development of the training, education, employment, and management contract, without good cause, by the last day of the second benefit month of training, education, employment, and management eligibility may result in case closure. An individual who has good cause for not signing or cooperating in the development of the training, education, employment, and management contract may continue to receive training, education, employment, and management benefits after the initial two months if all other factors of eligibility are met. The individual shall complete the training, education, employment, and management contract as soon as the good cause reason is no longer applicable. Good cause for not completing the development or for not signing the training, education, employment, and management contract exists only if the individual:

1. Has a medical condition that precludes the individual from leaving home as verified by a licensed physician's statement; or

2. Is hospitalized or institutionalized.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-82. Job opportunities and basic skills program - Definitions. For purposes of the job opportunities and basic skills program:

1. "Coordinator" means the job opportunities and basic skills program staff person responsible for directing and monitoring a participant's planning and activities that relate to the job opportunities and basic skills program. The coordinator functions as a case manager in the development and execution of an employability plan.
2. "Participant" means a member of an aid to families with dependent children filing unit who is not exempt from participating in the job opportunities and basic skills program or who, if exempt, has volunteered to participate in that program.
3. "Satisfactory progress" in any postsecondary education or training program means the participant is maintaining the greater of a "C" average or progress minimally sufficient to allow continuation of the course of study or training under the standards of the education or training facility.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-83. Job opportunities and basic skills program and work registration - Basic requirements. To the extent resources permit, all nonexempt adult members of a training, education, employment, and management household who are members of an aid to families with dependent children filing unit shall participate in the job opportunities and basic skills program. All nonexempt adult members of a training, education, employment, and management who are not members of an aid to families with dependent children filing unit shall participate in work registration. The program combines education, training, and employment components. Its purpose is to place participants in nonsubsidized employment as soon as possible. The training, education, employment, and management program manager shall:

1. Determine eligibility for training, education, employment, and management benefits and determine whether each person is a member of an aid to families with dependent children filing unit within the training, education, employment, and management household;

2. Determine whether the recipient is exempt from participating in the job opportunities and basic skills program or work registration; and
3. Refer nonexempt members of the aid to families with dependent children filing unit to the job opportunities and basic skills program and refer nonexempt training, education, employment, and management household members not in an aid to families with dependent children filing unit to work registration.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-84. Job opportunities and basic skills program - Participation requirements in households receiving unemployed parent benefits.

1. Each nonexempt parent in a family receiving unemployed parent benefits shall participate or be available for participation in an approved work program component for a total of at least thirty-two hours per week.
2. An individual participating in a work experience program for at least thirty-two hours per week must be treated as a participant in the job opportunities and basic skills program.
3. If a participant receiving unemployed parent benefits is under age twenty-five and has not received a high school diploma or a general equivalency diploma, the employability plan must include high school attendance or general equivalency diploma program attendance in lieu of other participation requirements, if the participant is involved in education or training no less than twelve hours per week, and makes satisfactory progress.
4. If the principal wage earner is exempt, the second parent must meet the participation requirements for the family. If a nonexempt principal wage earner is sanctioned for failure to participate in the program, the second parent shall meet the participation requirements for the family. If the second parent fails to meet the participation requirements, the family is not eligible for aid to families with dependent children. The second parent is subject to all participation requirements of a principal wage earner, and may not show good cause for failure or refusal to participate.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-05.1, 50-09

75-02-01.2-85. Job opportunities and basic skills program - Components. The components of the job opportunities and basic skills program include:

1. Educational activities related to secondary education, basic and remedial education, or education in English proficiency;
2. Job skills training;
3. Job readiness activities;
4. Job search;
5. Job development and job placement activity;
6. Postsecondary education activities;
7. Self-initiated education activities;
8. Community work experience;
9. Alternate work experience;
10. On-the-job training; and
11. Work supplementation program.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-86. Job opportunities and basic skills program - Tribal program. Tribal job opportunities and basic skills programs are available to native Americans who are members of aid to families with dependent children filing units and who reside in a county within which there is a tribal job opportunities and basic skills program. The county agency shall:

1. Refer eligible individuals to the tribal program;
2. Provide child care payments to authorized tribal program participants based on information furnished by the tribal program; and
3. Upon notification from the tribal program, consider sanctioning individuals for failure or refusal to participate in the program without good cause.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-87. Job opportunities and basic skills program and work registration - Exemptions from participation.

1. An individual is exempt from participation in the job opportunities and basic skills program and work registration if the individual is:
 - a. A native American who resides in the service area of a tribal job opportunities and basic skills program and meets the requirements of that program;
 - b. A dependent child who is under age sixteen or a dependent child who is age sixteen or over and who is enrolled or has been accepted for enrollment as a full-time student for the next school term in an elementary or secondary school or in a vocational or technical school that is equivalent to secondary school, unless the dependent child is a custodial teen parent;
 - c. A parent or other eligible caretaker relative of a child under age two who is personally caring for the child full time unless:
 - (1) A teen parent is under twenty years of age, has not received a high school diploma or its equivalent, and is attending school full time;
 - (2) A parent is under twenty years of age, has not completed a high school education or its equivalent, or is an early intervention program experimental participant; or
 - (3) Child care is guaranteed; or
 - d. A full-time volunteer serving under the volunteer in service to America pursuant to title I of the Domestic Volunteer Act of 1973.
2. A dependent child who is age sixteen or over and not enrolled as a full-time student for the next school term in an elementary or secondary school or in a vocational or technical school that is equivalent to secondary school, and not otherwise exempt, must be referred to the job opportunities and basic skills program or work registration.
3. Participation for more than twenty hours per week is not required for one parent in an aid to families with dependent children - unemployed parent family who provides care for a child age two, three, four, or five years.
4. Exemptions described in subsection 1 apply to the parents in an aid to families with dependent children filing unit if both parents are members of that filing unit, but neither parent

may claim an exemption for personally caring for a child, under age three, on a full-time basis.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-88. Job opportunities and basic skills program - Referral.

1. Any individual not exempt from the job opportunities and basic skills program and anyone who volunteers must be referred to the program. Referrals may be made only after the individual is determined eligible for training, education, employment, and management benefits as a member of an aid to families with dependent children filing unit.
2. The referred individual shall contact the coordinator within seven days of the referral date to set up an appointment for program orientation, assessment, and employability planning.
3. Upon referral, the county agency may authorize supportive services, limited to child care and transportation allowance, solely for the first thirty days after the referral date and solely when necessary to allow the individual to complete the planning process.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-89. Job opportunities and basic skills program - Orientation, assessment, and employability planning. The coordinator shall complete a general program orientation. The coordinator shall, together with the participant, make an initial assessment of employability and, on the basis of that assessment, develop an employability plan in connection with the participant. The cooperation, assistance, and consultation of the participant is important to the accuracy of the assessment and the appropriateness of the plan, but is not required if the participant seeks to use participation as a means of blocking or delaying entry into the work force. No employability plan is effective unless approved by the department.

1. General program orientation includes a preliminary identification of the participant's needs and of the barriers to the participant's entry into the work force and an explanation of:
 - a. Program activities;
 - b. Available supportive services;

- c. The relationship between the department, the county agency, and the coordinator's employer;
 - d. How other cooperating programs coordinate activities with participants;
 - e. The participant's rights and responsibilities; and
 - f. Procedures for handling disputes.
2. The initial assessment of employability is based on:
- a. The participant's educational, training, child care, and other supportive service needs;
 - b. The participant's proficiencies, skills deficiencies, and prior work experience;
 - c. A review of the family circumstances that may include the needs of any child of the participant;
 - d. The participant's interests, personal traits, and leisure-time activities;
 - e. The participant's mental and physical limitations; and
 - f. Other factors that may affect the participant's potential for employment.
3. The employability plan must:
- a. Contain an employment goal for the participant;
 - b. Describe the supportive services to be provided;
 - c. Describe the program components to be undertaken by the participant to achieve the employment goal;
 - d. Describe any other needs, identified in the review of family circumstances, that might be met through the program; and
 - e. Take into account:
 - (1) Resources available to the participant;
 - (2) The participant's supportive service needs;
 - (3) The participant's skills levels and aptitudes;
 - (4) Local employment opportunities; and

- (5) To the maximum extent reasonably possible, the preferences of the participant.
4. The employability plan is not a contract and may not be so interpreted, considered, or applied.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-90. Job opportunities and basic skills program - Supportive services.

1. Within the limits described in this section, supportive services may be made available to a participant who, but for supportive service, would be unable to enter into or remain in an approved job opportunities and basic skills program activity. No supportive service may be provided with respect to an activity that is not an approved program activity or on behalf of anyone who is not participating satisfactorily in the program.
2. No supportive services may be provided prior to the start of an approved program activity except:
 - a. For up to two weeks on behalf of a participant waiting to enter an approved program activity; or
 - b. For up to one month if necessary to avoid the loss of the supportive service, and if the approved program activity begins within that period.
3. Supportive services, excluding child care, may be provided for up to three months after termination of aid to families with dependent children benefits provided for in the employability plan.
4. Supportive services include only:
 - a. Relocation assistance provided to a participant with moving expenses in order to achieve permanent employment with earnings sufficient to preclude aid to families with dependent children eligibility, provided that:
 - (1) Payment is made to the vendor of the moving service provider or, if to the participant, is limited under subsection 5; and
 - (2) The participant demonstrates that the most economical reasonably available means of relocation was used.

- b. A monthly transportation allowance provided to participants currently enrolled in an approved program activity, if necessary to continued participation.
- c. Child care expense reimbursement of up to the limit established under subsection 5, provided that no child care expense reimbursement may be provided where:
 - (1) The participant's approved program activities fall within the child's school hours;
 - (2) There are individuals in the household whose needs are met on the basis of their responsibility for caring for a child in the home; or
 - (3) There is another legally responsible adult in the home who is not incapacitated and who is not suspected of child abuse or neglect.
- d. Assistance in the purchase of care for an incapacitated or disabled adult member of the participant's household, to whom the participant owes a legal duty to provide care, provided:
 - (1) There is no other person in the household who can provide the care; and
 - (2) The incapacitated or disabled adult cannot provide self-care.
- e. Assistance in the purchase of employment-related clothing determined by the coordinator to be reasonable and necessary for the participant to enter employment.
- f. Assistance in the purchase of tools or equipment determined by the coordinator to be required for the participant to accept employment.
- g. Assistance in the cost of repairs determined by the coordinator to be reasonable and necessary to return a participant's vehicle to operable condition, provided:
 - (1) No feasible public transportation is available;
 - (2) The vehicle is registered to a member of the training, education, employment, and management household; and
 - (3) The general condition and value of the vehicle justifies repairs.
- h. Assistance for defraying the cost of books, tuition, and fees associated with training the participant, provided:

- (1) Available funds are further limited to the total cost of books, tuition, and fees, reduced by the total amount of educational grants and scholarships available to the participant;
 - (2) The participant is a member of an aid to families with dependent children filing unit and eligible for training, education, employment, and management benefits at the time funds are paid or obligated; and
 - (3) No payment may be made for tuition, books, or fees secured for self-initiated education or training.
- i. Assistance with payment for professional license fees and professional examination fees, where there is no other available source of funding, including fee waivers, and the professional license or examination is necessary to achieve an employment-related goal.
 - j. Assistance with expenses determined by the coordinator to be reasonable and necessary for employment interviews, including transportation, lodging, grooming, and clothing.
5. The maximum expenditures permitted for supportive services, or for any type of supportive services, under any employability plan, are limited to amounts identified in the approved state plan established under title IV-F of the Social Security Act [42 U.S.C. 681, et seq.].

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-91. Job opportunities and basic skills program - Educational activities related to secondary education, basic and remedial education, or education in English proficiency.

1. If a custodial parent, age twenty or older, has not earned a high school diploma or its equivalent, the employability plan must include activities under this section unless:
 - a. The individual demonstrates a basic literacy level above the 8.9 grade level;
 - b. The long-term employment goal of the individual does not require a high school diploma or its equivalent;
 - c. After assessment by the educational institution, the individual is determined to not have the potential to secure a general equivalency diploma or high school diploma, or to make a significant improvement in reading skills, in a reasonable length of time; or

- d. The individual fails to make satisfactory progress.
2. If a custodial parent, under twenty years of age, has not earned a high school diploma or its equivalent, the employability plan must include high school attendance unless:
 - a. After assessment by the educational institution, the individual is determined to not have the potential to secure a general equivalency diploma or high school diploma, or to make a significant improvement in reading skills, in a reasonable length of time; or
 - b. The individual fails to make satisfactory progress.
3. For purposes of this section:
 - a. A "reasonable length of time" means a time determined by the coordinator, based on recommendations of an individual's instructors, for completion of education activities while consistently participating in those activities on a regular basis as a full-time student in a high school program or as a part-time student in a high school program if the coordinator determines that circumstances beyond the individual's control limits attendance to less than full time; and
 - b. "Activities under this section" include high school, alternative high school, adult learning center programs, general equivalency diploma programs, and basic or remedial education programs.
4. If the employability plan of a custodial parent, under age twenty who does not have a high school diploma or general equivalency diploma, does not include high school attendance, it must include alternative educational activities or training activities no less than twelve hours per week.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-92. Job opportunities and basic skills program - Jobs skills training. Job skills training is formal training, provided by an organized school or training facility, designed and intended to lead to the participant's unsubsidized employment, in the shortest reasonable time.

1. The training program must be recognized by the state board of vocational education.
2. The participant shall be a full-time trainee pursuing the course of training at a rate intended to achieve the training

goal by the end of the first school term that begins before, and ends after, a day twenty-four months after approval of the participant's initial employability plan.

3. The trainee shall verify that the trainee is making satisfactory progress, and taking classes or training required by the employability plan, through class schedules and grade reports for each school term or training period.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-93. Job opportunities and basic skills program - Job readiness activities. Job readiness activities help reprepare participants for work by assuring that participants are familiar with general workplace expectations and are able to exhibit work behavior and attitudes necessary to compete successfully in the labor market. Those activities include self-assessment, goal setting, developing a personal marketing strategy, developing self-image, learning interview techniques and basic sales techniques, and developing appropriate work behavior and attitudes necessary to compete successfully in the labor market.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-94. Job opportunities and basic skills program - Job search. Participants may be required by the coordinator to make an individual work search for up to eight weeks in each twelve months of continuous eligibility for training, education, employment, and management benefits by any family member. Upon reapplication for such benefits after any termination, the participant may again be required to make an individual work search for up to eight weeks, even if twelve months has not elapsed since the beginning of an individual work search previously required.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-95. Job opportunities and basic skills program - Job development and job placement activities. The coordinator may create or discover job openings on behalf of participants. The coordinator may market participants for job openings and may secure job interviews.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-96. Job opportunities and basic skills program - Postsecondary education.

1. A participant in the job opportunities and basic skills program may undertake postsecondary education if:
 - a. The employability plan identifies a clearly identified goal of employment in a specific occupation;
 - b. The curriculum is recognized by the board of higher education as leading to qualification for employment in the specific occupation identified in the employability plan;
 - c. The postsecondary education is not for the purpose of achieving any degree more advanced than a bachelor's degree;
 - d. The participant does not already possess a bachelor's degree unless:
 - (1) The participant, by reason of incapacity or substantiated lack of employment, in North Dakota, in the field for which the participant was prepared, cannot be employed in North Dakota; and
 - (2) The department, exercising its reasonable discretion, approves the employability plan;
 - e. The participant is a full-time student;
 - f. The selection of a course of study is guided by demand in specific occupations or, upon approval by the coordinator, a course of study in another occupation for which the participant provides substantial justification of demand;
 - g. The participant applies for a Pell grant and all other reasonably available sources of grants and scholarships, which become the first source of payments for books, tuition, and fees;
 - h. The participant verifies that the participant is maintaining satisfactory progress, and taking classes required by the employability plan, through class schedules and grade reports; and
 - i. The employability plan is reviewed and revised at least annually except for child care needs, which must be reviewed at the beginning of each school term.
2. Except as provided in subsection 3, a participant enrolled in postsecondary education may receive any supportive service for which a need can be demonstrated.

3. Recipients of aid to families with dependent children enrolled in any course of postsecondary education study at the time they become participants may seek approval of an employability plan which continues that course of study. Approval may not be granted if the participant is presently qualified for available full-time employment. Any approved employability plan is subject to review. Other program activities in which the participant participates may not interfere with the self-initiated education or training activity so long as the employability plan continues to be approved. Upon review, approval of the employability plan may be terminated, and the participant may be required to seek employment. A participant enrolled in an approved self-initiated course of postsecondary education may receive any supportive service for which a need can be demonstrated, except payment for defraying the cost of books, tuition, or fees.
4. Postsecondary education may not be included in an approved employability plan unless, with satisfactory progress, the course of study will be completed by the end of the first school term that begins before, and ends after, a day twenty-four months after approval of the participant's initial employability plan.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-05.1, 50-09

75-02-01.2-97. Job opportunities and basic skills program - Self-initiated education activities. Self-initiated education activities are subject to all requirements of education activities otherwise planned for under the job opportunities and basic skills program.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-98. Job opportunities and basic skills program - Community work experience program.

1. The community work experience program offers the performance of public service work in exchange for aid to families with dependent children. Its goal is to improve a participant's employability through supervised work in order to enable the participant to obtain permanent, unsubsidized employment.
2. A participant's work obligation is the number of hours determined by subtracting any child support received from the aid to families with dependent children portion of the training, education, employment, and management benefit amount

received by the participant's family and dividing the result by the current federal hourly minimum wage.

3. Community work experience worksites must be limited to those provided by public or private, nonprofit public service organizations, tribal governments, nursing homes, and hospitals, or at projects that serve a useful public purpose and provide appropriate working conditions.
4. A workday placement must be designed to provide a participant with a basic understanding of work and productive work habits, establish positive work references, provide training, and otherwise encourage the participant to become economically self-sufficient.
5. Workers' compensation coverage must be provided for community work experience program participants.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-99. Job opportunities and basic skills program - Alternate work experience.

1. Alternate work experience offers work, based on a forty-hour workweek, that includes work expectations found in unsubsidized employment, provided at private nonprofit or public worksites. Alternate work experience is provided for up to thirty-two hours per week in conjunction with structured job search activities the remaining eight hours per week.
2. A parent under age twenty-five who has neither completed high school nor earned a general equivalency diploma, and who is maintaining satisfactory progress in either of those educational activities, may substitute that educational activity for alternate experience.
3. If a family is eligible for aid to families with dependent children due to the unemployment of the parent who is the principal wage earner, each parent in that family must participate in alternate work experience for at least thirty-two hours per week.
4. Workers' compensation coverage must be provided to alternate work experience participants.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-100. Job opportunities and basic skills program - On-the-job training. On-the-job training provides, through a negotiated agreement, payment to an employer for the costs of training and lower productivity normally associated with a new employee. The agreement is intended to place a participant in an occupational position that requires training. The training is intended to lead to permanent employment with that employer or one that is similar in its training requirements.

1. The agreement must be for a fixed price that does not exceed fifty percent of the average wage paid by the employer to the participant during the training period.
2. The starting wage of an on-the-job training participant must be at least equal to the federal minimum wage rate.
3. On-the-job training participants must be compensated at the same rates, and receive the same benefits, as other individuals similarly employed by the employer.
4. Wages paid to an on-the-job training participant must be treated as earned income for purposes of this chapter.
5. If an on-the-job training participant becomes ineligible for training, education, employment, and management benefits because of earned income:
 - a. That person shall remain a participant for the duration of the on-the-job training and may be eligible for those supportive services available to other similarly situated participants; and
 - b. If that participant would have been eligible for transitional child care, under a program furnishing such care pursuant to 45 CFR part 256, at the time the ineligibility for training, education, employment, and management benefits occurred, the participant may:
 - (1) Remain eligible for transitional child care, after the on-the-job training ends, for the number of months that remain in the twelve-month period following the month in which the participant became ineligible for training, education, employment, and management benefits; or
 - (2) Receive child care as a supportive service to a participant if the person otherwise meets the requirements to be a participant.

History: Effective December 9, 1996.
General Authority: NDCC 50-06-01.8
Law Implemented: NDCC 50-06-01.8

75-02-01.2-101. Job opportunities and basic skills program - Work supplementation program.

1. Public and private employers may receive payment for extraordinary costs of training intended to assist a recipient to obtain unsubsidized employment. The payment is diverted from, and limited to, a negotiated amount that cannot exceed the aid to families with dependent children portion of the recipient's training, education, employment, and management benefit amount. A work supplementation program participant must be considered a regular employee, and receive benefits and enjoy working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work.
2. Work supplementation program payments may be made only pursuant to a contract signed by the employer, the work supplementation program participant, and the coordinator.
3. The length of the contract is limited to the training time required for the recipient to learn the necessary job skills.
4. The initial work supplementation program contract may be up to six months in length. The contract may be extended, where necessary, provided that the total length of all work supplementation program contracts or extensions, entered into with respect to a particular recipient, may not exceed nine months.
5. If a work supplementation participant becomes ineligible for training, education, employment, and management benefits because of earned income:
 - a. That person shall remain a participant for the duration of the work supplementation contract and may be eligible for those supportive services available to other similarly situated participants; and
 - b. If that participant would have been eligible for transitional child care, under a program furnishing such care pursuant to 45 CFR part 256, at the time the ineligibility for training, education, employment, and management benefits occurred, the participant may:
 - (1) Remain eligible for transitional child care, after the work supplementation ends, for the number of months that remain in the twelve-month period following the month in which the participant became ineligible for training, education, employment, and management benefits; or

(2) Receive child care as a supportive service to a participant if the person otherwise meets the requirements to be a participant.

6. Workers' compensation coverage must be provided for work supplementation program participants.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-102. Job opportunities and basic skills program - Failure or refusal to participate. A failure or refusal to participate in the job opportunities and basic skills program occurs any time the participant:

1. Misses a scheduled appointment for any program activity;
2. Is absent from a workday when scheduled to be there;
3. States an unwillingness to participate in any program activity or workday activity;
4. Fails to contact the coordinator, within seven days of referral, to set up an appointment for program orientation;
5. Refuses, despite apparent ability, to maintain satisfactory progress in any program activity; or
6. Fails to conform to the requirements of the participant's employability plan.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-103. Job opportunities and basic skills program - Work registration - Good cause for failure or refusal to participate.

1. All nonexempt training, education, employment, and management household members must participate in the job opportunities and basic skills program or work registration unless good cause is granted by the training, education, employment, and management program team manager. Good cause for failure or refusal to participate in the job opportunities and basic skills program and work registration exists when:
 - a. The household member is over sixty years of age;
 - b. The household member is incapacitated with a medically determinable physical or mental impairment which, by

itself or in conjunction with age, prevents the individual from working or participating in any job opportunities and basic skills program or work registration activity, including a period of recuperation after childbirth if prescribed by the woman's physician;

- c. A person whose substantially continuous presence in the household is necessary to care for another member of the household, to whom the individual seeking exemption owes a legal duty to provide care, who has a condition, verified by reliable medical evidence, which does not permit self-care, care by another household member, or care provided as supportive services;
- d. A woman is pregnant, beginning in the fourth month of a pregnancy verified by, and with a delivery date estimated by, a licensed physician, physician's assistant, nurse practitioner, or nurse midwife;
- e. Unless there is a generally accepted community standard for commuting that exceeds two hours, a round trip of more than two hours by available transportation, exclusive of the time necessary to transport children to and from a child care facility that would be required for a normal work or training day;
- f. A person has an illness or injury, verified by reliable medical evidence and reviewed every thirty days, which is serious enough to temporarily prevent entry into employment or participation in any job opportunities and basic skills program or work registration activity;
- g. A person is working not less than an average of thirty hours a week in unsubsidized employment, or is on a temporary break from such employment not exceeding ten working days in length, and the employment is expected to last a minimum of thirty days provided gross earned income equals or exceeds thirty hours times the current federal minimum wage and monthly net income from self-employment equals or exceeds 97.5 times the federal hourly minimum wage;

2. Claims of good cause must be evaluated using the decisionmaking principles described in section 75-02-01.1-09.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

75-02-01.2-104. County administration and share of assistance cost.

1. Except as provided in subsection 2, the county agency of the county where the training, education, employment, and management household is physically present must be responsible for the administration of the program with respect to that unit.
2. Where a family unit receiving assistance moves from one county to another, the outgoing county continues to be responsible for the administration of the program with respect to that unit until the last day of the month after the month in which the unit assumes physical residence in an incoming county.
3. For purposes of apportioning each county's share of assistance costs in the aid to families with dependent children program, a fraction must be formed for each county. Each county's assistance expenses, in the year ending June 30, 1983, is the numerator, and the total of all county's assistance expenses, in that year, is the denominator. For periods beginning July 1, 1984, each county's share of the amount expended, statewide, for aid to dependent children, must be determined by multiplying that county's fraction times the total of all county's assistance expenses.
4. For purposes of this section, "county's assistance expense" means the total amount, in dollars, expended from each county's funds, for aid to dependent children, but excluding child support collection expenses and expenses for dependent children defined in subdivision b of subsection 4 of North Dakota Century Code section 50-09-01.

History: Effective December 9, 1996.

General Authority: NDCC 50-06-01.8

Law Implemented: NDCC 50-06-01.8

TITLE 89
Water Commission

FEBRUARY 1997

CHAPTER 89-02-01

~~89-02-01-01. Application-of-chapter~~ Intent. This chapter applies ~~to-all~~ establishes rules for processing applications not--covered--by chapter--89-02-02 for permits to drain certain ponds, sloughs, or lakes, or any series thereof, and meandered lakes, as required by North Dakota Century Code ~~section~~ sections 61-15-08 and 61-32-03.

History: Amended effective December 1, 1979; August 1, 1994; February 1, 1997.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-15-08, 61-32-03

89-02-01-02. Definitions. Unless the context otherwise requires, the following definitions apply:

1. "Assessment drain" means any drain constructed pursuant to North Dakota Century Code chapter 61-16.1 or 61-21.
2. "Board of--managers" means the board of managers of a water resource district.
3. "District" means water resource district.
4. "Drain" includes any natural watercourse ~~{as-a-lake,-river,-creek,-stream,-or-draw}~~ opened, or proposed to be opened, and improved for the purpose of draining-a-pond,-slough,-or-lake,-or-any-series-thereof, drainage and any artificial drains of any nature or description {as-a-canal,-grassed-ditch,-ditch,-tile,-or-pipe} constructed for such purpose, including dikes and other appurtenant works. This definition may include more

than one watercourse or artificial channel constructed for the
aforementioned purpose when the watercourses or channels drain
land within a practical drainage area.

5. "Lake" means a land-depression--having--a-greater-depth-of
well-defined basin which characteristically holds water and
having--more--permanent-standing-water-than-either-a-slough-or
pond.--This-definition-classifies-lakes-as-type-five--wetlands
or--"inland-open-freshwater" throughout the year. Lakes go dry
only after successive years of below normal runoff and
precipitation.
6. "Lateral drain" for the purpose of regulating the drainage of
water means a drain constructed after the establishment and
construction of the original drain or drainage system (for
which-a--permit--was--obtained) and which flows into such
original drain or drainage system from outside the limits of
the original drain.
7. "Maintenance" means removal of silt and vegetation from a
drain. Maintenance does not include deepening or widening a
drain.
8. "Meandered lake" means any pond, slough, or lake which has had
its boundaries established by metes and bounds in the survey
of public lands by the government of the United States.
- 8- 9. "Party of record" means any-person-who-submits-oral-or-written
testimony-and-evidence-for-the-record-of-the-state--engineer's
public--hearing each person named or admitted as a party, or
properly seeking and entitled as of right to be admitted as a
party.
- 9- 10. "Person" means a person, firm, partnership, association,
corporation, or any other type of private legal relationship,
and any governmental organization, which includes,--but-is-not
limited-to, any agency of the United States, a state agency,
and any political subdivision of the state.
- 10- 11. "Pond" means a well-defined land depression where-the-soil-is
covered-with-six-inches-[15-centimeters]-to-three--feet--[0.91
meters]--or--more--of or basin that holds water throughout-the
growing-season.--This-definition-classifies-ponds-as-type-four
wetland--or--"inland--deep-marshes" in normal years throughout
the summer. Ponds generally go dry only in years of below
normal runoff and precipitation.
12. "Series of ponds, sloughs, or lakes" means two or more ponds,
sloughs, or lakes that are hydrologically linked naturally or
artificially.
- 11- 13. "Slough" includes three two types:

- a. ~~Type one sloughs are "seasonally flooded basins or flats" which includes land depressions where the soil is covered with water, or is waterlogged, during variable seasonal periods but is usually well drained during much of the growing season.~~ Seasonal slough: a depression which holds water in normal years from spring runoff until mid-July. In years of normal runoff and precipitation, a seasonal slough is usually not tilled but can be used for hayland or pasture. In low runoff, dry years, these areas generally are tilled for crop production, but commonly reflood with frequent or heavy summer or fall rains.
- b. ~~Type two sloughs are "inland fresh meadows" which includes land depressions where the soil is usually without standing water during most of the growing season but is waterlogged within at least a few inches [centimeters] of its surface.~~ Temporary slough: a shallow depression area that holds water or is waterlogged from spring runoff until early June. In years of normal runoff and precipitation, a temporary slough is usually tilled for crop production. In years of high runoff or heavy spring rain, a temporary slough may not dry out until mid-July and generally would not be tilled but may be used for hayland or pasture. A temporary slough frequently refloods during heavy summer and fall rains.
- c. ~~Type three sloughs are "inland shallow fresh marshes" which includes land depressions where the soil is usually waterlogged throughout the growing season and is often covered with as much as six inches [15 centimeters] or more of water.~~

12. 14. "State engineer" means the state engineer, appointed pursuant to North Dakota Century Code section 61-03-01, or the state engineer's designee.
13. 15. "Supplemental public hearing" means a hearing held to review evidence not contained in the record of the state engineer's public hearing.
14. 16. "Watercourse" is defined by North Dakota Century Code section 61-01-06. That section provides: "A watercourse entitled to the protection of the law is constituted if there is a sufficient natural and accustomed flow of water to form and maintain a distinct and a defined channel. It is not essential that the supply of water should be continuous or from a perennial living source. It is enough if the flow arises periodically from natural causes and reaches a plainly defined channel of a permanent character." Watercourse, for the purposes of this chapter, also means an outlet channel utilized to carry drained water from the outlet of the drain to a watercourse, as defined by section 61-01-06.

15- 17. "Watershed" means the area which drains into a slough, pond, or lake, or any series thereof.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-15-08, 61-32-03

89-02-01-03. Permit required.

1. A permit is required before any person may construct a drain for the purpose of draining waters from a slough, pond, or lake, or any series thereof, having a watershed of eighty acres [32 hectares] or more.
2. A permit is required before any person may drain by pumping a slough, pond, or lake or ~~connected~~ any series of ~~sloughs, ponds, or lakes~~ thereof having a watershed of eighty acres [32 hectares] or more.
3. A permit is required before any person may drain or ~~cause to be drained, or who shall attempt to drain~~ any meandered lake.
4. A permit is required for an assessment drain constructed pursuant to North Dakota Century Code chapter 61-16.1 or 61-21.
5. A permit is required for the construction of any lateral drain, ~~as defined herein, unless it is within the assessed area of an assessment drain which has been permitted for the entire assessed area, in accordance with section 89-02-01-04.~~
6. A permit is required before any person may modify the drainage authorized in the original permit. Modification of drainage ~~shall include~~ includes deepening and widening of a drain, or the extension of any drain.
7. A permit is required before any person may fill a pond, slough, or lake, which has a watershed of eighty acres [32.37 hectares] or more, for the purpose of causing the pond, slough, or lake ~~having a watershed of eighty acres [32 hectares] or more~~ to be drained by elimination of the existing storage.
8. A permit is required before any person may ~~clean an old drain which has not been constructed as an assessment drain and has not been properly maintained~~ drain temporary ponding if the surface area of the temporary ponding is eighty acres [32.37 hectares] or more.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-15-08, 61-32-03

89-02-01-04. Permits for assessment drains. ~~The permit for an assessment drain constructed pursuant to North Dakota Century Code chapter 61-16.1 or 61-21, if so specified, may encompass the entire assessed or benefited area. In order for a permit to encompass the entire assessed or benefited area, the assessment drain must be designed to accommodate, as determined by the state engineer, the drainage of the entire assessed area, and must be so stated on the application. However, an assessment drain approved in accordance with this section may still require the approval of the appropriate district prior to the construction of lateral drains, as defined herein, within the assessed area.~~ Repealed effective February 1, 1997.

History: Amended effective December 1, 1979; October 1, 1982.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-15-08

89-02-01-05. Exceptions to permit required.

1. A drainage permit under section 89-02-01-03 is not required for maintenance of a drain.
2. The provisions of section 89-02-01-03, except subsection 3, shall do not apply to any drain constructed under the direct and comprehensive supervision of the federal or state agencies specified in this section. The only agencies deemed capable of such comprehensive providing supervision and analyzing downstream impacts are the:
 - a. The state water commission;
 - b. The army corps of engineers, the soil;
 - c. The natural resources and conservation service, for projects constructed pursuant to the Watershed Protection and Flood Prevention Act [Pub. L. 83-566; 16 U.S.C. 1001]; and the;
 - d. The bureau of reclamation, for projects that are part of the originally authorized Garrison Diversion Unit authorized in 1965; and
 - e. The state department of transportation, for federal aid projects.

However, these agencies shall notify the state engineer of any proposed drainage projects under their direct supervision during the planning stages.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-15-08, 61-32-03

89-02-01-06. ~~Methods--for-determining~~ Determination of watershed area of watershed. ~~The-following-methods-may-be-utilized-in-determining whether--the--area--of--a--watershed-for-a-slough,-pond,-or-lake,-or-any series--thereof,-comprises-eighty-acres-[32-hectares]-or-more.~~

1.--~~The--watershed-area-may-be-estimated-from-the-most-accurate-or reliable-maps-or-surveys-available.~~ The determination of the watershed area must be made using accurate or reliable maps or surveys. Published seven and one-half minute topographic maps or a survey conducted under the supervision of a registered land surveyor are preferred.

2.--~~Aerial~~ This information may be supplemented by aerial photographs of the watershed may also be used--to--define--the drainage--area or by an onsite investigation if requested by the applicant or the local water resource board, or if the state engineer determines it is necessary.

3.--~~An--onsite--investigation-of-the-drainage-area-by-the-district or-the-state-engineer,-or-both,-without--the--assistance--of other-data-may-be-sufficient-to-determine-drainage-area.~~

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-15-08, 61-32-03

89-02-01-07. **Filing application.** Any person desiring a drainage permit shall file an application with the state engineer on a form provided by the state water commission form number twenty-eight. ~~A copy of the permit application shall also be filed with--the--water--resource district--within--which-is-found-a-majority-of-the-watershed-or-drainage area-of-the-pond,-slough,-or-lake,-or-series--thereof~~ engineer. The applicant, if requested by the state engineer or the district board, shall provide an engineering analysis showing the downstream impacts of the proposed drainage. The analysis, at the discretion of the state engineer or the board of managers, may include a determination of the capacity of the drain and the receiving watercourse and a comparison of volume and timing of predrainage and postdrainage flows. If the application is incomplete, or if the information contained therein is insufficient to enable the state engineer or the appropriate district to make an informed decision on the application, the application shall must be returned to the applicant for correction.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-15-08, 61-32-03

89-02-01-08. Referral of applications to appropriate district.
The Upon receipt of a properly completed application, the state engineer shall determine whether the application involves drainage of statewide or interdistrict significance using the factors set out in section 89-02-01-09. The state engineer shall attach to the application any comments, recommendations, and engineering data which that may assist the appropriate district in making a determination on the application. The application shall must then be referred to the appropriate district within which is found a majority of the watershed or drainage area of the pond, slough, or lake, or any series thereof.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-15-08, 61-32-03

89-02-01-09. Criteria for determining whether drainage is of statewide or interdistrict significance. In determining whether the proposed drainage is of statewide or interdistrict significance, the state engineer shall be guided by the following criteria:

1. Drainage which would affect property owned by the state or its political subdivisions.
2. Drainage of sloughs, ponds, or lakes having recognized fish and wildlife values.
3. Drainage or partial drainage of a meandered lake.
4. Drainage which would have a substantial effect on another water-resource district.
5. Drainage which would convert previously noncontributing areas (based on twenty-five year event - four percent chance) into permanently contributing areas.
6. ~~Assessment---drains---shall---be---considered---of---statewide---or---interdistrict---significance.~~
7. For good cause, the state engineer may classify any proposed drainage as having statewide or interdistrict significance, or the state engineer may determine that certain proposed drainage is not of statewide or interdistrict significance.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-15-08

89-02-01-09.1. Board procedure for processing applications to drain.

1. The board shall use the procedure in this subsection when it processes a drainage permit application that the state engineer has determined is of statewide or interdistrict significance:

a. Upon receipt of an application to drain from the state engineer, the board shall set the date, time, and place for a meeting at which it will receive information concerning the merits of, as well as any testimony or information pertinent to the application. At the applicant's expense, the board shall also give notice by mail not less than twenty days from the date set for consideration of the drainage application to:

(1) The applicant.

(2) All record title owners of real estate and holders of a contract for deed whose property would be crossed by the proposed drain.

(3) All downstream riparian landowners on the watercourse into which water will be drained who are adversely impacted as determined by the board.

(4) Any board that would be substantially affected by the water to be drained.

(5) The state game and fish department.

(6) The state department of health.

(7) The state highway commissioner, county commissioners, and board of township supervisors if the proposed drainage will affect or cross the right of way of any public highway or road within their jurisdiction.

(8) The state engineer.

(9) Any person who has made a written request for notification of that project and has advanced the cost of providing that notification. Such advance may not exceed ten dollars.

b. Notice must also be published in a newspaper of general circulation in the area of the proposed drainage once a week for two consecutive weeks. Final notice must be published not more than fifteen days nor less than five days from the date set for the meeting.

- c. The notice must give the essential facts of the proposed drain including name and address of applicant; legal description of the area to be drained; purpose of the drainage; watercourse into which the water will be drained; legal description of the confluence of the drain and the watercourse into which the water will be drained; the time, date, and place of the board's consideration of the application; and the location and date of availability of information regarding the project.
- d. At least fourteen days prior to the date set by the board for its meeting to receive information on the application, the applicant shall submit to the board all documentary information the applicant intends to present at the board's meeting. The board shall immediately place such information in the board's office if the office is open for public access at least twenty hours each week, or if the board's office is not open to the public at least twenty hours each week, in custody of the auditor of the county in which the majority of the watershed of the drain is to be built. The information must be available for public review. The board shall notify the applicant of this requirement upon its receipt of an application to drain. If the information is placed in the auditor's office, the auditor shall return the information to the board one working day prior to the board's meeting.
- e. The board shall allow submission of all relevant oral or written evidence.
- f. In evaluating applications, the board shall consider the factors in section 89-02-01-09.2.
- g. The meeting at which the board receives information concerning the application must be recorded either stenographically or electronically. If the board approves the permit application, the record and all documentary information received by the board must be transferred to the state engineer. Upon request of the state engineer, the board shall provide a transcript of the meeting. The cost of providing a transcript must be borne by the applicant.
- h. At the conclusion of the meeting at which the board receives information about the proposed drain, the board shall announce that:
- (1) The board's denial of a permit constitutes final denial of the permit. Appeals of a denial must be taken to the district court within thirty days.
 - (2) A board-approved application will be forwarded to the state engineer.

- (3) Those who wish to be notified of the board's decision shall so notify the board and shall provide their names and addresses in writing to the board at the end of the meeting.
- (4) The board shall send notice of the board's decision along with a copy of the board's determination and rationale to all parties of record, to anyone who has requested in writing to be notified, and to the state engineer.
- i. If the board denies the application, it shall return the application to the applicant along with a copy of the board's determination and rationale. A copy of the board's denial and rationale must also be sent to all parties of record, to anyone who has requested in writing to be notified, and to the state engineer.
- j. If the board approves the application, the board's approval must be noted on the application and a copy of the determination sent to the applicant. The board shall send notice of the board's decision along with a copy of the board's determination and rationale to all parties of record and to anyone who has requested in writing to be notified. The application, a copy of the determination, and all information reviewed by the board in considering the application must be forwarded to the state engineer for review within twenty days of the determination. The board's decision approving the application must contain a determination of the location and size, in surface acres, of ponds, sloughs, and lakes to be drained by the proposed drain. A seven and one-half minute topographic map indicating the location and size of the ponds, sloughs, and lakes approved for drainage must be attached to the determination.
- k. The board's notice to an applicant must state that the board's approval of the application is not a permit to drain until the state engineer has also approved the application.
- 2. The board shall use the following procedure when it processes a drainage permit application that the state engineer has determined is not of statewide or interdistrict significance:

 - a. The board shall review the permit application and any supporting documentation and determine whether protection of public and private interests would be better served by a specific public meeting to consider the project. If it is determined a specific public meeting is necessary to protect public and private interests, the board shall process the permit application in accordance with procedures established by the board.

- b. If the board determines a specific public meeting is unnecessary, the board shall consider the project pursuant to the criteria set forth in section 89-02-01-09.2 and shall deny or grant the application with or without modifications or conditions based upon those criteria. Written notice of the board's decision must be provided to all parties of record, to anyone requesting in writing notice of the decision, and to the state engineer.

History: Effective February 1, 1997.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-09.2. Evaluation of applications - Factors considered. The state engineer, for applications of statewide or interdistrict significance, and the board, for all applications to drain, shall consider the following factors:

1. The volume of water proposed to be drained and the impact of the flow or quantity of this water upon the watercourse into which the water will be drained.
2. Adverse effects that may occur to the lands of lower proprietors. This factor is limited to the project's hydrologic effects such as erosion, duration of floods, impact of sustained flows, and impact on the operation of downstream water control devices.
3. The engineering design and other physical aspects of the drain.
4. The project's impact on flooding problems in the project watershed.
5. The project's impacts on ponds, sloughs, or lakes having recognized fish and wildlife values.
6. The project's impacts on ponds, sloughs, or lakes on agricultural lands.
7. Whether easements are required.
8. Other factors unique to the project.

History: Effective February 1, 1997.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-01-26, 61-16.1-10(3), 61-32-03

89-02-01-09.3. Time for determination by board. Within sixty days after receipt from the state engineer of an application to drain, the board shall make a determination on the application. This time

limit may be extended only with the written consent of the state engineer. A request for an extension of time under this section must be in writing to the state engineer and must set forth the reason for requesting the time extension.

In applications involving assessment drains, the sixty-day time period does not commence until the date the assessments are finally established by the board and are no longer subject to appeal to a court of law or the state engineer.

History: Effective February 1, 1997.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-09.4. Evaluation of applications by the state engineer of statewide or interdistrict significance - Information to be used. In the state engineer's evaluation of an application of statewide or interdistrict significance, the state engineer shall use all relevant documentary information submitted and oral testimony given for the board's consideration at its meeting. The state engineer may also use any information in the files and records retained by the state engineer's office or engineering information developed or obtained through investigation of the project area by the state engineer's staff. The information used must be relevant and is part of the record.

The state engineer may also request information and comment from independent sources. However, the state engineer is not required to delay the state engineer's decision on an application for more than thirty days from the date of request while waiting for comment from these sources.

History: Effective February 1, 1997.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 28-32-06, 61-32-03

89-02-01-09.5. Procedure, availability, and contents of notice of state engineer's decision to grant or deny application of statewide or interdistrict significance.

1. If the state engineer determines an application of statewide or interdistrict significance should be denied, the state engineer shall provide a copy of the determination to the parties of record. If the state engineer determines an application should be granted, with or without conditions, the state engineer shall provide a copy of the determination to all parties of record. Other members of the public may view the record at the office of the state engineer, 900 east boulevard, Bismarck, during normal business hours.

2. One copy of the determination to grant or deny a permit may be provided to persons not provided copies pursuant to

subsection 1 upon written request. Additional copies will be provided upon payment for necessary copying, handling, and postage.

3. Copies of the notice of the state engineer's determination must be provided to persons who made a written request for notice of that project not more than two months, or later than one day, prior to the date of the state engineer's decision.
4. The notice of decision must include the name of the drain; the applicant's name; whether the application was granted or denied and the date of the decision; the availability of the full text of the decision; and the fact that within thirty days of the date of the state engineer's decision a hearing may be requested on the project. The notice must also state that a valid request for a hearing must be in writing; must specifically state facts from which the person requesting the hearing is factually aggrieved by the state engineer's decision; and must state what material facts, or conclusions, are believed to be erroneous and why they are believed to be erroneous.

History: Effective February 1, 1997.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-03-22, 61-32-03

89-02-01-09.6. Request for state engineer's hearing. All requests for a formal hearing on a project must be made in writing to the state engineer. To be valid, a request must be made within thirty days of the date of service of the state engineer's decision. The request must be in writing and must specifically state facts from which it is evident the person requesting the hearing is factually aggrieved by the state engineer's decision; and must state which material facts or conclusions are believed to be erroneous and why they are believed to be erroneous.

History: Effective February 1, 1997.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-09.7. Notice of state engineer's hearing. If the state engineer determines that a request for a hearing on an application of statewide or interdistrict significance is valid and well-founded, the state engineer shall set a date for a hearing and publish notice in the official newspaper of the county within which a majority of the drainage basin is located. Publication must be once a week for two consecutive weeks. One of the publications must be published no less than twenty days before the hearing date. The person requesting the hearing shall give notice by certified mail to the state department of health, the state game and fish department, the state department of transportation, and all parties of record to the board's hearing at least twenty-one

days before the date of the hearing. If such notice is not provided, the hearing may not be held. The notice must give essential information about the proposed drainage application including the date, time, and location of the hearing. All hearings will be held in Bismarck.

History: Effective February 1, 1997.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 28-32-05

89-02-01-09.8. Evidence at the state engineer's hearing. Evidence at the state engineer's hearing may be confined to the matters put in issue by any valid request of hearing described in section 89-02-01-09.7.

History: Effective February 1, 1997.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 28-32-06, 61-32-03

89-02-01-09.9. Time for determination by the state engineer - Copies of decision. Unless the state engineer determines the matters put in issue by the request for a hearing raise complex or unique issues, the state engineer shall render a decision within thirty days of the close of the state engineer's hearing. A copy of the decision must be given to all parties of record at the state engineer's hearing either personally, by certified mail, or by regular mail provided the state engineer files an affidavit of service by mail indicating upon whom a copy of the decision was served.

History: Effective February 1, 1997.

General Authority: NDCC 28-32-02, 28-32-13, 61-03-13

Law Implemented: NDCC 28-32-13

89-02-01-09.10. Consideration of evidence not contained in the state engineer's record. The record of the state engineer's hearing must be closed at the conclusion of the state engineer's formal hearing. It is in the state engineer's discretion to receive testimony and evidence that is not contained in the record. However, the state engineer, before considering any evidence not contained in the record, shall transmit the evidence to the parties of record for their examination and comment. The costs of reproducing and transmitting the evidence must be paid in advance by the party offering the evidence. Written comment or a request for a supplemental hearing must be submitted to the state engineer within ten days after transmittal of the additional evidence. Any request for a supplemental hearing must provide sufficient information to allow the state engineer to determine if a supplemental hearing is warranted. If a supplemental hearing is warranted, ten days' notice by personal service or certified mail must be afforded the parties of record to inform them of the date, time, place, and nature of the hearing. All supplemental hearings must be held in Bismarck.

History: Effective February 1, 1997.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 28-32-07

89-02-01-09.11. Conditions to permits. Unless otherwise specifically stated:

1. All permits must include the following conditions:
 - a. The project and the rights granted under the permit are subject to modification to protect the public health, safety, and welfare.
 - b. That construction commence within two years from the date of final approval.
2. All permits of statewide or interdistrict significance must include the following conditions:
 - a. All highly erodible drainage channels must be seeded to a sod-forming grass.
 - b. The vegetative cover must be adequately maintained for the life of the project or control structures must be installed, or a combination of these two criteria.

The state engineer or the board may attach other conditions to the permit if deemed necessary.

History: Effective February 1, 1997.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-15-08, 61-32-03

89-02-01-09.12. Time within which to begin construction of drain. The recipient of a permit to drain under this chapter shall commence actual construction within two years of the date the decision granting the permit is final. The two-year period does not begin until any appeal of the state engineer's decision or board's decision is completed, nor does it run during the course of any other legal action brought to challenge the state engineer's decision or board's decision or halt or modify the project.

Once construction has been commenced the permit recipient must make good faith efforts and satisfactory progress, as determined by the board, toward completion of the project. If the permit has been determined to be of statewide or interdistrict significance, the determination must be made jointly by the state engineer and the board.

If the two-year period runs before construction is commenced, the permit recipient may make a written request for a one-year extension which must be approved by the board. All requests for extensions must

be made at least sixty days prior to the end of the two-year period and must specifically state why construction has not commenced. Upon expiration of any extension, the permit recipient may request a further extension. If the request is for an extension relating to a permit that the state engineer has determined to be of statewide or interdistrict significance, the extension must be approved by both the state engineer and the board.

In the event the two-year period passes without the commencement of construction, an extension of the period as provided in this section, or legal process staying construction, the permit is void.

History: Effective February 1, 1997.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-03-13, 61-32-03

89-02-01-10. District hearing on applications of statewide or interdistrict significance. ~~Upon referral by the state engineer of an application of statewide or interdistrict significance to the district, the board of managers shall set the date, time, and place for a public hearing on the application. The purpose of the hearing is to establish a record on which to base a decision as to whether the application to drain shall be granted, and if so, under what conditions the water is to be drained. A hearing shall not be required for proposed drainage which is not of statewide or interdistrict significance. However, the appropriate district may hold hearings on such applications at its discretion.~~ Repealed effective February 1, 1997.

History: ~~Amended effective December 1, 1979; October 1, 1982.~~

General Authority: ~~NDCC 28-32-02, 61-03-13~~

Law Implemented: ~~NDCC 61-15-08~~

89-02-01-11. Emergency drainage. ~~The requirement for a hearing and notice thereon may be waived by the state engineer in order for the board of managers to process applications for temporary emergency drainage. However, a hearing shall be conducted at the earliest opportunity if the emergency drainage is to be permanent and has been determined by the state engineer to be of statewide or interdistrict significance.~~ Repealed effective February 1, 1997.

History: ~~Amended effective December 1, 1979; October 1, 1982.~~

General Authority: ~~NDCC 28-32-02, 61-03-13~~

Law Implemented: ~~NDCC 61-15-08~~

89-02-01-12. Notice of district hearing. ~~For all hearings required of the district pursuant to this article, the district shall, at the applicant's expense, publish notice in a newspaper of general circulation in the area of the proposed drainage once a week for two consecutive weeks. The final published notice shall be published not more than fifteen days, nor less than five days, before the date set for~~

the hearing. The board of managers shall also give, at the applicant's expense, notice by certified mail not more than thirty days nor less than ten days from the date set for hearing, to:

1. All record title owners of real estate or holders of a contract for deed whose property would be directly affected by the proposed draining, as determined by the board of managers.
2. All downstream landowners riparian to the watercourse into which water will be drained, within two miles [3 kilometers] from the outlet of the drain as determined by the board of managers.
3. Any district which would be directly affected by the water to be drained.
4. The North Dakota game and fish department.
5. The North Dakota state department of health and consolidated laboratories.
6. The state highway department, county commissioners, and board of township supervisors, for any proposed drainage which will affect the right-of-way of any highway or roadway.
7. Any person who has notified the district in writing of the person's objection to the drainage project proposed, and who has requested in writing notification of such hearing on the drainage project proposed. Repealed effective February 1, 1997.

History: Amended effective December 1, 1979; October 1, 1982.

General Authority: NDCC-28-32-02, -61-03-13

Law Implemented: NDCC-61-15-08

89-02-01-13. Content of notice of hearing. The notice shall give all essential facts concerning the proposed drainage, including, but not limited to: name and address of applicant; legal description of the area to be drained; purpose of drainage; watercourse into which the water will be drained; legal description of confluence of drain and watercourse into which the water will be drained; estimated dates drainage construction will commence; the time, date, and location of the hearing; and other pertinent information. Repealed effective February 1, 1997.

History: Amended effective December 1, 1979; October 1, 1982.

General Authority: NDCC-28-32-02, -61-03-13

Law Implemented: NDCC-61-15-08

89-02-01-15. Time for determination by board of managers. Within thirty days after a hearing required pursuant to this article, or at the

earliest opportunity in emergency situations, the district shall make a determination on the application. For complex or unique applications this time limit may be extended by the board of managers. Repealed effective February 1, 1997.

History: Amended effective December 1, 1979; October 1, 1982.

General Authority: NDCC-28-32-02, 61-03-13

Law Implemented: NDCC-61-15-08

89-02-01-16. Consideration by the state engineer and districts. In evaluating a drainage permit application the state engineer and districts shall consider the following criteria:

1. Whether the flow or quantity of water to be drained will overburden the watercourse into which the water will be drained.
2. Whether the drainage will flood or adversely affect the lands of lower proprietors.
3. Whether easements are required.
4. Whether consideration was given to the water resources policy as contained in North Dakota Century Code section 61-01-26, including the following:
 - a. Whether it is shown that there will be a significant decrease in water quality resulting from the proposed drainage project.
 - b. Whether, in evaluating the entire watershed, the resultant drainage will significantly increase flooding problems in the watershed.
 - c. Whether the permanent storage of water on parcels in the application area is beneficial.
 - d. Whether the area's erosion potential will be increased significantly due to the drainage of the water and the subsequent lack of wetlands to retard erosion.
 - e. Whether type four and five wetlands as determined by the state engineer from evidence in the record exist in the application area, and if so, these wetlands shall not be drained unless overriding circumstances exist.
 - f. Whether the agricultural productivity was considered.
 - g. Whether the drainage project will decrease local flooding problems.
 - h. Whether fish and wildlife values were considered.

5. ~~Any other factors deemed important.~~ Repealed effective February 1, 1997.

History: Amended-effective-December-1,-1979;-October-1,-1982-

General Authority: NDCC-28-32-02,-61-03-13

Law Implemented: NDCC-61-15-08

89-02-01-17. Approval of drainage permit applications by district.

1. ~~Approved drainage permit applications not involving drainage of statewide or interdistrict significance. The district's approval shall be noted thereon and it shall be a permit to drain. The permit shall be forwarded to the applicant and notice of the action of the board of managers shall be forwarded to the state engineer.~~

2. ~~Approved drainage permit applications involving drainage of statewide or interdistrict significance. The district's approval shall be noted thereon, and the application, along with the determination, copies of all applicable easements, copies of the publication of notice, and minutes of the public hearing shall be immediately forwarded to the state engineer. Notice of the action of the board of managers shall be forwarded to the applicant.~~ Repealed effective February 1, 1997.

History: Amended-effective-December-1,-1979;-October-1,-1982-

General Authority: NDCC-28-32-02,-61-03-13

Law Implemented: NDCC-61-15-08

89-02-01-18. Denial of application by the district. A denied application shall be returned to the applicant along with a copy of the district's determination. A complete copy of the determination shall be forwarded to the state engineer. Repealed effective February 1, 1997.

History: Amended-effective-December-1,-1979;-October-1,-1982-

General Authority: NDCC-28-32-02,-61-03-13

Law Implemented: NDCC-61-15-08

89-02-01-18.1. Notice by state engineer of public hearing on application of statewide or interdistrict significance. The state engineer, upon receipt of a drainage application that is of statewide or interdistrict significance which has been approved by a district shall hold a public hearing. Notice shall be published in the official newspaper in the county or counties of the proposed drainage once a week for two consecutive weeks. One of the published notices shall be published not less than twenty days before the hearing date. The notice shall give essential information about the proposed drainage application and set the date and time of the public hearing. All public hearings

~~conducted--by--the--state-engineer-shall-be-held-at-the-state-engineer's offices-in-Bismarck. Repealed effective February 1, 1997.~~

~~History: Effective-October-1,-1982;-amended-effective-August-1,-1994.
General Authority: NDEC-28-32-02
Law Implemented: NDEC-28-32-05~~

~~89-02-01-18.2. Evidence presented at the state engineer's public hearing. The-formal-rules-of-evidence-shall--be--waived--at--the--state engineer's--public-hearing-on-application-to-drain;-however;-the-hearing examiner-shall-accept-only-testimony-that-is-relevant--to--the--drainage application. Repealed effective February 1, 1997.~~

~~History: Effective-October-1,-1982-
General Authority: NDEC-28-32-02,-61-03-13
Law Implemented: NDEC-28-32-06~~

~~89-02-01-19. Consideration by state engineer of applications of statewide or interdistrict significance. The--state--engineer;---upon receipt--of--an--application--to--drain--of--interdistrict--or--statewide significance;-which-has-been--approved--by--a--district;---shall--make--a determination-whether-the-permit-shall-be-granted;-utilizing-information from-the-record-compiled-at-the-state-engineer's--public--hearing.---The state-engineer--shall--only-utilize-information-contained-in-the-record except-as-provided-by-section-89-02-01-20.2.---The--state--engineer;---in making--the--determination;---shall--consider--the--criteria-contained-in section-89-02-01-16. Repealed effective February 1, 1997.~~

~~History: Amended-effective-December-1,-1979;-October-1,-1982-
General Authority: NDEC-28-32-02,-61-03-13
Law Implemented: NDEC-61-15-08~~

~~89-02-01-20. Criteria to determine whether drainage will adversely affect lands of lower landowners. The-state-engineer-and--the district-shall-be-guided-by-the-following-criteria:~~

- ~~1.--Uncontrolled-drainage-into-receiving-watercourses-which-do-not have-sufficient-capacity-to-handle--the--additional--flow--and quantity--of--water--shall--be--considered--to-have-an-adverse effect.~~
- ~~2.--Whether--drainage--is--accomplished-by-reasonably-improving-and aiding-the-normal-and-natural-system-of-drainage-according--to its--reasonable--carrying--capacity;---or--in--the-absence-of-a practical-natural-drain;-a-reasonable-artificial-drain--system is-adopted.~~
- ~~3.--The-amount-of-water-proposed-to-be-drained.~~
- ~~4.--The-design-and-other-physical-aspects-of-the-drain.~~

5. ~~The impact of sustained flows.~~ Repealed effective February 1, 1997.

History: Amended effective December 1, 1979; October 1, 1982.
General Authority: NDCG-28-32-02, 61-03-13
Law Implemented: NDCG-61-01-11, 61-15-08

89-02-01-20.1. Time for determination by the state engineer. Within thirty days of the public hearing on a drainage application, the state engineer shall render the determination on the application. For complex or unique applications this time limit may be extended by the state engineer. Following the determination, the state engineer shall notify the parties of record of the determination, either personally, by certified mail, or by regular mail provided the state engineer files an affidavit of service by mail indicating upon whom the determination was served. This notice must be accompanied by the findings of fact and conclusions on which the determination was based and the notice is deemed given as of the date of certification. Repealed effective February 1, 1997.

History: Effective October 1, 1982; amended effective August 1, 1994.
General Authority: NDCG-28-32-02, 61-03-13
Law Implemented: NDCG-28-32-13

89-02-01-20.2. Consideration of evidence not contained in the record. The record shall be closed at the conclusion of the state engineer's public hearing. The state engineer may receive testimony and evidence that is not contained in the record. However, the state engineer, before considering any evidence not contained in the record shall transmit the evidence to the parties of record for their examination and comment. Written comment or a request for a supplemental public hearing must be submitted to the state engineer within ten days after transmittal of the additional evidence. If a supplemental public hearing is warranted, ten days' notice by certified mail shall be afforded the parties of the record to inform them of the date, time, place, and nature of the hearing. All supplemental hearings shall be held at the state engineer's offices in Bismarek. Repealed effective February 1, 1997.

History: Effective October 1, 1982.
General Authority: NDCG-28-32-02, 61-03-13
Law Implemented: NDCG-28-32-07

89-02-01-21. Conditions to permits. The state engineer may require as a condition to the approval of any drainage permit application a postconstruction survey of the permitted drain. Any permit to which the state engineer has attached such condition will be perfected upon receipt of the survey. The state engineer may attach any other conditions to an approved permit deemed necessary by the state

engineer--according--to--the--circumstances--of--each--application. Repealed effective February 1, 1997.

History: Amended-effective-December-1,-1979;-October-1,-1982.

General Authority: NDCC-28-32-02,-61-03-13

Law Implemented: NDCC-61-15-08

89-02-01-23. Procedure upon complaint of violation. If-the-state engineer-receives--a--complaint--of--unauthorized--drainage,--the--state engineer--shall--so--inform--the--appropriate--district.---The--district--shall report--on--the--complaint--within--thirty--days.---If--the--district--fails--to satisfactorily--report--on--the--complaint--within--thirty--days--or--if--its report--indicates--the--existence--of--unauthorized--drainage--but--that--it intends--to--take--no--action--on--the--complaint,--the--state--engineer--may--send such--district--notice--of--intent--to--file--suit--under--the--North--Dakota Environmental--Law--Enforcement--Act--of--1975,--as--provided--in--North--Dakota Century--Code--section--32-40-07.---If--the--district--fails--to--satisfactorily respond--to--the--notice--of--intent,--the--state--engineer--may--file--a--suit against--the--district--which--seeks--that--the--court--order--proper--enforcement or--which--seeks--other--appropriate--relief,--as--provided--in--North--Dakota Century--Code--chapter--32-40. Repealed effective February 1, 1997.

History: Amended-effective-December-1,-1979.

General Authority: NDCC-28-32-02,-61-03-13

Law Implemented: NDCC-32-40-07,-61-15-08

CHAPTER 89-02-02
DRAINAGE OF WETLANDS

[Repealed effective February 1, 1997]

CHAPTER 89-02-03

WETLANDS BANK

[Repealed effective February 1, 1997]

CHAPTER 89-02-05

LICENSES FOR EMERGENCY DRAINAGE

[Repealed effective February 1, 1997]

CHAPTER 89-03-01

89-03-01-14. Notice. When a statute or rule requires the state engineer or water commission to serve an order personally or by certified mail, in circumstances requiring it, the order may be served by regular mail provided an affidavit of service by mail is filed indicating upon whom the order was served.

History: Effective February 1, 1997.

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

Law Implemented: NDCC 28-32-13

CHAPTER 89-03-02

89-03-02-08. Assignment of a water permit to another person. Applications for the assignment of a water permit to another person must be submitted to the state engineer on the form provided by the state engineer. When title of land on which there is a water permit for irrigation is transferred, either the transferee or the holder of the permit may apply for assignment of the water right. ~~An assignment may only be granted if the criteria of North Dakota Century Code section 61-04-06 are met.~~

History: Effective April 1, 1989; amended effective February 1, 1997.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-15

TITLE 92
Workers Compensation Bureau

APRIL 1997

CHAPTER 92-01-02

92-01-02-01. Definitions.

1. "Act" means the North Dakota Workers' Workers Compensation Act.
2. "Bureau" means the workers compensation bureau.

History: Amended effective August 1, 1987; January 1, 1994; April 1, 1997.

General Authority: NDCC 65-02-08, ~~65-13-05~~

Law Implemented: NDCC 65-02-08, ~~65-13-05~~

92-01-02-02. **Claims - Forms.** All claims shall must be made on a form prescribed and provided by the bureau; however, any written communication to the bureau by the claimant which can be reasonably construed as a request for benefits shall ~~be~~ is sufficient to ~~tell~~ satisfy the statutory time limitation.

History: Amended effective April 1, 1997.

General Authority: NDCC 65-02-08, ~~65-13-05~~

Law Implemented: NDCC 65-05-02, ~~65-13-06~~

92-01-02-02.1. **Temporary partial disability benefits.** If, after a compensable injury, a claimant cannot return to full-time employment, or returns to work at a wage less than that earned at the time of the claimant's first or recurrent disability as defined in North Dakota Century Code section 65-05-09, the claimant is eligible for a temporary partial disability benefit. Pursuant to North Dakota Century Code

section 65-05-10, the temporary partial disability rate is to be fixed by the bureau.

For claims of temporary partial disability benefits asserted against the fund when the partial loss of earning power occurred prior to July 1, 1989, benefits will be calculated in the following manner:

1. The temporary partial disability rate ~~will be equal to~~ is the percentage obtained by dividing the claimant's postinjury wages by the claimant's preinjury wages. Postinjury wages ~~means those are~~ means those are wages actually earned after the first or recurrent disability ~~as defined in this section~~. Preinjury wages ~~means are~~ means are the claimant's wages earned the claimant was earning at the time of the first or recurrent disability ~~as defined in this section~~.
2. The claimant will receive the above calculated percentage of the weekly temporary total disability benefits ~~as determined by~~ calculated under North Dakota Century Code section 65-05-09.
3. Dependency ~~The dependency~~ allowance ~~as defined in~~ provided by North Dakota Century Code section 65-05-09 will be paid at the same temporary partial disability percentage ~~as rate~~ calculated in subsection 1.
4. ~~If, after the injury,~~ the claimant ~~earns~~ claimant's postinjury earnings equal or exceed ninety percent of the claimant's earnings at the time of the first or recurrent disability ~~as defined in this section~~, no benefits will be paid.
5. A claimant may earn up to ten percent of the claimant's ~~preinjury wages earned at the time of the first or recurrent disability with no reduction in~~ preinjury wages earned at the time of the first or recurrent disability without the bureau reducing temporary total disability benefits; however, all wages ~~earned after the injury~~ postinjury wages, from the employer ~~of injury or any other employer~~ any source, must be reported to the bureau to determine whether a reduction ~~applies~~ is required.
6. If the claimant's failure to report postinjury wages earned after the injury results in an overpayment of benefits, ~~such the claimant shall refund the overpayment must be refunded to the bureau at a rate set by the bureau, or be deducted as a reduction from future payable benefits.~~

History: Effective June 1, 1990; amended effective April 1, 1997.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-02-08, 65-05-09

92-01-02-03. Informal hearing. ~~Upon receipt of a claim, the bureau shall investigate the claim, review the file and make a determination. Such action shall constitute an informal hearing.~~

Pursuant to North Dakota Century Code section 28-32-08, no notice of such hearing need be given. Any decision arrived at, as a result of an informal hearing, shall be made pursuant to North Dakota Century Code section 28-32-13. Repealed effective April 1, 1997.

General Authority: NDCC-65-02-08,-65-13-05

Law Implemented: NDCC-28-32-08,-28-32-13,-65-02-11,-65-02-12,-65-05-03,-65-13-05,-65-13-08

92-01-02-04. Rehearing - Formal hearing. Following an informal hearing, the bureau may set a rehearing on the claim pursuant to North Dakota Century Code section 28-32-14. Such a rehearing shall be a formal hearing on the claim. Repealed effective April 1, 1997.

General Authority: NDCC-65-02-08,-65-13-05

Law Implemented: NDCC-28-32-14,-65-02-11,-65-05-03,-65-13-05,-65-13-08

92-01-02-05. Notice of formal hearing - Specification of issues. When a claim is assigned for formal hearing, the bureau, at least twenty days prior to such hearing, shall notify in writing all interested parties of the time and place of the hearing. The twenty-day notice may be dispensed with upon agreement by the parties. The bureau shall attach to the notice of hearing a written specification of the issues which are to be considered and determined, and a full opportunity shall be afforded the parties to present evidence and be heard. Formal hearings will be held at the office of the bureau, at the county seat of the county in which the injury occurred, or at such other place as may be agreed upon by the parties. Repealed effective April 1, 1997.

General Authority: NDCC-65-02-08,-65-13-05

Law Implemented: NDCC-28-32-14,-65-02-11,-65-05-03,-65-13-05,-65-13-08

92-01-02-06. Evidence. The admissibility of evidence in any proceeding before the bureau shall be determined pursuant to North Dakota Century Code section 28-32-06. Repealed effective April 1, 1997.

General Authority: NDCC-65-02-08,-65-13-05

Law Implemented: NDCC-28-32-06,-65-02-11,-65-13-05

92-01-02-07. Subpoena - Depositions. The bureau may issue subpoena and subpoena duces tecum either at its own instance or upon written application of any party made not less than ten days prior to a hearing. The cost of service, witness, and mileage fees shall be borne by the party at whose request the subpoena is issued unless otherwise ordered by the bureau. The bureau may take or cause to be taken affidavits or depositions of witnesses residing within or without the state, whenever it deems such procedure necessary. The bureau may set appropriate terms and conditions pertaining to the taking of affidavits

~~or depositions. The requesting party shall bear the expense unless otherwise ordered by the bureau.~~ Repealed effective April 1, 1997.

General Authority: NDCC-65-02-08, -65-13-05
Law Implemented: NDCC-65-02-11, -65-13-05

~~92-01-02-08. Information not presented at a formal hearing. Information not presented at a formal hearing may be considered pursuant to North Dakota Century Code section 28-32-07.~~ Repealed effective April 1, 1997.

General Authority: NDCC-65-02-08, -65-13-05
Law Implemented: NDCC-28-32-07

~~92-01-02-09. Decision. After a formal hearing, a determination shall be made by the bureau pursuant to North Dakota Century Code section 28-32-13.~~ Repealed effective April 1, 1997.

General Authority: NDCC-65-02-08, -65-13-05
Law Implemented: NDCC-28-32-13, -65-05-03

~~92-01-02-10. Appeal. An appeal from a bureau decision may be taken in the manner provided in North Dakota Century Code chapter 65-10 and section 28-32-15.~~ Repealed effective April 1, 1997.

General Authority: NDCC-65-02-08, -65-13-05
Law Implemented: NDCC-28-32-15, -65-10-01, -65-13-17

~~92-01-02-11. Attorneys. Any party shall have has a right to be represented by an attorney at any stage in the proceedings regarding a claim. Attorney's fees for the claimant only will be paid by the bureau at a rate set by the bureau according to North Dakota Century Code section 65-02-08. The bureau may deny attorney's fees upon a finding that a claim is frivolous. The~~ An attorney who represents an injured worker in a proceeding regarding a claim shall file a notice of legal representation prior to or together with the attorney's first communication with the bureau. If a notice of legal representation is filed subsequently by another attorney, a notice of withdrawal must be filed by the attorney of record before the subsequent attorney may represent the claimant.

History: Amended effective June 1, 1990; April 1, 1997.
General Authority: NDCC 65-02-08, 65-10-03
Law Implemented: NDCC 65-02-08, 65-10-03

92-01-02-11.2. Attorney time statements. An attorney representing a claimant shall submit to the bureau, at least once a month, a statement of the time spent representing that claimant during that month. The statement must include the name and claim number of the

claimant represented, the type of work performed, which attorney or legal assistant performed the work, and the dates each service was performed. The bureau may not pay fees which were not included on a monthly statement submitted as required by this section.

History: Effective April 1, 1997.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-02-08

92-01-02-12. Mileage and per diem for travel to and from medical treatment. The North Dakota workers compensation bureau recognizes payment for travel to and from medical treatment as an implied benefit of a reasonable and necessary medical expenses, pursuant to the terms of North Dakota Century Code section 65-05-07 expense. These expenses will be paid according to North Dakota Century Code section 65-05-28.

~~The North Dakota workers compensation bureau shall pay mileage for travel to and from medical treatment at the rate set by the legislative assembly for state employees, as provided in North Dakota Century Code section 54-06-09. Mileage must be measured from city limit to city limit. In order to foster efficiency and to administer the provisions of this rule, no payment for mileage may be paid when the distance traveled is less than fifty miles [80.47 kilometers] one way, unless the total mileage equals or exceeds two hundred miles [321.87 kilometers] in a calendar month.~~

~~The North Dakota workers compensation bureau shall pay the costs of necessary lodging and per diem when the claimant must be away from home as a result of necessary medical treatment at the rate set by the legislative assembly for state employees, as provided in North Dakota Century Code section 44-08-04, except that reimbursement for out-of-state lodging may not exceed one hundred twenty-five percent of the allowance for in-state lodging. However, the bureau may pay no more than actual cost of meals and lodging, with receipt required. Intracity mileage may not be reimbursed.~~

History: Effective August 1, 1988; amended effective April 1, 1997.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 44-08-04, 54-06-09, 65-02-08, 65-05-07 65-05-28

92-01-02-13. Merger, exchange, or transfer of business.

1. Definitions. In this section:

- a. "Business entity" means any form of business organization including, ~~but not limited to,~~ proprietorships, partnerships, limited partnerships, cooperatives, and corporations.
- b. "Constituent business" means any a business entity of which a surviving entity is composed.

- c. "Surviving entity" means the business entity resulting from a merger, exchange, or transfer of business assets from one or more constituent businesses.
2. **Experience rating.** The surviving business entity resulting from a merger, exchange, or transfer of business assets shall retain retains the highest experience rating of any constituent business entity merged, exchanged, or transferred. The bureau may, ~~in its discretion,~~ change the experience rating of the surviving entity.
 3. **Compensation coverage.** The bureau may transfer compensation coverage of any constituent business ~~may, at the discretion of the bureau, be transferred~~ to the surviving entity. Any premium unearned on the seller's risk must be applied toward payment ~~for the transferred coverage.~~ ~~The compensation coverage of a constituent business sold or transferred within three months of the last actual payroll period expiration date to a surviving entity may be transferred to the surviving entity.~~ ~~Then the payroll for the three month (or less) payroll period will be prorated on the 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 maximum amount of one-twelfth of the statutory payroll cap per month, the full amount is reportable, or if an employee ceased employment during the three month period, the gross paid is to be reported up to the payroll cap established by statute.~~ The bureau shall calculate premium based on actual taxable payroll for the period of time involved. The bureau may prorate the payroll cap based on one-twelfth of the statutory payroll cap per month per employee at the beginning of the period of time involved.

History: Effective June 1, 1990; amended effective January 1, 1992; April 1, 1997.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-04-01

92-01-02-16. Expiration date change. If Upon the request of a riskholder requests a change of, the bureau may change the expiration date on the riskholder's account, the following procedure will apply: and shall calculate premium based on actual taxable payroll for the period of time involved. The bureau may prorate the payroll will be prorated cap based on a basis of the maximum of one-twelfth of the statutory payroll cap per month per employee for at the beginning of the period of time involved. ~~If the salary paid is less than the maximum amount of one-twelfth of the statutory payroll cap per month, the full amount is reportable.~~

History: Effective June 1, 1990; amended effective January 1, 1994; April 1, 1997.

General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-04-01

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

1. Definitions. In this section, unless the context otherwise requires:
 - a. "Five-year losses" means the total sum of ratable losses accrued on claims occurring during the first five of the six years immediately preceding the premium year being rated. For payroll periods beginning between July 1, 1994, and June 30, 1995, this term means the total sum of ratable losses accrued on claims occurring during the first four of the five years immediately preceding the payroll year being rated.
 - b. "Five-year payroll" means the total sum of limited payroll reported for the first five of the six years immediately preceding the premium year being rated. For payroll periods beginning between July 1, 1994, and June 30, 1995, ~~this term~~ the term means the total sum of limited payroll reported for the first four of the five years immediately preceding the payroll year being rated.
 - c. "Five-year premium" means the total sum of earned premium for the first five of the six years immediately preceding the premium year being rated. For payroll periods beginning between July 1, 1994, and June 30, 1995, this term means the total sum of earned premium for the first four of the five years immediately preceding the payroll year being rated.
 - d. "Manual premium" means the actual premium, prior to any experience rating, for the premium year immediately preceding the premium year being rated for claims experience.
2. ~~Qualified-accounts~~. An employer's account is not eligible for an experience rating until the account has completed three consecutive twelve-month payroll periods and has developed annual premium of one hundred twenty-five dollars or more, excluding optional coverages, on its last actual payroll report. Employer's and volunteer coverages are not eligible for experience rating.
3. For accounts with manual premium of less than twenty-five thousand dollars:

- a. The experience rating must be applied prior to the inception of each payroll year for all eligible employers' accounts. ~~No--minimum-premium-is-eligible-for-experience rating.~~ Notwithstanding a calculated experience rate discount, an employer may not pay less than the minimum premium for the highest applicable classification rate. A claim is deemed to occur in the payroll year in which it is accepted by the bureau.
- b. ~~Experience--rate--discount--or--surcharge.~~ Percentage of experience rate discount or surcharge is computed as follows:
- (1) Calculate the basic compensation allowance ~~which is determined~~ by multiplying the five-year premium by forty percent.
 - (2) Subtract the basic compensation allowance from the five-year losses.
 - (3) Divide this difference by the basic compensation allowance to obtain the percentage difference.
 - (4) Multiply thirty-five percent by the percentage difference ~~obtained under paragraph--3~~ to give the experience rate percentage to be applied in calculating the estimated premium for the current premium year. If this percentage is greater than zero, the account is subject to an experience rate surcharge in the amount of the calculated percentage. If this percentage is less than zero, the account is entitled to an experience rate discount in the amount of the absolute value of the percentage.
- c. Maximum percent of surcharge or discount. For payroll periods beginning prior to August 1, 1993, the maximum experience rating surcharge or discount may not exceed forty percent for all accounts. For payroll periods beginning between August 1, 1993, and June 30, 1994, the maximum experience rating surcharge or discount may not exceed thirty-five percent on an individual account with base premium of five thousand dollars to twenty-four thousand nine hundred ninety-nine dollars and ninety-nine cents, and thirty percent on an account with base premium of one hundred dollars to four thousand nine hundred ninety-nine dollars and ninety-nine cents. For payroll periods beginning after June 30, 1994, the maximum experience rating surcharge or discount may not exceed twenty percent on an account with base premium of five thousand dollars to twenty-four thousand nine hundred ninety-nine dollars and ninety-nine cents, and fifteen percent on an account with base premium of one hundred

twenty-five dollars to four thousand nine hundred ninety-nine dollars and ninety-nine cents.

4. For accounts with manual premium of twenty-five thousand dollars or more:
 - a. The experience rating must be applied prior to the inception of each premium year for all eligible accounts. A claim is deemed to occur in the premium year in which the injury date occurs.
 - b. The experience modification factor (EMF) to be applied to the current estimated portion of an employer's payroll report is computed as follows:
 - (1) Calculate the actual primary losses (A_p), which consist of the sum of those five-year losses, comprising the first ten thousand dollars of each individual claim.
 - (2) Calculate the actual excess losses (A_e), which consist of the sum of those five-year losses in excess of the first ten thousand dollars of losses of each individual claim.
 - (3) Calculate the total expected losses (E_t), which are determined by adding the products of the actual payroll for each year of the five-year payroll times the class expected loss rate for each year. The class expected loss rates, taking into consideration the hazards and risks of various occupations, must be those contained in the most recent edition of the North Dakota workers compensation bureau summary of expected loss rates and information, which is hereby adopted by reference and incorporated within this subsection as though set out in full herein.
 - (4) Calculate the expected excess losses (E_e), which are determined by adding the products of the actual payroll for each year of the five-year payroll times the class expected excess loss rates. The class expected excess loss rates, taking into consideration the hazards and risks of various occupations, must be those contained in the most recent edition of the North Dakota workers compensation bureau summary of expected loss rates and information, which is hereby adopted by reference and incorporated within this subsection as though set out in full herein.
 - (5) Calculate the "credibility factor" (Z) which is the quotient of the total expected losses divided by the sum of the total expected losses plus one million dollars.

- (6) The experience modification factor is then calculated as follows:
- (a) Add the actual primary losses to the product of the actual excess losses times the credibility factor.
 - (b) To this sum add the product of the expected excess losses times the difference between one dollar and the credibility factor.
 - (c) To this sum add twenty thousand dollars.
 - (d) Divide this total sum by the sum of the total expected losses plus twenty thousand dollars.

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

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

$$EMF = \frac{A_p + (Z \times A_e) + [(1.00 - Z) \times E_e] + \$20,000.00}{E_t + \$20,000.00}$$

History: Effective June 1, 1990; amended effective July 1, 1993; July 1, 1994; April 1, 1997.

General Authority: NDCC 65-02-08, 65-04-17

Law Implemented: NDCC 65-04-01

92-01-02-18.1. Application of discount to experience rate for employers establishing operations in this state. If an employer who is beginning operations in this state can prove that for similar operations in another jurisdiction the employer received an experience-rate based discount on workers' compensation premiums in that jurisdiction, the bureau may discount that employer's premium in this state not to exceed a maximum discount of ten percent. The employer must be setting up a permanent operation and the discount must be part of an economic development package. The discount will be applied retrospectively after a successful year of participation within the bureau's risk management program. Premium discounts for the employer's second through fourth years of operation in this state will be retrospectively based on the employer's most recent out-of-state experience rate and continued successful participation within the bureau's risk management program. Premiums for the employer's fifth year of operation in this state will be based on the applicable experience rating programs in this state. An employer who self-insured in another jurisdiction is not eligible for the discount.

History: Effective April 1, 1997.

General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-04-01, 65-04-17

92-01-02-21. Employee leasing arrangements.

1. Definitions. As used in this section:

- a. "Client" means an entity leasing one or more employees from ~~another-entity~~ a labor contractor.
- b. "Employee leasing arrangement" means an ~~arrangement~~ whereby ~~an-entity-utilizes a client~~ uses the services of another-entity a labor contractor to maintain all or some of its employees. Employee leasing arrangement does not include arrangements an arrangement to provide temporary employees.
- c. "Labor contractor" means an entity leasing one or more of its employees to another company.
- d. "Temporary employee" means an employee who is furnished provided by a labor contractor to a client less than three-fourths of any three consecutive months.

2. Coverage. For purposes of coverage under the Workers Compensation Act, a client leasing an employee from a labor contractor pursuant to an employee leasing agreement must be deemed the employer of the leased employee, and the bureau may require the client to provide ~~worker's~~ workers' compensation coverage for the leased employee, ~~when the leased employee has been furnished by the labor contractor to the client at least three-fourths of any three consecutive months. A leased employee so employed may not be deemed a temporary worker.~~ The labor contractor shall provide ~~worker's~~ workers' compensation coverage for temporary employees furnished provided to clients.

3. Premium for leased employees - Client as policyholder.

- a. The client shall provide a complete payroll record of the employees and ~~workers~~ leased to it from the labor contractor. Premium on such that payroll must be based on the classifications and rates which would have be applied if the employees and ~~workers~~ leased to the client had ~~been~~ were direct employees of the client.
- b. If the client does not supply the payroll records of the employees and ~~workers~~ leased to it from the labor contractor, one hundred percent of the ~~full~~ employee leasing arrangement price must be established as the payroll of the employees and ~~workers~~ leased to the client. The premium must be charged on that amount as payroll.

- c. If an experience modification has been established for the client, such that experience modification must be applied to the premium developed for the leased employees and workers.

History: Effective July 1, 1991; amended effective January 1, 1992; April 1, 1997.

General Authority: NDCC 65-02-08, 65-04-17

Law Implemented: NDCC 65-04-17

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; amended effective April 1, 1997.

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~~ education, 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 pool under subdivision 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~~ bureau shall pay 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~~ bureau shall pay 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 by showing that such the expenses are reasonable and necessary. A rehabilitation award for short-term or long-term training may include tutoring assistance to these employees who require such--services tutoring 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-an-expense~~ Expenses such as association dues or a ~~subscription~~ subscriptions may be reimbursed only if 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~~ wage-loss allowance to maintain two domiciles as provided in subdivision b of subsection 2 of North Dakota Century Code section 65-05.1-06.1 may continue only ~~during-the-time~~ while 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~~ means 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; April 1, 1997.

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 and has been evaluated for permanent 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, and there is a disagreement arising from the evaluation that affects the amount of the award.

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 is not 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 medical 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.~~

d. "Potentially eligible for an impairment award" means the medical evidence in the claim file indicates an injured employee has reached maximum medical improvement and has a significant permanent impairment caused by the work injury.

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~~

format order has been issued by the bureau, payment of attorneys' fees is governed by North Dakota Century Code sections 65-02-08 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 these conditions. All permanent impairment reports must include the opinion of the physician or chiropractor doctor on the cause of the impairment and must contain an apportionment if the impairment is caused by both work and nonwork-related injuries or conditions.

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. 3. 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~~ of medical specialists from the appropriate specialty until a name is chosen.

8- 4. ~~In the event of~~ If there is a dispute involving an employee who resides outside of North Dakota, the bureau shall ~~have the sole discretion to determine whether it will~~ may 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~~ medical specialists in the other state, if such a list is available, or from some comparable list of appropriate medical specialists in that state.

9- 5. Upon receipt ~~of receiving~~ a permanent impairment rating 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 audit the report and shall issue an order awarding or denying permanent impairment benefits.

History: Effective November 1, 1991; amended effective January 1, 1996; April 1, 1997.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-05-12; 65-05-12.2

92-01-02-26. Binding arbitration. Binding arbitration pursuant to under North Dakota Century Code section 65-02-15 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--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. 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 qualified based upon substantial experience, training, education, fair judgment, independence, and neutrality. 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.
5. 2. One qualified arbitrator shall hear and decide a dispute. The arbitrator may be changed only by order of the arbitrator upon a showing of financial interest, personal involvement, or good cause presented to the arbitrator by the requesting party within fifteen at least fourteen days of the date the parties are notified of the name of the arbitrator before the hearing.
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.--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.

7.--Arbitration--hearings--must--be--in--accordance--with--the--following
procedures:

3. The bureau shall send by regular mail an arbitration information form to a party requesting reconsideration requiring binding arbitration under North Dakota Century Code section 65-02-15 and to any other party to the claim. The requesting party shall submit a completed form to the bureau within thirty days of the date the form was mailed. A

nonrequesting party also may submit a completed form to the bureau within thirty days of the date the form was mailed. The bureau shall submit completed forms that were timely submitted to the arbitrator and shall request an arbitration hearing date. The arbitrator will notify the parties and the bureau of the time and place of the arbitration hearing. No pleadings other than the form are required. A court reporter is not required to take testimony. The parties and the bureau may appear without counsel.

4. a. Witness fees and mileage shall be are paid by the party or bureau at whose instance request the witness appears. The arbitrator may for good-cause order the bureau, for good cause, 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 hearing must be held in the region county where the injury occurred or in the county where the requesting party resides, ~~or, if.~~ If the requesting party resides out of state, the arbitration hearing must be held in Bismarck, North Dakota. The location of the hearing may be changed by agreement of the participating parties and the bureau. 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 by 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.~~
- j. ~~Only evidence 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. c. 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 the documents to be submitted, or such the

witness to testify as provided in subsection 7 of North Dakota Century Code section 28-32-09.

7. d. The arbitrator may announce a decision prior to adjourning the hearing. 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 shall sign the decision and served upon serve it on all parties and the bureau by certified mail.

8. e. 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 service of the arbitrator's decision. The arbitrator may deny the request with ~~or without~~ explanation, issue an amended ~~order~~ decision, or order that the ~~proceedings~~ hearing be reopened for submission of additional evidence or briefs.

9. f. There shall may not be any discovery except by the consent of the parties and the bureau.

10. g. Should if any party ~~fail~~ fails to appear at a hearing after proper notice under ~~subdivision g~~ subsection 3, 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 has waived the right to testify and to present other relevant evidence.

11. ~~The bureau retains continuing jurisdiction over the decision of the arbitrator, pursuant to North Dakota Century Code 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.~~

- 9- 5. ~~These rules govern any petition for arbitration made following issuance of an administrative order after August 1, 1995.~~ 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~~ from 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 is not certain and could exceed three thousand dollars, 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; April 1, 1997.

General Authority: NDCC 28-32-05, 28-32-05.1, 65-02-08

Law Implemented: NDCC 65-02-15

92-01-02-35. Determining medically stationary status.

1. ~~An--injured--employee's~~ A claimant's condition must be determined to be medically stationary when the attending doctor or a preponderance of medical opinion ~~declares~~ evidence indicates the employee claimant is 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 on 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~~ When 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 claimant'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~~ a claimant is medically stationary is the earliest date that a preponderance is established under this section. The date of the 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 medical opinion states the employee claimant is medically stationary, an-employee the claimant is presumed medically stationary on the date of the last examination.~~

History: Effective January 1, 1994; amended effective January 1, 1996; April 1, 1997.

General Authority: NDCC 65-02-08, 65-02-20, 65-05-07

Law Implemented: NDCC 65-02-20, 65-05-07

92-01-02-38. Changes of doctors.

1. All changes from one doctor to another must be approved by the bureau. Normally, changes will be allowed only after the employee claimant has been under the care of the attending doctor for sufficient time for the doctor to complete necessary diagnostic studies, establish an appropriate treatment regimen, and evaluate the efficacy of the therapeutic program.
2. North Dakota Century Code section 65-05-28 governs choice of doctor. For purposes of this rule, the following are not considered changes of doctor by the employee claimant:
 - a. Emergency services by a doctor;
 - b. Examinations at the request of the bureau;
 - c. Consultations or referrals initiated by the attending doctor;
 - d. Referrals to radiologists and pathologists for diagnostic studies;
 - e. When employees claimants are required to change doctors to receive compensable medical services, palliative care or time loss authorization because their health care provider is no longer qualified as an attending doctor; or
 - f. Changes of attending doctor required due to conditions beyond the employee's claimant's control. This would include when the doctor terminates practice or leaves the area.
3. ~~Except--as--provided--under--this--subsection,--no--reasonable request-for-a-change-will-be--denied. The injured--employee~~

claimant must be advised when and why a change is denied. The bureau reserves the right to require an employee a claimant to select another doctor or specialist for treatment under the following conditions:

- a. When more conveniently located doctors, qualified to provide the necessary treatment, are available;
 - b. When the attending doctor fails to cooperate-in-observance and-compliance observe or comply with the bureau's rules;
 - c. ~~In~~ When, in a time loss cases-where case, reasonable progress towards return to work is not shown;
 - d. ~~Cases--requiring~~ When a claimant requires specialized treatment, which the attending doctor is not qualified to render, or which is outside the scope of the attending doctor's license to practice;
 - e. ~~Where--the--bureau--finds--the--change--of--doctor--to--be appropriate-and-has-requested-the-employee--to--change--in accordance--with--this--rule;--the-bureau-may-select-a-new attending-doctor-if-the-employee-unreasonably--refuses--or delays-in-selecting-another-attending-doctor;--or~~
 - f. ~~In--cases-where~~ When the attending doctor is not qualified to treat each of several accepted conditions. This does not preclude concurrent care where indicated as outlined in section 92-01-02-37.
4. When the bureau finds the change of doctor to be appropriate and has requested the claimant to change under this rule, the bureau may select a new attending doctor if the claimant unreasonably refuses or delays in selecting another attending doctor.
 5. ~~Changes--will-be-authorized-for-the-foregoing-reasons-or-where~~ The bureau in its discretion may authorize a change when it finds that a change is in the best interest of returning the injured-employee claimant to a productive role in society.

History: Effective January 1, 1994; amended effective April 1, 1997.

General Authority: NDCC 65-02-08, 65-02-20, 65-05-07

Law Implemented: NDCC 65-02-20, 65-05-07

92-01-02-44. Special programs.

1. The bureau may ~~from-time-to-time~~ enter into special agreements for services provided by, or under the direction of, licensed providers authorized to bill the bureau. Special agreements are for services ~~other-than-routine-services~~ not covered under the fee schedule, and may include multidisciplinary or

interdisciplinary programs such as pain management, work hardening, and physical conditioning.

2. The bureau shall establish payment rates for special agreements, and may establish outcome criteria, measures of effectiveness, minimum staffing levels, certification requirements, special reporting requirements, and such other criteria as will ensure injured employees claimants receive good quality and effective services at a prudent reasonable cost.

~~3. Special agreements may be purchased at the discretion of the bureau. The bureau may terminate special programs upon thirty days' notice to the provider.~~

History: Effective January 1, 1994; amended effective April 1, 1997.

General Authority: NDCC 65-02-08, 65-02-20, 65-05-07

Law Implemented: NDCC 65-02-20, 65-05-07

92-01-02-45. Bureau responsibilities.

1. ~~These rules and the fee schedules do not require the bureau to pay a charge for a service that is not for the treatment of a compensable injury or a charge that is the primary responsibility of another payer.~~
2. Determinations of excessiveness and medical necessity are subject to a determination of the director bureau or the director's its representatives and must be determined by evaluating the charge and service according to the conditions of excessiveness and medical necessity as specified in the medical service rules.
3. 2. As soon as reasonably possible after receiving a bill the bureau shall ~~do any or all of the following:~~
 - a. Pay the charge or any portion of the charge bill that is not denied.
 - b. Deny all or a portion of a charge the bill on the basis that the injury is not compensable, or the service or charge is excessive or not medically necessary.
 - c. Request specific additional information to determine whether the charge or service is excessive or not medically necessary or whether the condition is compensable.
4. 3. If a service is not included in the fee schedule and the charge is not otherwise excessive and is medically necessary the bureau shall evaluate the charge against the usual and

customary charges prevailing in the same geographic community for similar services.

- 5- 4. If the charge submitted is less than or equal to the prevailing and customary charges, the bureau shall pay the charge in full. If the charge exceeds the usual and customary charges, the bureau shall pay an amount equal to the usual and customary charge for similar services.
- 6- 5. The bureau shall provide written notification through a notice of nonpayment to the employee claimant when the employee claimant is personally responsible for the payment of a charge and to the provider through a remittance advice of denial of part or all of a charge, or to the provider for any request for additional information. Written notification must include:
 - a. The basis for denial of all or part of a charge that the payer has determined is not for a compensable injury under North Dakota Century Code title 65.
 - b. The basis for denial or reduction of each charge and the specific amounts being denied or reduced for each charge meeting the conditions of excessive charge.
 - c. The basis for denial of each charge meeting the conditions of an excessive service.
 - d. The basis for denial of each charge not meeting the conditions of medically necessary.
 - e. A request for an appropriate record or the specific information requested to allow proper determination of the bill, or both.
- 7- 6. Any payment made to a provider which is determined to be wholly or partially excessive or not medically necessary, according to the conditions prevailing at the time of payment, may be collected from the provider by the bureau in the amount that the reimbursement was excessive.
- 8- 7. If the bureau requests a special report as defined in section 92-01-02-29, asking the health care provider or doctor to respond to specific questions regarding causation, aggravation, preexisting conditions, or to clarify complex conditions, or other issues not required to be included in standard reports, the bureau will pay a reasonable fee for responding to such requests. The health care provider or doctor should include in the special report the time involved in responding to such requests. Both time factors and complexity of the issues will be considered when determining the reasonableness of fees for such service. Such services

should be billed under current procedural terminology code 99080 with a descriptor of "special report".

History: Effective January 1, 1994; amended effective April 1, 1997.

General Authority: NDCC 65-02-08, 65-02-20, 65-05-07

Law Implemented: NDCC 65-02-20, 65-05-07

92-01-02-46. Medical services disputes.

1. Dispute resolution is mandated by these rules under North Dakota Century Code section 65-02-20 when an aggrieved party raises a bona fide dispute concerning the bureau's determination managed care vendor's recommendation that an employee has received, is receiving, or is proposed to receive medical treatment for a compensable condition that is excessive, inappropriate, ineffectual, or in violation of the medical rules regarding the performance of medical services. Dispute resolution is also mandated under these rules where the aggrieved party is an employer who disputes an award of medical services.
2. The bona fide dispute must involve ~~medical services including the following:~~
 - a. Medical services performed by doctors;.
 - b. Ancillary services that are prescribed by an attending doctor;.
 - c. ~~Any services~~ Services that cannot be obtained without a doctor's prescription;.
 - d. ~~These services~~ Services that qualify for review under this rule pursuant to section 92-01-02-30;.
 - e. Braces, splints, and physical restorative devices will be reviewed under the provisions of this rule only if the sole issue is whether the treatments are determined to be excessive, inappropriate, ineffectual, or in violation of the rules regarding the performance of medical services;.
 - f. ~~Requests for palliative care; and~~
 - g. Denials or reductions in payment to the health care a provider arising out of medical bill review or application of the bureau's fee schedules or medical service rules.
3. An aggrieved party is an ~~employee~~ a claimant, an employer, or health care a provider who raises a bona fide dispute.
4. ~~The bureau may dismiss the petition for dispute resolution, at any time during the proceedings, if it finds there is no~~

bona-fide-dispute.---In-such-case-the-bureau-will-issue-an administrative-order-denying-application-of-these-rules-to-the dispute.

5.--In-order-to-show-a A bona fide dispute does not include:

a. An---employer---must---show---that---the---charges---affect---the employer's-premium-payment-to-the-bureau.

b.--An-employee-must-show-that-the-reduction-or-denial-of-care will-oblige-the-employee-to-personally-pay-for-the-service (e.g.,-application-of-the-fee-schedules-reducing-a-payment to-a-provider-may-not-be-contested-by-the-employee-because subsection-4-of-North-Dakota-Century-Code-section-65-05-07 does-not-allow-the-provider-to-bill-the-employee-for services-rendered-to-treat-a-compensable-injury).

c.--Any-party-must-show-that-the-dispute-concerns-a-question of-fact.--Any A dispute that is solely a question of law is-not-subject-to-binding-dispute-resolution-under-this section.---In-such-case,---the-bureau-shall-issue---an administrative-order.---The-sole-remedy-for-an-aggrieved party-is-appeal-to-the-appropriate-district-court.--A-fact hearing-may-not-be-conducted-in-such-case,---absent-order-of a-court.

d.--b. Any-party-must-show-that-the A dispute does-not-concern about the compensability of an entire condition (e.g.,--an employee--alleges--that--diabetes-was-triggered-by-injury. The--correct--issue--is--whether---there---is---a---causal relationship--between--injury-and-condition.--In-such-case the-employee's-remedy-is-for-formal--hearing--under--North Dakota--Century--Code-chapter-28-32-or-binding-arbitration under-North-Dakota-Century-Code-section-65-02-15-et-seq.}). However,--this--section-does-not-preclude-denial-of-single medical-charges-as-unrelated.

c. A dispute about the compensability of a claim.

6.--A-petition-for-binding-dispute-resolution-stays-payment-of-the health-care-provider's-bills--pending--final--outcome--of--the reviews.

7. 5. An aggrieved party must first exhaust the dispute resolution procedures of the managed care vendor prior-to before filing a request with the bureau for informal-review,--reconsideration, or-for binding dispute resolution on any issue related to managed care services as-defined-by-these-rules. The managed care vendor's dispute resolution process must be completed within thirty days of receipt of the necessary information to process the request. The managed care vendor ~~must--orally~~ shall notify the aggrieved party and the bureau orally of the results of the additional review and shall notify the bureau

in writing within seven days of completion of the additional review.

8. After the aggrieved party exhausts the dispute resolution procedures of the managed care vendor, the bureau shall undertake an informal investigation, review the medical evidence, including any new evidence the aggrieved party submits, and the recommendations of the managed care vendor.

The bureau shall issue an informal decision within thirty days after receiving written notification of the managed care vendor's dispute resolution results and shall serve a copy of the informal decision to the parties by regular mail. The informal decision must summarize the reason for the determination, but need not make findings of fact and conclusions of law. If the aggrieved party does not file a formal petition for binding dispute resolution under these rules within thirty days of issuance of the bureau's informal decision, that decision is final, subject only to reopening under North Dakota Century Code section 65-05-04.

9. 6. The If the aggrieved party shall file files a formal petition for binding dispute resolution within thirty days of issuance of the bureau's informal decision. The formal managed care vendor's dispute resolution recommendation, the petition for binding dispute resolution must be in a form and format as prescribed by the director bureau and must:

a. Identify the employee's claimant's name, date of injury, and claim number;

b. Certify that the relatedness of ongoing treatment to the work-related injury is not at issue at the time of the request, except that denial of single medical charges as unrelated may be decided under these rules;

c. Specify the treatment in question along with the time period of the treatment in dispute. When the treatment is proposed, the requesting party shall provide the director with documentation of the specific treatment plan proposed by the attending doctor;

d. b. Provide all relevant and pertinent medical information along with any medical documentation which indicates that the treatment in question conforms to accepted medical standards of care;

e. c. Identify any actual or potential harm that has befallen, or might befall to the employee; claimant.

f. If applicable, provide specific examples of how the treatment complies with the medical service rules; and

g. d. Identify the specific relief sought.

10. 7. Similarly, ~~formal~~ A petition for binding dispute resolution regarding denial or reductions ~~in~~ of fees must be filed within thirty days of the issuance of the managed care vendor's dispute resolution recommendation, in a form ~~and format~~ as prescribed by the ~~director~~ bureau and must:

a. ~~Be filed within thirty days of issuance of the bureau's informal decision;~~

b. State specific code and dates date of service in dispute;

e. b. State the grounds for questioning the disputed amount;

d. c. State the ~~request for correction and~~ requested relief; and

e. d. Include specific documentation to support the review request, including copies of original health care financing administration bills, chart notes, remittance advice, any correspondence between the parties regarding the dispute, and any other documentation necessary to evaluate the dispute.

11. 8. The ~~director~~ bureau shall review the formal petition for binding dispute resolution and ~~notify the aggrieved party by regular mail if a bona fide dispute was found to exist. If the director determines that a bona fide dispute exists, an~~ informal investigation of the petition and evidence must will be conducted. ~~The investigation may include request for and review of pertinent medical treatment and payment records, interviews with the parties to the dispute, or consultation with an appropriate health care provider or committee of the provider's peers.~~

12. 9. ~~The bureau shall arrange all relevant and pertinent medical information in chronological order, with the oldest documents on top, and numbered in Arabic numerals in the lower right-hand corner of each page, beginning with the document of the earliest date. The documents must have an index that includes the document numbers, descriptions of each document, author, number of pages, and date of the document. The bureau shall provide the aggrieved party with a copy of the index.~~

If The bureau shall advise the parties if additional information is necessary, the director shall so advise the parties. Upon receipt of a written request for additional information, the parties have fourteen days to respond needed to make a decision. If the a party does not provide the information requested by the ~~director~~ bureau within fourteen days, the ~~director~~ bureau may issue an order resolving or dismissing the dispute based on available information.

~~If the aggrieved party believes that relevant medical information has not been provided, the party shall either provide that information, or identify the report by date, name of provider, and address so that the bureau may obtain the missing medical record. If the aggrieved party submits new evidence, the party shall arrange the evidence in chronological order, with the oldest documents on top, and numbered in Arabic numerals in the lower right hand corner of each page, beginning with the document of the earliest date.~~

- ~~13.~~ 10. The ~~director~~ bureau shall determine whether it is necessary to appoint ~~medical~~ health care providers to examine the records or ~~employee~~ the claimant. ~~The director may determine if the bureau determines that peer review is not required, and the bureau shall enter a final administrative order based upon the investigation.~~
- ~~14.~~ 11. If the ~~director~~ bureau determines it is necessary to appoint appropriate health care providers to review the case, the providers may:
- a. Examine the medical records; and
 - b. ~~If necessary, perform any~~ Perform reasonable and necessary medical tests, other than invasive tests, pursuant to North Dakota Century Code section 65-05-28.
- ~~15.~~ 12. ~~The appropriate health care providers are those appointed by the director provided further that:~~
- a. The ~~director~~ bureau may select a health care provider or convene a panel of health care providers to conduct ~~the~~ a review ~~in accordance with~~ under subsection 3 of North Dakota Century Code section 65-05-07; and
 - b. When a doctor is selected to conduct a review, the doctor must be a practitioner of the healing art of the health care provider whose treatment is being reviewed; and
 - c. When a panel of doctors is selected, at least one member of ~~any such~~ the panel must be a practitioner of the healing art of the health care provider whose treatment is being reviewed.
- ~~16.~~ 13. When an examination of an ~~employee~~ a claimant is necessary, the ~~director~~ bureau shall inform the ~~employee~~ claimant of the date, time, and location of the examination ~~with copies to~~ and also shall inform the attending doctor and the selected ~~health care providers, doctor, or panel members.~~ health care providers, doctor, or panel members. The examination may include:
- a. ~~A~~ a review of all medical records and x-rays submitted;

b. -- An an interview and examination with the employee claimant; and

c. -- Performance performance of any necessary tests, except invasive tests, laboratory studies, or x-rays.

17- 14. If, without good cause, the employee claimant does not attend the examination, without good cause, the director bureau may issue an order resolving or dismissing the dispute based on available information.

18. -- When -- an -- examination -- of -- an -- employee -- or -- a -- review -- of -- the employee's medical records is conducted, the doctor -- or -- panel of doctors -- shall -- mail -- a -- report -- to -- the director in writing within five days of the examination, with copies mailed to the employee and attending doctor. -- The report may include:

a. -- Reason for the examination;

b. -- Past medical history;

c. -- Current medical problem;

d. -- Current treatment;

e. -- Results of the examination;

f. -- Results of any tests performed;

g. -- Diagnosis identified by ICD-9 code or DSM-III-R code;

h. -- Whether the employee is medically stationary;

i. -- Whether -- current -- treatment -- is -- excessive, inappropriate, ineffectual, or in violation of the rules; and

j. -- Whether -- or -- not -- the current treatment should be continued, modified, or terminated.

19. -- Upon -- conclusion -- of -- the review, those performing peer review shall issue a summary of the pertinent facts, and reasons -- for the -- decision -- as -- outlined -- in -- subsection 18. -- The director retains -- continuing -- jurisdiction -- pursuant -- to -- North -- Dakota Century -- Code -- section -- 65-05-04, -- and -- may -- affirm, -- modify, -- or -- reverse the decision of those -- performing -- peer -- review. -- The director -- shall -- limit -- exercise of continuing jurisdiction to reverse or modify the decision of those performing peer review to instances in which:

a. -- The peer review decision is contrary to law or the medical service rules; or

b. -- The peer review decision has no rational basis.

The--director--may--refuse--to--exercise--continuing--jurisdiction without--explanation.---The--director--shall--issue--a---final administrative-order-in-reviewable-form-containing-findings-of fact,-conclusions-of-law,-and-order.---The--decision--that--is reviewable-by-the-courts-is-that-of-the-director.

20.--An--appeal--of--the--director's--order--must--be--taken--to--the district-court-specified-in-North-Dakota-Century-Code--section 65-10-01.---The-provisions-of-North-Dakota-Century-Code-chapter 28-32-are-applicable-to-govern-any--appeals,--except--that--in accordance--with--North--Dakota-Century-Code-section-65-02-20, the-standard-of-review-is-whether-there-has-been-an--abuse--of discretion--by--the--director.---The-provisions-of-North-Dakota Century-Code-chapter-28-32-which-conflict-with-these-rules--do not--apply--by--virtue--of--North--Dakota-Century-Code-section 65-02-20.

21.--These-rules-govern-any-informal-request-or-formal-petition-for medical-services-dispute-resolution-made-following--a--managed care--recommendation--that-occurs-on-or-after-January-1,-1994. In-order-to-facilitate--uniformity--of--decision,--and--speedy resolution--of--dispute,-these-rules-will-also-govern-any-such qualifying--request--made--prior--to---January-1,---1994,---by stipulation--of--the--aggrieved-party-and-the-bureau,-provided that-dispute-resolution-had-not-already--taken--place--in--any other-proceeding-regarding-the-issue-in-dispute.

History: Effective January 1, 1994; amended effective April 1, 1997.

General Authority: NDCC 65-02-08, 65-02-20

Law Implemented: NDCC 65-02-20

92-01-02-47. Providers performing peer review.

1. In consultation with the workers compensation bureau's health care advisory board, the director bureau shall establish and maintain a list of appropriate doctors and health care providers or panel of health care providers and doctors, to review medical services disputes.
2. Doctors and health care providers, and panels of doctors and health care providers, will be selected by the director bureau. To be eligible to receive reimbursement for treating injured-employees claimants, all North Dakota doctors and health care providers must be available for peer review upon the request of the director bureau. Hospitals are not subject to peer review; however, professional services provided by a health care provider in a hospital setting are subject to peer review. Peer review members may not include any North-Dakota health care providers or doctors whose examination or treatment is the subject of the review, or any health care provider whose license is under suspension by the provider's licensing board.

3. ~~Doctors and health care providers performing peer review and appointed pursuant to this rule~~ and acting pursuant to the authority of the director bureau are agents of the department. The findings of those performing peer review, all of the records and all communications to or before the reviewers are privileged and are not discoverable or admissible in any proceeding other than those under this chapter.
4. Any person performing binding dispute resolution under these rules is immune from any civil liability pursuant to North Dakota Century Code section 65-02-20 ~~so long as~~ if that person acts in good faith, without malice, and not for improper personal enrichment.
5. When ~~an employee~~ a claimant is required to attend an examination pursuant to section 92-01-02-46, the ~~director bureau~~ shall send notice of the examination to the ~~employee claimant~~ and all affected parties. The notice must inform all parties of the time, date, location, and purpose of the examination.
6. Those performing peer review pursuant to this rule must be paid as follows:
 - a. ~~A single~~ The bureau shall pay a health care provider, other than a doctor, ~~shall receive~~ seventy-five dollars, to be billed under North Dakota specific code BDR01, for record review and examination. In addition, the ~~person shall receive~~ bureau will pay twenty-five dollars for the report ~~to the director~~, to be billed under North Dakota specific code BDR02. ~~These fees apply to evaluations by all single health care providers, other than doctors.~~ If the bureau has requested a review by a panel of providers, the bureau will pay the provider preparing the report twenty-five dollars for report preparation. The panel members shall bill under North Dakota specific code BDR05 and the report must be billed under North Dakota specific code BDR06.
 - b. ~~A single~~ The bureau shall pay a doctor selected pursuant to section 92-01-02-46 to review records, review treatment, perform reasonable and appropriate tests, or examine the ~~employee claimant~~, ~~shall receive~~ one hundred fifty dollars per hour up to a maximum of four hours ~~for record review and examination~~. The A doctor will also receive one hundred dollars for preparation and submission of the report. Billings for services by a single doctor must be billed under North Dakota specific code BDR03 for the examination and BDR04 for the report. Billings by a doctor selected to a panel must be billed under North Dakota specific code BDR07 for the examination and BDR08 for the report of the panel.

- c. Health-care-providers, other than doctors, selected to a panel of reviewers shall each receive seventy-five dollars for record review and the examination. The health-care provider who prepares and submits the report shall receive an additional twenty-five dollars. Billings by each panel member selected must be billed under North Dakota specific code BDR05. Billing for the panel report must be billed under North Dakota specific code BDR06.
- d. Doctors selected to serve on a panel of doctors to review records, review treatment, perform reasonable and appropriate tests, or examine the employee shall each receive one hundred-fifty dollars per hour up to a maximum of four hours for record review and examination. The panel member who prepares and submits the panel report shall receive an additional one hundred dollars for preparation and submission of the report. Billings by each doctor selected to a panel must be billed under North Dakota specific code BDR07 for the examination and BDR08 for the report.
- e. Notwithstanding the provisions of this subsection, the director bureau may in a complex case requiring extensive review preauthorize additional fees of up to two hundred dollars above the amounts specified in a complex case requiring extensive review. Billings for that additional amount must be billed under North Dakota specific code BDR09.

7. The bureau shall pay costs related to record review, examinations, and reports pursuant to this rule shall be paid by the bureau and charged shall charge the costs to the appropriate claim file. If additional diagnostic tests are required, the costs for these tests must will be reimbursed in accordance with according to the North Dakota fee schedules. The bureau also shall also pay the employee claimant for travel within the parameters of according to North Dakota Century Code section 65-05-28.
8. If an employee the claimant fails to appear for a required examination under this section, without providing the doctor with at least twenty-four hours' notice, the bureau shall pay each selected doctor shall receive one hundred dollars. Billings for Doctors shall bill cancellations in these circumstances must be billed under North Dakota specific code BDR10.

History: Effective January 1, 1994; amended effective April 1, 1997.
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~~ otherwise requires:
 - 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 which is 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 bills 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 benefits are deemed satisfied when the bureau has received ~~the following items~~:
 - a. Form The C1 form completed and signed by the employee;

- b. Form The C2 form 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 The C3 form or other 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 necessary to determine the type, nature, extent, and potential 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 The C4 form or other 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 a bill review is completed and after the bureau is in receipt of the following items has received:
- 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 needed to process ~~the claim~~ a reapplication and the employee does not provide the information as requested, elements of filing are not deemed satisfied until the employee provides the requested information as requested.

History: Effective January 1, 1994; amended effective January 1, 1996; April 1, 1997.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-02-08

92-01-02-50. Other states' coverage.

1. ~~Definitions.~~ The terms used in this section have the same meaning as in North Dakota Century Code title 65 and in North Dakota Administrative Code title 92, except:
 - a. "Covered employment" means hazardous employment principally localized in this state which involves incidental operations in another state. The term "covered employment" ~~specifically-excludes-any~~ does not include employment in which the employer is required by the laws of that other state to purchase workers' compensation coverage in that other state.
 - b. "Employee" means any North Dakota employee as that term is defined in North Dakota Century Code section 65-01-02 who engages in covered employment ~~principally-localized-in this-state~~ and who is eligible to file for workers' compensation benefits in another state if the employee suffers a work-related illness or injury or dies as a result of work activities in that state. The term "employee" ~~for-purposes-of-this-section~~ also includes a person with optional workers' compensation coverage in this state under North Dakota Century Code section 65-04-29 or 65-07-01 ~~whose-employment-is-principally localized-in-this-state-and~~ who engages in covered employment and ~~who~~ is eligible to file for workers' compensation benefits in another state if ~~the-employee~~ that person suffers a work-related illness or injury or dies as a result of work activities in that state.
 - c. "Employer" means any ~~North-Dakota~~ an employer as ~~that-term~~ is defined in North Dakota Century Code section 65-01-02, who is not materially delinquent in payment of of premium, and who has employees engaged in covered employment. An employer is not materially delinquent in payment of premium if such the premium is no more than thirty days delinquent.
 - d. "Incidental operations" means business operations of an employer for fewer than thirty consecutive days in a state where the employer has no other significant contacts and which operations do not require the employer to purchase workers' compensation insurance under the laws of that state. "Significant contacts" means such contacts as ~~are~~ defined as significant by the workers' compensation laws of that other state and which are sufficient to subject the employer to liability for payment of workers' compensation premium in that other state. ~~Significant contacts,--for--the--purposes--of--these--rules,--does--not--bear the--same--meaning--as--that--term--is--defined--in--North--Dakota Century--Code--section--65--08--01.~~

~~e. -- "Principally-localized" is defined in North Dakota Century Code section 65-08-1-01 and section 92-01-02-22, and these definitions are adopted by reference in this chapter.~~

2. ~~Scope of section.~~ If an employee, hired in this state for covered employment ~~principally-localized-in-this-state~~ by an employer covered by the Workers' Compensation Act of this state, receives an injury while temporarily employed in incidental operations outside this state, such the injury is subject to the provisions of this section if the employee elects to receive benefits under the workers' compensation laws of that other state in lieu of a claim for benefits in this state. This section applies only if the workers' compensation laws of the other state allow the employee to elect to receive benefits under the laws of that state. If the employee does not or cannot elect coverage under the laws of another state, such the injury is subject to the provisions of North Dakota Century Code chapter 65-08.

The provisions of this section do not apply to:

- a. States having a monopolistic state fund.
- b. States having a reciprocal agreement with this state regarding extraterritorial coverage.
- c. Compensation received under any federal act.
- d. ~~Federal-Employees-Liability-Act.~~
- e. Foreign countries.
- f. ~~United-States-Longshoremen-and-Harborworker's-Act.~~
- g. e. Maritime employment.
- h. f. Employer's liability or "stop-gap" coverage.
- i. ~~Employment-in-which-the-employer-is-required-by-the-laws-of-another-state-to-purchase-workers'-compensation-coverage-in-that-state.~~

3. ~~Election of other state's benefits waives right to receive North Dakota benefits.~~ An employee who elects to receive benefits under the workers' compensation laws of another state waives the employee's right to seek compensation under North Dakota Century Code title 65.
4. ~~Coverage provided.~~ The bureau will pay on behalf of an employer any regular workers' compensation benefits the employer is obligated to pay under the workers' compensation laws of a state other than North Dakota, with respect to personal injury, illness, or death sustained as a result of

work activities by an employee engaged in covered employment in that state, if the employee or the employee's dependents elect to receive benefits under the other state's laws in lieu of benefits available under the North Dakota Workers' Compensation Act. The term "dependents" includes an employee's spouse ~~for--purposes-of-this-section~~. The bureau will pay benefits on behalf of an employer but may not act nor be deemed as an insurer, nor may the bureau indemnify an employer for any liabilities, except as specifically provided in this section.

The benefits provided by this section are those mandated by the workers' compensation laws of the elected state. This includes benefits for injuries that are deemed compensable in that other state but are not compensable under North Dakota Century Code chapters 65-05 and 65-08. Medical benefits provided pursuant to this section are subject to any fee schedule and other limitations imposed by the workers' compensation law of the elected state. The North Dakota fee schedule does not apply to this section.

The bureau may reimburse an employer covered by this section for legal costs and for reasonable attorney's fees incurred, at a rate of no more than eighty-five dollars per hour, if the employer is sued in tort in another state by an injured employee or an injured employee's dependents relative to a work-related illness, injury, or death; or if the employer is alleged to have failed to make payment of workers' compensation premium in that other state by the workers' compensation authorities of that state. This reimbursement may be made only if it is determined by the bureau or by a court of competent jurisdiction that the employer is subject to the provisions of this section and was not required to purchase workers' coverage in that other state relative to the employment of the injured employee.

The bureau may not reimburse any legal costs, attorney's fees, nor any other costs to a coemployee sued in tort by an injured employee.

5. ~~Administration--of--other--states'--coverage-~~ The bureau may contract with a qualified third-party administrator to adjust and administer claims arising under this chapter. The bureau shall pay the costs of such the third-party administrator must be-paid from the general fund.
6. ~~Experience--rating-~~ Benefits paid on behalf of an employer pursuant to this section will be charged against the employer's account for experience rating purposes. The experience rating loss will be equal to the actual claim costs. The assessment charge plus appropriate penalties and interest, if any, levied pursuant to North Dakota Century Code

section 65-05-07.2, will be assessed on all claims brought under this section.

7. ~~Employer's report of claim:~~ The employer shall notify the bureau when a claim is filed in another state by an employee covered by this section. The employer shall notify the bureau of such the claim in writing. The employer has thirty days after actual knowledge of the filing of a claim in which to notify the bureau, ~~and such.~~ That time can be extended an additional for thirty days by the bureau ~~upon a showing of if~~ the employer shows good cause ~~by the employer~~ for failing to timely notify the bureau. If the employer fails to timely notify the bureau when a claim is filed in another state by an employee covered under this section, the bureau is may not liable ~~for payment of~~ pay benefits under this section.

~~The employer also may have a duty, under the workers' compensation law of the state of injury, to notify the workers' compensation authorities of that state of the injury or claim.~~ The bureau is may not liable ~~for any~~ pay costs, charges, or penalties ~~that may be~~ charged against an employer for late reporting of an injury or claim to the workers' compensation authorities of the state of injury.

8. ~~Exclusive remedy:~~ The exclusive remedy provisions of North Dakota Century Code sections 65-01-01, 65-01-08, 65-04-28, and 65-05-06 apply to this section ~~in full~~.

History: Effective January 1, 1994; amended effective April 1, 1997.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-08.1-02, 65-08.1-05

CHAPTER 92-05-01

92-05-01-01. Definitions. As used in this article:

1. "Accident" means an unplanned event, not necessarily injurious or damaging to property, interrupting the work activity in progress.
2. "Bureau" means the North Dakota workers compensation bureau as described in North Dakota Century Code section 65-01-02.
3. "Coordinator" means a designated person synchronizing, adjusting, integrating, and organizing workers' compensation risk management program efforts.
4. "Employer" means employer as described defined in North Dakota Century Code section 65-01-02.
5. 4. "Ergonomics" means the study of human characteristics for the appropriate design of living and work environments.
6. 5. "Essential job functions" means the basic job duties that an employee must be able to perform with or without reasonable accommodation.
7. 6. "Hazard" means an unsafe condition that, if left uncontrolled, may contribute to an accident.
8. 7. "Near miss" means an incident resulting that does not result in neither an injury nor or property damage but which has the potential to inflict injury or property damage.
9. 8. "Premium" means the actual premium determined at the end of the policy period, which is determined by applying the actual yearend payroll of an employer to the rates in effect when the prepaid premium (or deposit premium) is charged.
10. ~~"Program" means the written workers' compensation risk management program as described in section 92-05-01-04.~~
11. ~~"Recognized hazard" means an acknowledged unsafe condition that, if left uncontrolled, may contribute to an accident.~~

History: Effective January 1, 1994; amended effective April 1, 1997.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-04-19.1

92-05-01-02. Premium discount for approved risk management program. ~~An employer who implements or maintains a program approved by the bureau is entitled to a five percent discount in the annual premium~~

~~the-employer-must-pay-to-the-bureau-for-the-year-following-the--year--in
which--the--program--is--implemented--or-maintained.~~ Repealed effective
April 1, 1997.

History: Effective-January-1,-1994.
General Authority: NDCC-65-02-08
Law Implemented: NDCC-65-04-19.1

~~92-05-01-03. Procedures for applying for approval of program.~~
The written program, with the application form, must be sent to the bureau no later than thirty days before the end beginning of the premium year. ~~The-program-must-be-approved-by-the-bureau-and-implemented-before
the--end-of-the-first-premium-year-to-receive-a-five-percent-discount-on
the-premium-for-the-following-year.~~ If the bureau requests additions or changes to the written program before approval will be given, the bureau must receive those additions or changes within thirty days of written notice to the employer that the additions or changes are needed.

History: Effective January 1, 1994; amended effective April 1, 1997.
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-04-19.1

~~92-05-01-04. Written workers' compensation risk management program.~~ A written program as described in the bureau's "North Dakota Workers Compensation Risk Management Program" publication must be submitted to the bureau and must include ~~the-following:~~

1. ~~Safety~~ A safety policy meeting the requirements of section 92-05-01-10.
2. Accident investigation and near miss programs meeting the requirements of section 92-05-01-11.
3. General safety rules meeting the requirements of section 92-05-01-12.
4. Safe operating procedures meeting the requirements of section 92-05-01-13.
5. ~~Workers'~~ A workers' compensation claims management program meeting the requirements of section 92-05-01-14.
6. Essential job functions meeting the requirements of section 92-05-01-15.
7. ~~Ergonomics~~ An ergonomics program meeting the requirements of section 92-05-01-16.
8. ~~Self-inspection---or---hazard--recognition~~ A self-inspection program meeting the requirements of section 92-05-01-17.

9. ~~Training~~ A training program meeting the requirements of section 92-05-01-18.
10. Risk Provision for a risk management coordinator meeting the requirements of section 92-05-01-19.
11. Designated A statement of whether the employer intends to designate a medical provider meeting--the--requirements--of section--92-05-01-20 under North Dakota Century Code sections 65-05-28.1 and 65-05-28.2.

History: Effective January 1, 1994; amended effective April 1, 1997.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-04-19.1

92-05-01-05. Risk management seminars. Once the program has been approved, the employer's management representative and the designated risk management coordinator ~~must--annually~~ shall attend at least one seminar each year on workplace safety or workers' compensation claims management. The bureau shall use the representative's and coordinator's record of compliance with this section as a factor in determining whether the employer is properly maintaining the program.

History: Effective January 1, 1994; amended effective April 1, 1997.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-04-19.1

92-05-01-06. Maintenance of program approval. If an employer maintains program approval, the employer will receive the five percent premium discount ~~on--the--premium~~ for the premium year following the premium-year in which the program was properly implemented ~~or~~ and maintained. To maintain program approval, an employer must comply with ~~the~~ its approved workers' compensation risk management program ~~designed by--the--employer--and--approved--by--the--bureau.~~ An employer who is delinquent greater than ninety days in premium payments may receive the discount only as a credit to that employer's account.

History: Effective January 1, 1994; amended effective April 1, 1997.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-04-19.1

92-05-01-07. Bureau program certification approval committee. A committee shall meet to evaluate approve the program submitted. The committee ~~must consist-of-the:~~

- 1--Bureau include a bureau policyholder services representative.
- 2--Bureau, a bureau claims department representative.
- 3--Bureau, and the bureau loss prevention director.

History: Effective January 1, 1994; amended effective April 1, 1997.
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-04-19.1

92-05-01-08. ~~Initial--and-annual--approved~~ Annual program review. The bureau shall review each program ~~initially-and-annually~~ to determine compliance ~~with--the-employer's-program.~~ The bureau's review procedure ~~must~~ may be done by ~~one-or-any-combination-of-the-following:~~

1. ~~Phone.~~
2. ~~Letter.~~
3. Physical phone, letter, or onsite review.

History: Effective January 1, 1994; amended effective April 1, 1997.
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-04-19.1

92-05-01-09. Bureau assistance and responsibility.

1. ~~Employers--who-wish-to-develop-an-approved-program-may-consult with-the-bureau-or-any-vender.--The-bureau-may-not-be-involved in-the-writing-of-the-program,-but-will-assist-the-employer-to define-necessary-elements-of-the-program.~~
2. ~~The-bureau-has-the-following-responsibilities:~~
 - a. ~~The--bureau--shall--send-a-list-of-all-losses-to-employers that-have-approved-programs.~~
 - b. ~~The---bureau---shall---send---annual---aggregate--workers' compensation-safety-program-loss-runs--to--employers--that have-approved-programs.~~
 - c. ~~The-bureau-shall-maintain-a-current-list-of-employers-that have-approved-programs-as-well-as-a-loss-ratio-history--on these-employers.~~ Repealed effective April 1, 1997.

History: ~~Effective-January-1,-1994.~~
General Authority: ~~NDCC-65-02-08~~
Law Implemented: ~~NDCC-65-04-19.1~~

92-05-01-10. Safety policy. A written safety policy must exist which includes the signature of the employer's top management. ~~Included in-this~~ This policy must be ~~the-following:~~

1. ~~The--prevention-of-accidents-is-a-high-priority-of-management.~~
2. ~~The-reduction-of-claims-costs-is-a-goal-of-management.~~

3. ~~The identify and define the safety responsibilities of all levels of management and the employees must be identified and defined in the policy, including management.~~

History: Effective January 1, 1994; amended effective April 1, 1997.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-04-19.1

92-05-01-11. Accident investigation and near-miss program. The written accident investigation and near-miss program must include the following:

1. ~~Procedures~~ procedures for the ~~investigation of~~ reporting and investigating all accidents and near misses.
2. ~~Procedures providing and for the review of~~ reviewing reports by the employer's management representative and coordinator for corrective action to prevent ~~accident occurrence or recurrence~~ recurring accidents and near misses.
3. Copies of the following reports used in the accident and near miss investigation program must be available for bureau review:
 - a. 1. An initial report of an accident or near miss completed and signed by the employee.
 - b. 2. An accident or near miss investigation report, including identification of causes and corrective action recommended and taken.

History: Effective January 1, 1994; amended effective April 1, 1997.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-04-19.1

92-05-01-12. General safety rules. ~~Written~~ The employer shall post general safety rules ~~for the employer must be posted~~ in a conspicuous manner at fixed worksites and, wherever feasible, at mobile worksites. ~~The employer shall periodically review and update the general safety rules.~~

History: Effective January 1, 1994; amended effective April 1, 1997.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-04-19.1

92-05-01-13. Safe operating procedures. ~~Written~~ The employer shall develop written safe operating procedures ~~must be developed~~ for operations and tasks that involve recognized hazards. ~~A provision must be made by the employer for training as described in section 92-05-01-18 in safe operating procedures.~~

History: Effective January 1, 1994; amended effective April 1, 1997.
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-04-19.1

92-05-01-14. Claims management program. The written program must address the following:

- ~~1. Procedures for training as described in section 92-05-01-18 on claims management program.~~
- ~~2. A return to work plan that includes modified duty.~~
3. Immediate reporting of an injury by the injured employee.
2. Procedures for informing the injured employee on employees how to file for benefits and the nature of those benefits.
- ~~4. Immediate report of injury by injured employee.~~
- ~~5. A procedure to identify to the bureau all program approved claims.~~
- 6- 3. Immediate report of injury by the employer to the bureau including reporting to the claims analyst and the managed care vendor when lost time occurs, medical restrictions are imposed, or medical care is ongoing.
4. A return to work plan that includes modified duty.
5. The employer's plan for communication among the employer, injured employee, medical provider, managed care vendor, and the bureau to facilitate the return to work and continual progress of the injured employee as described in section 92-05-01-20.

History: Effective January 1, 1994; amended effective April 1, 1997.
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-04-19.1

92-05-01-15. Essential job function. For employers with Employers having fifteen or more employees, shall identify the essential functions of each job category shall be identified and have them available for bureau review.

History: Effective January 1, 1994; amended effective April 1, 1997.
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-04-19.1

92-05-01-16. Ergonomics program. The employer shall develop a written ergonomics program must be developed to address musculoskeletal

injuries caused by exertions, repetitive motions, or sustained postures. These injuries include including back injuries, sprains, strains, carpal tunnel syndrome, and other cumulative trauma disorders. This program must consist of training as described in section 92-05-01-18 to inform workers of ergonomic hazards and enable them to participate in their own protection.

Two years from initial program certification, the following must be implemented:

1. Workplace Following the initial training required by section 92-05-01-18 on the basic principles of ergonomics, a workplace analysis will be done to determine the recognized identify ergonomic hazards.
2. Procedures and procedures must be developed to correct or control ergonomic hazards through engineering, work practices, or administrative controls that have been identified.

History: Effective January 1, 1994; amended effective April 1, 1997.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-04-19.1

92-05-01-17. Self-inspection or hazard recognition program. A The employer shall develop a written self-inspection program must exist which develops an internal self-inspection program that identifies hazards that exist in the workplace. It must In the program, the employer shall outline procedures that will provide for regular and periodic inspection of all the entire work stations place. The self-inspection or hazard recognition program must include the following:

1. Description of Indicate the types frequency of inspection inspections.
2. Frequency of inspections.
3. Designation of the individuals responsible.
4. Documentation Provide for documentation of the inspection which includes an allowance for inclusion of including the corrective action taken and the name of the individual conducting the inspection.
5. 3. Review Require management's review and signature of management.

History: Effective January 1, 1994; amended effective April 1, 1997.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-04-19.1

92-05-01-18. Training program.

1. ~~A~~ The employer shall develop a written program identifying training needs and objectives must-be-developed. This written program must include ~~the-following~~:

a. ~~New~~ A new employee orientation program ~~consisting-of-the following on~~:

(1) General safety rules.

(2) Safe operating procedures, specific to the employees' job tasks.

(3) Ergonomic-hazards Basic principles of ergonomics.

(4) ~~Claims~~ The claims management program, including identification of the employer's designated medical provider.

b. ~~Periodic-regular~~ An annual training program on ~~at-least-an annual-basis-of-the-following~~:

(1) ~~General-safety-rules.~~

(2) Safe operating procedures, specific to the employees' job tasks.

(3) (2) Ergonomic-hazards Basic principles of ergonomics.

(4) (3) ~~Claims~~ The claims management program, including identification of the employer's designated medical provider.

(4) New equipment that is added or procedures which are added or changed.

~~c.--Training,-if-procedures-are-added-or-changed.~~

~~d.--Updated-training-when-new-equipment-is-introduced.~~

2. ~~Documentation-of~~ The employer shall document all training ~~must be-done-and-must-include~~ including the date of training, the topics covered, the name of the person providing the training, and the participant's acknowledgment of attendance. This documentation must be available for the bureau to review.

History: Effective January 1, 1994; amended effective April 1, 1997.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-04-19.1

92-05-01-19. Risk management coordinator. The employer shall designate a risk management coordinator. ~~Any manager or~~ Only the employer or a covered employee may be assigned these responsibilities. ~~The duties and responsibilities of the coordinator may include the following:~~

- ~~1. Liaison between management and employees, with advice and guidance being given in workplace safety issues.~~
- ~~2. Workers' compensation claims management.~~
- ~~3. Knowledge of current federal, state, local, and industry safety standards that apply to the employer.~~
- ~~4. Training program.~~
- ~~5. Full implementation and development of the risk management program.~~

History: Effective January 1, 1994; amended effective April 1, 1997.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-04-19.1

92-05-01-20. Designated medical provider. ~~If feasible, employers must have prearranged medical care for injured employees. The name of the provider must be posted and well publicized by the employer. An injured employee should be encouraged, but cannot be required, to have care provided by this provider. The employer should encourage providers to review the workplace ahead of time to build understanding and assist in early return to work. Normally, the employer's designated provider will treat the employer's injured employee. However, there may be circumstances where this is not possible. Regardless of who the provider is, a relationship must exist which provides the following information:~~

- ~~1. Full reports after treatment which determine the nature and extent of injury. A "release of information" should be signed by all employees and furnished to the medical provider in the event of injury.~~
- ~~2. Estimated course of recovery.~~
- ~~3. Plan to return the injured employee to work.~~ Repealed effective April 1, 1997.

History: Effective January 1, 1994.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-04-19.1