

NORTH DAKOTA ADMINISTRATIVE CODE

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

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TITLE 7
Agriculture, Commissioner of

AUGUST 2000

STAFF COMMENT: Article 7-13 contains all new material and is not underscored so as to improve readability.

ARTICLE 7-13

MEAT INSPECTION

Chapter	
7-13-01	General Information
7-13-02	Registration and Records Requirements
7-13-03	Marks and Labels
7-13-04	Custom Slaughtering and Processing
7-13-05	Slaughter Requirements
7-13-06	Facility Requirements
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**CHAPTER 7-13-01
GENERAL INFORMATION**

Section	
7-13-01-01	History
7-13-01-02	Inquiries
7-13-01-03	Federal Law
7-13-01-04	Definitions
7-13-01-05	Access Authorization

7-13-01-01. History. The first law providing inspection of meat slaughtering and processing facilities was enacted in 1951 as the standards for meat inspection, sanitation, and distribution under North Dakota Century Code chapter 36-23 (S.B. No. 201; S.L. 1951, ch. 223). In 1969, the existing meat inspection program was repealed because of disorganization caused by the lack of inspector training, inconsistency, and lack of guidance in the regulations (S.B. No. 251; S.L. 1969, ch. 322, § 10). It was immediately replaced by the North Dakota Meat Inspection Act under North Dakota Century Code chapter 36-23.1 (S.B. No. 251; S.L. 1969, ch. 322, §§ 1-8). This Act made the United States department of agriculture the only agency in North Dakota providing carcass inspection and inspection for meat slaughtering and processing facilities. North Dakota Century Code chapter 36-23.1 was repealed in 1991 (H.B. No. 1478; S.L. 1991, ch. 377, § 3).

In 1999, House Bill No. 1290 created a state meat inspection program, giving the North Dakota department of agriculture the authority to make rules and implement inspection of meat slaughtering and processing establishments, including custom-exempt plants. The intent of the program is to allow small and medium livestock producers more opportunities to market their animal products and to provide a means for processing alternative or nontraditional livestock.

History: Effective August 1, 2000.
General Authority: NDCC 36-24-24
Law Implemented: NDCC 36-24-24

7-13-01-02. Inquiries. All inquiries regarding the state meat inspection program should be directed to:

North Dakota Department of Agriculture
Director - Meat Inspection Program
600 East Boulevard Avenue, Dept. 602
Bismarck, ND 58505-0020
Telephone: 701-328-2231
Facsimile: 701-328-4567
E-mail: ndda@state.nd.us

History: Effective August 1, 2000.
General Authority: NDCC 36-24-24
Law Implemented: NDCC 36-24-24

7-13-01-03. Federal law. All federal meat inspection regulations effective as of August 1, 2000, as provided under title 9, Code of Federal Regulations, parts 301-320, 325, 329, 416-417, and 500, but excluding parts 307.4 and 307.5, are incorporated by reference and made a part of this title.

History: Effective August 1, 2000.
General Authority: NDCC 36-24-24

Law Implemented: NDCC 36-24-18, 36-24-24

7-13-01-04. Definitions. The terms used throughout this article have the same meaning as in title 9, Code of Federal Regulations, part 301, unless already defined in North Dakota Century Code section 36-24-01, in which case the North Dakota Century Code definitions shall govern. In addition, as used in this chapter or in applying title 9, Code of Federal Regulations, part 301:

1. "Administrator" as the term is used in title 9, Code of Federal Regulations, means the North Dakota agriculture commissioner unless made inappropriate by context.
2. "Commissioner" means the North Dakota agriculture commissioner or the agriculture commissioner's authorized representative.
3. "Department" means the North Dakota department of agriculture.
4. "Federal Act" means the Federal Meat Inspection Act, as amended [Pub. L. 90-201; 21 U.S.C. 601 et seq.].
5. "Food safety inspection service" or "FSIS" as used in title 9, Code of Federal Regulations, means the North Dakota agriculture commissioner unless made inappropriate by context.
6. "Official establishment" means a plant, facility, operation, or premises where animals are slaughtered for human consumption, or a plant or premises where meat or meat food products are processed, but does not include:
 - a. Establishments subject to federal inspection.
 - b. Premises of a person who is the owner of the animals to be slaughtered or of carcasses to be processed, and the resulting product is for exclusive use by that person, members of that person's household, or that person's nonpaying guests and employees.
7. "Overtime" means any time when meat inspection personnel are requested to work in an establishment, as follows:
 - a. Saturday or Sunday.
 - b. New Year's Day, Martin Luther King Day, Presidents' Day, Good Friday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, and Christmas Day. If any such holiday falls on Saturday or Sunday, the preceding Friday or succeeding Monday, respectively, shall be a holiday.
 - c. The day before Christmas Day and the day before New Year's Day.

- d. Before 6 a.m. or after 6 p.m.
- e. In excess of forty hours of "straight time" in any calendar week.
- f. At any time other than a regularly scheduled slaughter period.
- g. When an owner of an animal requests slaughter inspection from an official establishment at a nonregularly scheduled time.

"Overtime" does not include time spent traveling to or from an establishment.

- 8. "Secretary" or "secretary of agriculture" as used in title 9, Code of Federal Regulations, means the North Dakota agriculture commissioner unless made inappropriate by context.

History: Effective August 1, 2000.

General Authority: NDCC 36-24-24

Law Implemented: NDCC 36-24-24

7-13-01-05. Access authorization. In addition to the access requirements under North Dakota Century Code section 36-24-03, the commissioner and any authorized representative shall have access to establishments where carcasses are stored or processed or where animals are slaughtered.

History: Effective August 1, 2000.

General Authority: NDCC 36-24-18, 36-24-24

Law Implemented: NDCC 36-24-03, 36-24-14

**CHAPTER 7-13-02
REGISTRATION AND RECORDS REQUIREMENTS**

Section	
7-13-02-01	Registration Required
7-13-02-02	Registration Period - Registration Number
7-13-02-03	Records Requirement

7-13-02-01. Registration required. Any slaughtering establishment, meat processing establishment, or custom-exempt plant that is required to be inspected pursuant to North Dakota Century Code chapter 36-24 to operate under this chapter must register annually with the department of agriculture on forms approved by the commissioner.

History: Effective August 1, 2000.
General Authority: NDCC 36-24-18, 36-24-24
Law Implemented: NDCC 36-24-16

7-13-02-02. Registration period - Registration number. Registration for slaughter establishments, processing establishments, and custom-exempt plants is valid for one year. All registrations will expire annually on June thirtieth. Each registered establishment will be assigned a number that may not be transferred from one person or establishment to another.

History: Effective August 1, 2000.
General Authority: NDCC 36-24-24
Law Implemented: NDCC 36-24-24

7-13-02-03. Records requirement. Any slaughtering establishment, meat processing establishment, or custom-exempt plant that is required to be inspected pursuant to North Dakota Century Code chapter 36-24 to operate under this chapter must prepare and maintain those records required under title 9, Code of Federal Regulations, part 320.

History: Effective August 1, 2000.
General Authority: NDCC 36-24-15
Law Implemented: NDCC 36-24-13, 36-24-14, 36-24-15

**CHAPTER 7-13-03
MARKS AND LABELS**

Section	
7-13-03-01	Standards of Identity
7-13-03-02	Required Labeling
7-13-03-03	Department Review of Labels
7-13-03-04	Official Marks
7-13-03-05	Official State Marks

7-13-03-01. Standards of identity. The composition of any meat or meat food product; whether or not in naturally occurring, processed, or composite and processed form; which is prepared, stored, handled, sold, or offered for sale in any establishment must comply with the definitions and standards of identity for such products as provided in title 9, Code of Federal Regulations, part 319.

History: Effective August 1, 2000.
General Authority: NDCC 36-24-04
Law Implemented: NDCC 36-24-04

7-13-03-02. Required labeling. Any meat or meat food product offered for sale or barter must bear an appropriate label as provided in title 9, Code of Federal Regulations, part 317.

History: Effective August 1, 2000.
General Authority: NDCC 36-24-04
Law Implemented: NDCC 36-24-04

7-13-03-03. Department review of labels. All formulas, labels, and labeling information used in the labeling of meat or meat food products in registered establishments must be submitted to the department for review prior to use. The department may seize and destroy all unauthorized labels.

History: Effective August 1, 2000.
General Authority: NDCC 36-24-24
Law Implemented: NDCC 36-24-07

7-13-03-04. Official marks. A person may not offer for sale or barter any meat or meat food product that is not properly marked or labeled as provided by title 9, Code of Federal Regulations, parts 312, 316, and 317.

History: Effective August 1, 2000.

General Authority: NDCC 36-24-04

Law Implemented: NDCC 36-24-07

7-13-03-05. Official state marks. The official mark used by state inspectors will be as prescribed in title 9, Code of Federal Regulations, parts 312 and 316, except that the letters "U.S." shall be replaced with the words "North Dakota", unless federal law is changed requiring that such product be stamped U.S. inspected. The commissioner may prescribe the size and shape of the official mark.

History: Effective August 1, 2000.

General Authority: NDCC 36-24-04

Law Implemented: NDCC 36-24-04, 36-24-05

**CHAPTER 7-13-04
CUSTOM SLAUGHTERING AND PROCESSING**

Section	
7-13-04-01	Marking of Products
7-13-04-02	Prohibited Sales
7-13-04-03	Farm Slaughter and Game Animals
7-13-04-04	Sanitary Requirements

7-13-04-01. Marking of products. All custom-exempt plants are required to mark all custom-exempt meat and meat food products with the words "NOT FOR SALE", stamped in block letters. The letters must be at least three-eighths of one inch [0.95 centimeter] in height. Stamps, brands, and marks for custom-exempt meat and meat food product identification must be preapproved by the department.

1. Each side, quarter, or other part of a carcass, including detached organs or custom slaughtered or custom processed animals, must be legibly marked immediately after slaughter or, if the animal is not slaughtered at the plant, at the time the meat enters the plant for processing.
2. All boxes, cartons, packages, or containers of custom processed meat or meat food products must be marked at the time of packaging with the name of the facility, or the registration number assigned by the department, with the words "NOT FOR SALE" at least three-eighths of one inch [0.95 centimeter] in height set forth in block letters.

History: Effective August 1, 2000.

General Authority: NDCC 36-24-04

Law Implemented: NDCC 36-24-04, 36-24-07

7-13-04-02. Prohibited sales. A person or slaughtering establishment, meat processing establishment, or custom-exempt plant that is required to be inspected pursuant to North Dakota Century Code chapter 36-24 to operate under this chapter may not offer for sale or for barter any noninspected carcasses or parts of carcasses.

History: Effective August 1, 2000.

General Authority: NDCC 36-24-24

Law Implemented: NDCC 36-24-06

7-13-04-03. Farm slaughter and game animals. Animals slaughtered on the farm, or game animals, may be processed at facilities under the same provisions as custom slaughtering or processing, provided that such animal carcasses are clean and wholesome and are handled, stored, and prepared so as to prevent the contamination of other food products handled, stored, or prepared at the plant. A person may not offer for

sale or barter any meat, meat byproduct, or any meat food product slaughtered or processed in this method.

History: Effective August 1, 2000.

General Authority: NDCC 36-24-11, 36-24-12, 36-24-24

Law Implemented: NDCC 36-24-10, 36-24-11

7-13-04-04. Sanitary requirements. A person or facility may not conduct custom slaughtering, custom processing, or custom-exempt operations unless such operations are conducted in accordance with the sanitary requirements under title 9, Code of Federal Regulations, part 303.

History: Effective August 1, 2000.

General Authority: NDCC 36-24-24

Law Implemented: NDCC 36-24-11

**CHAPTER 7-13-05
SLAUGHTER REQUIREMENTS**

Section

7-13-05-01	Antemortem Inspections
7-13-05-02	Post-Mortem Inspections
7-13-05-03	Pathogen Reduction Performance Standards
7-13-05-04	Condemned and Inedible
7-13-05-05	Dead, Dying, Disabled, or Diseased Animals
7-13-05-06	Humane Slaughter of Livestock - Religious Exemption
7-13-05-07	Horse Slaughter

7-13-05-01. Antemortem inspections. For the purpose of preventing the entry into or movement in intrastate commerce of any meat or meat food product that is adulterated and is capable of use as human food, the commissioner shall cause antemortem inspection to be made of all cattle, swine, sheep, goats, farmed cervidae, llama, ratite, horses, equines, and other large domesticated animal, not including poultry, intended for slaughter in any establishment in this state where animals are slaughtered solely for intrastate commerce. Meat and meat food products inspected and passed under this title may be shipped in interstate commerce when federal law permits state-inspected meat and meat food products to be marketed interstate. All antemortem inspections must be done in accordance with title 9, Code of Federal Regulations, part 309.

History: Effective August 1, 2000.

General Authority: NDCC 36-24-18, 36-24-24

Law Implemented: NDCC 36-24-24

7-13-05-02. Post-mortem inspections. Except for poultry, the commissioner shall cause post-mortem inspections to be made on all carcasses and parts thereof of cattle, swine, sheep, goats, farmed cervidae, llama, ratite, horses, equines, and other large domesticated animal, usable as human food prepared at a slaughtering, meat canning, salting, packing, rendering, or similar establishment in this state in which carcasses or parts thereof are prepared solely for intrastate commerce. Animal carcasses or parts thereof determined to be unadulterated must be marked, stamped, tagged, or labeled as "Inspected and Passed". Inspectors shall label, mark, stamp, or tag as "Inspected and Condemned" animal carcasses or parts thereof found to be adulterated. Carcasses or animal parts inspected and condemned must be destroyed for food purposes by the establishment in the presence of an inspector. Meat and meat food products inspected and passed under this title may be shipped in interstate commerce when federal law permits state-inspected meat and meat food products to be marketed interstate. All inspections are to be done in accordance with title 9, Code of Federal Regulations, part 310.

History: Effective August 1, 2000.

General Authority: NDCC 36-24-24
Law Implemented: NDCC 36-24-24

7-13-05-03. Pathogen reduction performance standards. Establishments that slaughter cattle, sheep, goats, equines, or swine shall collect and test samples as required in title 9, Code of Federal Regulations, part 310.

History: Effective August 1, 2000.
General Authority: NDCC 36-24-24
Law Implemented: NDCC 36-24-24

7-13-05-04. Condemned and inedible. All animal carcasses or parts thereof, meat, and meat food products found by an inspector to be adulterated in any establishment must be condemned and must be destroyed for human food purposes under the supervision of an inspector and in a manner prescribed by the commissioner. But such carcass or part, meat, or meat food product that may, by reprocessing, be made not adulterated, need not be condemned and destroyed if reprocessed under the supervision of an inspector and thereafter found to be unadulterated. The commissioner may remove inspectors from an establishment that fails to destroy a condemned animal carcass or part. A person may not sell, donate, transport, or offer or receive for sale or transportation, in this state, any such carcasses or parts thereof, meat, or meat food products which are not intended for use as human food unless they are denatured or otherwise identified as required by the commissioner or are naturally inedible by humans.

History: Effective August 1, 2000.
General Authority: NDCC 36-24-17
Law Implemented: NDCC 36-24-17

7-13-05-05. Dead, dying, disabled, or diseased animals. Any animal determined to be dead, dying, disabled, or diseased must be handled in accordance with title 9, Code of Federal Regulations, part 309.

History: Effective August 1, 2000.
General Authority: NDCC 36-24-17
Law Implemented: NDCC 36-24-17

7-13-05-06. Humane slaughter of livestock - Religious exemption. To prevent the inhumane slaughter of animals, the commissioner shall cause to be made an examination and inspection of the method by which animals are slaughtered and handled in the slaughtering establishments inspected under North Dakota Century Code chapter 36-24. The commissioner may refuse to provide inspection to a new slaughtering establishment or may suspend inspections at a slaughtering establishment if the commissioner finds that any animal has been slaughtered or

handled at such establishment by any method that is not in accordance with title 9, Code of Federal Regulations, part 313. The commissioner may cause inspection services to begin or resume after the establishment furnishes satisfactory assurance to the commissioner that all animal slaughtering and handling are in accordance with such method. The commissioner may permit slaughter methods in accordance with religious ritual requirements, provided that such slaughter methods are recognized and approved by the governing authority of that religious sect or group.

History: Effective August 1, 2000.

General Authority: NDCC 36-24-24

Law Implemented: NDCC 36-24-18, 36-24-24

7-13-05-07. Horse slaughter. The slaughter of horses, mules, and other equines and the preparation and handling of the products thereof must be conducted in establishments separate from those used for the slaughter and preparation of other animals. All carcasses, parts, meat, meat food products, or other products thereof must be conspicuously labeled, marked, branded, or tagged "Horse Meat" or "Horse Meat Product" by a method approved by the department.

History: Effective August 1, 2000.

General Authority: NDCC 36-24-08

Law Implemented: NDCC 36-24-08

**CHAPTER 7-13-06
FACILITY REQUIREMENTS**

Section	
7-13-06-01	Designated Inspection Hours
7-13-06-02	Inspection Fees
7-13-06-03	Facility Review Requirement

7-13-06-01. Designated inspection hours. Establishments shall designate to the department regular inspection days and hours for requested inspection services, subject to department approval. Establishments doing custom slaughter or custom processing shall do so only on designated hours or days apart from the regular inspection schedule unless preapproved by the department.

History: Effective August 1, 2000.
General Authority: NDCC 36-24-24
Law Implemented: NDCC 36-24-02

7-13-06-02. Inspection fees. Except for overtime hours, inspection fees for providing meat inspection services will not be charged to a person or establishment requiring those services. Overtime incurred by the department for providing meat inspection services requested by a person or establishment will be charged at such rates as the commissioner may determine from time to time. The commissioner may waive overtime charges to establishments.

History: Effective August 1, 2000.
General Authority: NDCC 36-24-24
Law Implemented: NDCC 36-24-24

7-13-06-03. Facility review requirement. New establishment construction plans or alterations to an existing establishment must be submitted to the department for review prior to construction. Plans must contain sufficient detail for the department to review all additions or modifications to slaughtering or processing areas on the establishment premises.

History: Effective August 1, 2000.
General Authority: NDCC 36-24-24
Law Implemented: NDCC 36-24-24

**CHAPTER 7-13-07
REINSPECTION**

Section	
7-13-07-01	Reinspection
7-13-07-02	Adulteration or Misbranding

7-13-07-01. Reinspection. After the first inspection, inspectors, if they consider it necessary, shall reinspect the animal carcasses, meat, meat byproducts, meat food products, or parts thereof to determine whether such carcasses, meat, meat byproducts, meat food products, or parts have become adulterated since the first inspection. If an animal carcass, meat, meat byproducts, meat food products, or animal part is then found to be adulterated, it must be destroyed for food purposes by the establishment in the presence of an inspector.

History: Effective August 1, 2000.

General Authority: NDCC 36-24-24

Law Implemented: NDCC 36-24-24

7-13-07-02. Adulteration or misbranding. A person or any slaughtering establishment, meat processing establishment, or custom-exempt plant may not misbrand or adulterate any meat, meat byproduct, or meat food product or misrepresent the products to its customers.

History: Effective August 1, 2000.

General Authority: NDCC 36-24-24

Law Implemented: NDCC 36-24-18

**CHAPTER 7-13-08
ENFORCEMENT**

Section	
7-13-08-01	Refusal or Withdrawal of Inspection
7-13-08-02	Regulatory Enforcement Action
7-13-08-03	Criminal Prosecution

7-13-08-01. Refusal or withdrawal of inspection. For the purpose of enforcing North Dakota Century Code section 36-24-19, an offense determined by the commissioner to have a direct bearing on the person's ability to serve the public in a business requiring inspection under North Dakota Century Code chapter 36-24 includes any felony conviction in any federal or state court. This section does not limit in any way other provisions of federal or state law for withdrawal of inspection services from official establishments failing to maintain sanitary conditions or destroy condemned carcasses, parts, meat, or meat food products.

History: Effective August 1, 2000.
General Authority: NDCC 36-24-24
Law Implemented: NDCC 36-24-19

7-13-08-02. Regulatory enforcement action. The commissioner shall take regulatory control, withholding, or suspension action when necessary, in accordance with the provisions of title 9, Code of Federal Regulations, part 500, except that any complaint or hearing when allowed or required under such action will be conducted in accordance with North Dakota Century Code chapter 28-32.

History: Effective August 1, 2000.
General Authority: NDCC 36-24-24
Law Implemented: NDCC 36-24-18, 36-24-19

7-13-08-03. Criminal prosecution. If an authorized representative of the commissioner believes that a violation of North Dakota Century Code chapter 36-24 or these rules has occurred, the representative shall immediately report the violation to the commissioner. The commissioner may refer the matter to the appropriate authorities for prosecution or injunctive proceedings unless the commissioner believes that a written warning will adequately serve the public interest.

History: Effective August 1, 2000.
General Authority: NDCC 36-24-24
Law Implemented: NDCC 36-24-18, 36-24-26

TITLE 10
Attorney General

JUNE 2000

CHAPTER 10-06-01

10-06-01-01. Definitions. The terms used throughout this article have the same meaning as in North Dakota Century Code title 12 except:

1. "Board" refers to those individuals who have been appointed by the attorney general to the peace officer standards and training board.
2. "Division" means the bureau of criminal justice investigation training and statistics division section of the office of the attorney general.
3. "Duty--weapon"--is-the-weapon-normally-carried-by-an-officer-in-the-performance-of-the-officer's-duties; "Duty equipment" is the equipment normally carried by an officer in the performance of the officer's duties.
4. "Duty-equipment"--is-the-gun-belt,-holster,-and-shell-holder-or pouches-or-speed-loaders-normally-carried-by-an-officer-in-the performance--of--the--officer's--duties; "Duty weapon" is the weapon normally carried by an officer in the performance of the officer's duties.
5. "Executive secretary" means the director of the bureau of criminal investigation training section of the office of the attorney general.
6. "Peace officer" means a public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law.

6- 7. "Sidearm" is a pistol, semiautomatic, or revolver carried by a peace officer.

History: Effective January 1, 1983; amended effective July 1, 1989; June 1, 2000.

General Authority: NDCC ~~12-62-02(6)~~; ~~12-62-04~~; 12-63-04

Law Implemented: NDCC ~~12-62-02(6)~~; ~~12-62-04~~ 12-63-06, 12-63-09, 12-63-11

10-06-01-11. Criteria for a certified shooting course. To be certified, a shooting course must meet the following requirements:

1. The course must include a minimum of three firing positions, such as:
 - a. Prone.
 - b. Sitting.
 - c. Standing.
 - d. Kneeling.
 - e. Point shoulder.
 - f. Crouch.
 - g. Walking.
 - h. Barricade position.
2. The course must induce stress by the use of time, physical activity, or night/low light conditions or a combination of all three. A time limit for course completion must be stated.
3. The course must include firing from at least three different yardages:
 - a. These yardages to be not less than one yard [0.91 meter] nor more than twenty-five yards [22.86 meters].
 - b. The majority of firing to take place at seven yards [6.40 meters] or more.
4. The course must include the firing of at least eighteen but not more than sixty rounds of ammunition from start to finish.
5. The course must be fired completely double-action (revolvers) or semiautomatic mode (pistol) and include both strong and weak-hand shooting.

6. The ammunition used when firing for annual qualification will be ballistically similar to the same-quality ammunition (brand, weight, velocity, etc.) normally carried on duty. ~~Ammunition-used-for-practice-can-be-determined-by-the-agency conducting-the-training.~~
7. The course must be fired using only the duty weapon and duty equipment.
8. The target used must be a silhouette-type similar to the B-27 or a "duelatron" type, no bull's-eye target may be used.
9. Within seven days after the completion of a certified shooting course the certified weapons instructor shall forward to the division a completed qualification form showing each student's name, social security number, and agency; course name and training location and date; whether or not the student scored the minimum required; and whether or not certification is recommended.

History: Effective January 1, 1983; amended effective July 1, 1989; June 1, 2000.

General Authority: NDCC ~~12-62-02(6)~~; ~~12-62-04~~, 12-63-04

Law Implemented: NDCC ~~12-62-02(6)~~; ~~12-62-04~~ 12-63-06, 12-63-09, 12-63-11

CHAPTER 10-06-02

10-06-02-01. Definitions. The terms used throughout this article have the same meaning as in the North Dakota Century Code except:

1. "Auxiliary personnel" means any individual utilized by a municipal, county, or state law enforcement agency to provide service to that jurisdiction on a nonsalaried basis. These individuals can be members of organized groups such as posse, search and rescue, security at dances, etc., which operate adjunct to a police or sheriff's department, and do not have arrest powers or peace officer authority delegated to them by the department. Nothing in these rules precludes pecuniary remuneration to auxiliary officers for order maintenance and security functions such as traffic and crowd control at sporting events, parades, and other similar events.
2. "Board" refers to those individuals who have been appointed by the attorney general to the peace officer standards and training board.
- 2: 3. "Certification" refers to a course of training that has complied with the requirements of the board and has been approved by the division.
- 3: 4. "College credits" are credits earned for studies satisfactorily completed at an accredited institution of higher learning in a program leading to an academic degree.
- 4: 5. "Department" is a law enforcement agency which is part of or administered by the state or any political subdivision thereof and which is responsible for the prevention and detection of crime and the enforcement of penal, traffic, or highway laws of North Dakota.
- 5: 6. "Division" is the bureau of criminal justice investigation training and statistics division section of the office of the attorney general.
- 6: 7. "In-service" training refers to a certified training program conducted by and for the members of a department or agency and of one hour or more in duration, ~~the~~. The training time is cumulative, i.e., six sessions of ten minutes each.
- 7: 8. "Instructor" means an instructor certified by the board to instruct law enforcement subjects.
- 8: 9. "License requirement" means a person may not perform law enforcement duties without having a license issued by the board.

- 9: 10. "Moral turpitude" means conduct contrary to justice, honesty, modesty, or good morals.
- 10: 11. "Peace officer (full time)" means a salaried public servant authorized by ~~law-or-by~~ a government agency or branch to enforce the law or to conduct or engage in investigations or prosecutions for violations of law who works twenty hours or more per week averaged over a one-year period.
- 11: 12. "Peace officer (part time)" means a salaried public servant authorized by ~~law-or-by~~ a government agency or branch to enforce the law or to conduct or engage in investigations or prosecutions for violations of law who works less than twenty hours per week averaged over a one-year period for any individual agency or combination of agencies.
- 12: 13. "Reserve officer" means any individual utilized by a municipal, county, or state law enforcement agency to provide service to that jurisdiction on a nonsalaried basis and who may be granted full arrest authority. Nothing in these rules precludes pecuniary remuneration to reserve officers for order maintenance and security functions such as traffic and crowd control at sporting events, parades, and other similar events. However, payment on a full-time or part-time basis for the performance of typical law enforcement duties involving the detection and apprehension of law violators and the investigation of crimes including routine criminal and traffic patrol operations would require that such officer comply with the training for peace officers (~~full-time~~ full time and ~~part-time~~ part time) as provided in this article.
- 13: ~~---"Auxiliary--personnel"---means---any---individual---utilized---by---a municipal,--county,--or--state--law--enforcement--agency--to--provide service--to--that--jurisdiction--on--a--nonsalaried--basis;---These individuals--can--be--members--of--organized--groups--such--as--posse, search--and--rescue,--security--at--dances,--etc,--which--operate adjunct--to--a--police--or--sheriff's--department,--and--do--not--have arrest--powers--or--peace--officer--authority--delegated--to--them--by the--department.---Nothing--in--these--rules--precludes--pecuniary remuneration--to--auxiliary--officers--for--order--maintenance--and security--functions--such--as--traffic--and--crowd--control--at sporting--events,--parades,--and--other--similar--events.~~
14. "School" is any school, college, university, academy, or local training program which offers law enforcement training and includes within its meaning the combination of course curriculum, instructors, and facilities.
15. "Training course" means any certified training program approved by the board.

History: Effective January 1, 1983; amended effective July 1, 1989; June 1, 2000.

General Authority: NDCC 12-62-02(4),-12-62-04, 12-63-04
Law Implemented: NDCC 12-62-02(4),-12-62-04, 12-63-02

10-06-02-02.2. Compliance with sidearm authorization and qualification as a condition of licensure. A license may not be issued, renewed, or reinstated unless the person who is authorized to carry a sidearm in the course of employment or in the performance of official duties has satisfied the requirements of chapter 10-06-01.

History: Effective June 1, 2000.

General Authority: NDCC 12-63-04

Law Implemented: NDCC 12-63-06, 12-63-09, 12-63-11

10-06-02-03. Compliance with minimum training standards.

1. Peace officers (full time) ~~must~~ shall satisfactorily complete the first available basic course approved by the board from the date of appointment and successfully pass the licensing examination.
2. Peace officers (part time) shall satisfactorily complete a basic training course or part-time officer correspondence course approved by the board within one year of employment.
3. Reserve Training for reserve officers ~~must-satisfactorily complete-a-course-of-instruction-as-approved-by-the-board within-one-year-from-the-date-of-appointment.-The-training will-be-conducted-locally-by-the-parent-or-another-agency~~ may not be specified by the board and must be left up to the discretion of the individual agency.
4. Training for auxiliary personnel shall ~~may~~ not be specified by the board and shall must be left up to the discretion of the individual agency.
5. Extensions of the time required for completion of required courses may be granted at the discretion of the board after written request by the agency administrator in cases of extreme hardship.

History: Effective January 1, 1983; amended effective July 1, 1989; June 1, 2000.

General Authority: NDCC 12-62-02(4),-12-62-04,-12-62-08, 12-63-04

Law Implemented: NDCC 12-62-02(4),-12-62-04,-12-62-08, 12-63-02, 12-63-06

10-06-02-04.1. Limited license. Peace officers will be issued a limited license until the basic course has satisfactorily been completed and the licensing examination has been passed. Individuals shall take the examination within thirty days after completing the basic training

program. Individuals will be permitted to take the examination a total of ~~two~~ three times ~~before remedial training and a waiting period is implemented.~~ After the second unsuccessful attempt, and before retaking the examination again, the individual shall successfully complete a board-approved law enforcement basic training program ~~and wait for one year before retaking the examination.~~

History: Effective July 1, 1989; amended effective June 1, 2000.

General Authority: NDCC 12-63-04

Law Implemented: NDCC 12-63-02, 12-63-09

10-06-02-05. Waiver of required training.

1. All peace officers with experience or training outside of or prior to the establishment of the board may qualify for a waiver of any training requirement. Such an application should be submitted through the administrator of the applying officer's department on the form provided by the board. The board shall review all such applications and shall have authority to grant a complete or partial waiver. The individual must successfully complete the licensing examination, and upon its completion the board will determine whether the complete or partial waiver is granted.
 - a. Training received in states with laws governing or regulating police training must, if subject to such review, have been approved or certified in the state in which the training was received.
 - b. The board may elect to prescribe as a condition of licensing supplementary or remedial training necessary to equate previous training with current standards.
 - c. The board is authorized to enter into standing reciprocity compacts or agreements with those states which by law regulate and supervise the quality of peace officer training and which require a number of training hours comparable to the current requirements for basic training in North Dakota.
2. If a complete or partial waiver is granted by the board, the individual will be allowed only one attempt to successfully complete the licensing examination. If a passing score is not obtained on the first attempt, the waiver is denied and the individual will be required to complete the full basic training before being allowed to take the licensing examination for the second time.
3. For the purpose of subsection 2 of North Dakota Century Code section 12-63-08, a person may be certified as a peace officer before July 1, 1989, if that person has completed basic training, successfully completed one year of in-state law

enforcement employment, and has successfully completed the probationary period of the person's current employer. However, for those persons who have commenced employment with a law enforcement agency after July 1, 1988, and who have successfully completed the basic training, and sidearm requirements, the board may grant a waiver of the written examination requirement upon application for such waiver.

History: Effective January 1, 1983; amended effective July 1, 1989; June 1, 2000.

General Authority: NDCC ~~12-62-02(4);-12-62-04;-12-62-08;~~ 12-63-04

Law Implemented: NDCC ~~12-62-02(4);---12-62-04;---12-62-08;~~ 12-63-02, 12-63-06, 12-63-08

10-06-02-05.1. Licensing examinations.

- 1. Application.** Licensing examinations will be administered by the division as required by the board. The applicant for any licensing examination shall submit a ~~written-application-on-a-form-provided-by-the-board~~ request prior to the date of the examination. ~~An--application~~ The request must be accompanied by the appropriate nonrefundable fee as set forth by the board.
- 2. Retaking examinations.** An applicant who fails an examination will be allowed to retake that examination one time, upon furnishing to the board a renewed ~~written-application~~ request and required fee. After the second unsuccessful attempt, and before retaking the examination again, the individual must successfully complete a board-approved law enforcement basic training program ~~and--wait--for--one--year--before--retaking--the--examination.~~

History: Effective July 1, 1989; amended effective June 1, 2000.

General Authority: NDCC 12-63-04

Law Implemented: NDCC 12-63-02, 12-63-07

10-06-02-05.2. Licensing of peace officers.

- 1. Appointees - Notification.** The employing agency shall notify the board of the appointment of any person to the position of peace officer before the first day of the appointee's employment. Notification must be made on a form provided by the board, and it must include the appointee's full name, sex, date of birth, social security number, the effective date of the appointment, and an affirmation that the appointee has met all selection standards as prescribed by law.
- 2. Application procedures.** If the appointee is not already a licensed peace officer, but is eligible to be licensed, the appointee shall apply to be licensed at the time of

appointment. Application must be made on a form provided by the board, and both the applicant and the ~~chief--law enforcement-officer~~ agency administrator shall affirm that the applicant is eligible to be licensed. The ~~applicant-shall also-submit-the~~ required licensing fee must accompany the application.

3. **License certificate.** The executive secretary shall issue a license certificate to an applicant who has complied with the requirements of law, and whose affirmations are consistent with the division's records and payment of required fees. The period of the initial licensure must be determined according to the initial letter of the licensee's surname; and expires as provided by law.
4. **Fees.** The following fees are nonrefundable:
 - a. Application for examination fee - twelve dollars and fifty cents.
 - b. ~~Out-of-state--reciprocity--application--examination--fee--twenty-five-dollars;~~
 - c. License fee - the appropriate license fee is fifteen dollars if the licensee is to be licensed for thirty to thirty-six months; ten dollars if the licensee is to be licensed for at least eighteen months but less than thirty months; and five dollars if the licensee is to be licensed for less than eighteen months.
 - d. c. Renewal fee - fifteen dollars for a three-year period.
 - e. d. Late renewal fee - twenty-five dollars.
 - f. e. Reinstatement fee - thirty-five dollars.
5. **Surrender of license certificate.** Licenses remain the property of the board. The license certificate and any renewal certificates must be surrendered to the board if suspended or revoked.

History: Effective July 1, 1989; amended effective June 1, 2000.

General Authority: NDCC 12-63-04

Law Implemented: NDCC 12-63-02, 12-63-04, 12-63-05

10-06-02-06.1. Lapse of license.

1. Any peace officer who does not perform duties as a peace officer, is no longer employed by a department, and lets his ~~or-her~~ the officer's license expire shall comply with the following conditions for reinstatement:

- a- 1. Any individual who has not been employed by a law enforcement agency for less than two years may reapply for a license. The individual will be required to pay the reinstatement fee and ~~appropriate--license--fee.~~ The individual must obtain sufficient makeup continuing education hours within three months of reinstatement.
- b- 2. Any individual who has not been employed by a law enforcement agency for two to five years may reapply for a license. The individual must pass the criminal and traffic law portions of the licensing examination and obtain sufficient makeup continuing education hours within six months of reinstatement. The individual must pay the reinstatement fee; and the examination fee;~~-and-the-appropriate-license-fee.~~
- e- 3. Any individual who has not been employed as a peace officer by a law enforcement agency for five to seven years must pass a licensing examination; and pay the reinstatement fee; and the examination fee;~~-and-appropriate-license-fee.~~ The individual must attain the sufficient makeup continuing education hours within six months of reinstatement. If the individual fails the licensing examination on the first attempt, the individual will be required to complete the process that is required for a new officer.
- d- 4. Any individual who has not been employed as a peace officer by a law enforcement agency for over seven years is required to complete the process that is required for a new officer.
- e- 5. The board shall give the individual written notice of its findings. The notice must include the reasons for the board's action where if the board denies relicensure or prescribes the conditions of relicensure.

History: Effective July 1, 1989; amended effective June 1, 2000.

General Authority: NDCC ~~12-62-04~~ 12-63-04

Law Implemented: NDCC ~~12-62-04~~ 12-63-04

10-06-02-07. Requirements to remain licensed or to obtain renewal or reinstatement of a license. In order for a part-time and or full-time peace officer to remain licensed, the officer must continue to meet all the minimum requirements and must further receive a minimum of ~~forty-eight~~ sixty hours of certified training every three years.

- 1. The training may consist of but is not limited to:
 - a. ~~Forty-eight~~ Sixty hours of certified law enforcement training;
 - b. ~~Three--semester--hours--of--college--credit--in-a-criminal justice-related-or-job-related-topie;~~

- ~~e. Five-quarter-hours-of-college-credit-in-a-criminal-justice-related-or-job-related-topic;~~
- d. ~~Forty-eight~~ Sixty hours of approved/certified criminal justice-related seminar.
2. The training may be attended in any hour grouping, as long as it totals a minimum of ~~forty-eight~~ sixty hours within a three-year period, i.e., two ~~eight-hour~~ ten-hour blocks of instruction every year, one ~~forty-eight-hour~~ sixty-hour block of instruction within the three-year period, etc.
 3. No surplus in training hours may be carried forth into the next three-year period.
 4. All officers shall meet the licensure requirements by the following dates:
 - a. If the surname begins with the letters A through G, the officer must have met the continuing education requirement for the period of July 1, 1984, through July 1, 1987. The next continuing education requirement before renewal can be completed will be for the period of July 1, 1987, through July 1, 1990, and every third year thereafter.
 - b. If the surname begins with the letters H through M, the officer must have met the continuing education requirement for the period of July 1, 1985, through July 1, 1988. The next continuing education requirement before renewal can be completed will be for the period of July 1, 1988, through July 1, 1991, and every third year thereafter.
 - c. If the surname begins with the letters N through Z, the officer must have met the continuing education requirement for the period of July 1, 1986, through July 1, 1989, and every third year thereafter.
 - d. If an officer is newly hired during the three-year cycle, the officer will meet the prorated share of the requirements needed until the officer's renewal date arrives.
 5. It shall be the duty of the employer agency or the officer to forward a record of the training attended to the board prior to the officer's recertification date.
 6. An officer who has enrolled and completed college courses may request, if necessary, a waiver of the sixty-hour training requirement for renewal of the peace officer license. The request may be granted upon showing of successful completion of at least:

- a. Three semester hours of college credit in a criminal justice-related or job-related topic; or
- b. Five quarter hours of college credit in a criminal justice-related or job-related topic.

History: Effective January 1, 1983; amended effective July 1, 1989; June 1, 2000.

General Authority: NDCC 12-62-02(4);-12-62-04; 12-63-04

Law Implemented: NDCC 12-62-02(4);-12-62-04; 12-63-02

10-06-02-07.1. License renewal.

1. **Application.** The board shall require a written application for renewal of licenses.
2. **Certificate of renewal.** The executive secretary shall issue a certificate of renewal, which is valid for three years, to each applicant who has submitted the appropriate fee on or before June thirtieth of the year when the license becomes due for renewal and also completed the required hours of continuing education.
3. **Late renewal.** Should a person fail to renew a license by June thirtieth, such person may be permitted to make application for renewal no later than July thirty-first of that same year upon payment of ~~renewal-fee-plus~~ the late renewal fee. If application for renewal is not made by July thirty-first, the license is deemed to be lapsed and no longer in effect.
4. **Reinstatement of a lapsed license.** After July thirty-first, a license may not be renewed but an application for reinstatement may be made by the applicant. The application for reinstatement must include payment of ~~renewal-fee-plus~~ the reinstatement fee as prescribed to be paid by the board. The board may grant reinstatement once the applicant has conformed with section 10-06-02-06.1.

History: Effective July 1, 1989; amended effective June 1, 2000.

General Authority: NDCC 12-63-04

Law Implemented: NDCC 12-63-02; 12-63-11

CHAPTER 10-06-03

10-06-03-02. Requirements for certification of law enforcement instructors.

1. The board will certify instructors considered qualified to teach in one or more subjects on the basis of the standards provided in this section.
2. Instructors are eligible for certification if they meet the following minimum qualifications in the areas of education, training, and experience:
 - a. A person applying for certification as a law enforcement instructor to teach peace officer subjects, including patrol, investigation, or the use of firearms must have:
 - {1} a. A high school diploma or its equivalent;
 - {2} b. Two years' experience as a certified licensed peace officer or equivalent;
 - {3} c. ~~Forty--hours--of--verified~~ Verified training or documented experience in each subject to be taught;
 - {4} d. A course of instructor development training or its equivalent approved by the board, including training in the areas of communication, psychology of learning, techniques of instruction, use of instructional aids, preparation and use of lesson plans, preparing and administering tests, teaching resources, and motivation; and
 - {5} e. A recommendation by the applicant's agency administrator or training officer.
 - ~~b.--A--person--applying--for--certification--to--teach--general subjects,--including--management,--human---relations,---or administration,--must--have:~~
 - ~~{1}--At--least--a--baccalaureate--degree,--and~~
 - ~~{2}--Three--years--experience--or--college--credits--or--both--in the--subject--to--be--taught.~~
3. The board may, in its discretion, waive any part of the requirements of subsection 2 if it finds that a person, although not meeting all of the eligibility requirements, is otherwise qualified to be an instructor.

History: Effective January 1, 1983; amended effective July 1, 1989; June 1, 2000.

General Authority: NDCC ~~12-62-02(3)~~; ~~12-62-02(4)~~ 12-63-04

Law Implemented: NDCC ~~12-62-02(3)~~; ~~12-62-02(4)~~ 12-63-06, 12-63-11

10-06-03-06. Application for course certification. The following procedures will be applicable to all training courses applying for certification:

1. The individual responsible for planning and coordinating a training program must prepare a letter of application for program certification. This letter should be sent to the division thirty days or as soon as possible in advance of the date the training program is to commence.
2. The application must ~~state-or~~ be accompanied by:
 - a. A course ~~outline~~ curriculum showing the date and location of the course, the hours of instruction, group to be taught (size, experience, etc.), method of evaluation, lesson plan (if available); and
 - b. Information concerning the instructors' education and experience if the instructors have not been certified by the division.
3. Within seven days after the completion of a training program, the coordinator of the program shall forward to the division a completed student roster, showing each student's name, social security number, and agency, hours attended, course name, and training location and date.

History: Effective January 1, 1983; amended effective July 1, 1989; June 1, 2000.

General Authority: NDCC ~~12-62-02(3)~~; ~~12-62-02(4)~~ 12-63-04

Law Implemented: NDCC ~~12-62-02(3)~~; ~~12-62-02(4)~~ 12-63-06, 12-63-11

TITLE 32
Cosmetology, Board of

JULY 2000

CHAPTER 32-01-02

32-01-02-01. Definitions. The terms used throughout this title have the same meaning as in North Dakota Century Code chapter 43-11, except:

1. "Cosmetology establishment" includes businesses, premises, and schools required to have a certificate of registration from the North Dakota board of cosmetology pursuant to North Dakota Century Code chapter 43-11.
2. "Cosmetology school" means any school teaching any or all of the practices of cosmetology.
3. "Disinfect" means to destroy harmful micro-organisms; to free from infection.
4. "Disinfectant" means an agent used to kill germs.
5. "Good repair" means that an item is soil free with no holes, frayed wires, or tears in covering and fully operational for the purpose intended.
6. "Infectious disease" means any disease which can be transmitted, directly or indirectly, from person to person.
7. "Occupation of cosmetologist" includes the practice of esthetics and manicuring as defined in North Dakota Century Code section 43-11-01.
8. "Salon" means that part of any building wherein the occupation of a cosmetologist, manicurist, or esthetician is practiced.

The occupation of a cosmetologist, manicurist, or esthetician is practiced in a particular location if the cosmetologist, manicurist, or esthetician advertises services will be provided at the location or provides services at the location to three or more people on a regularly scheduled basis, except if the services are provided under a homebound license.

9. "Sanitized" means rendered free of dust, foreign material, and agents of disease or infestation through use of effective cleaning and disinfecting processes.

9- 10. "Sanitizer" means a container holding a sanitizing agent which is large and deep enough to completely submerge the tools and implements to be disinfected.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; July 1, 2000.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-01, 43-11-11, 43-11-27.1

CHAPTER 32-02-01

32-02-01-04. Sanitary premises.

1. Walls, floors, and fixtures must be kept clean and in good repair at all times.
2. All floors must be kept ~~clean~~ cleaned and made free of hair and other debris ~~at-all-times~~ after each client and must be in good repair. Carpeting is not permitted in the working area. Carpeting will only be permitted in the reception, drying, and facial treatment,-and-manicuring-area-only areas.
3. Windows and mirrors should be clean.
4. Shampoo bowls and implements must be free from all hair and debris and cleansed prior to each use.
5. The dispensing area must be neat and clean. The supply area may not be accessible to the public.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; July 1, 2000.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-07. First-aid kit. Every cosmetology establishment shall have and maintain a complete first-aid kit in a readily accessible location on the premises. At a minimum, the first-aid kit must include adhesive dressings, gauze and antiseptic, tape, triple antibiotics, eyewash, and gloves.

History: Amended effective July 1, 2000.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

CHAPTER 32-03-01

32-03-01-07. Manager-operator. Every cosmetology salon shall have a manager-operator who shall be responsible for the operation, conduct, and management of the salon. The manager-operator ~~need not~~ shall be present on the salon premises ~~at--all--times~~ during business hours, ~~but--must--be--available--to--provide--direction--and--supervision--if~~ needed except the manager-operator may take breaks or leave to perform other responsibilities for periods of time that do not exceed one hour and the manager-operator need not be present if cosmetology services are not being performed. Each salon owner or manager-operator shall provide the office with an accurate schedule of the days and hours the salon is open for business.

History: Amended effective July 1, 1988; March 1, 1998; July 1, 2000.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-15

32-03-01-14. Practice outside of salon. A manager-operator may practice outside of a salon establishment if:

1. The manager-operator has one year of work experience;
2. The manager-operator follows all applicable rules of sanitation adopted in chapter 32-02-01; and
3. Cosmetology services are not provided in a manner or frequency to cause the location where the services are provided to constitute a salon as defined in section 32-01-02-01.

History: Effective July 1, 2000.

General Authority: NDCC 43-11-05, 43-11-11

Law Implemented: NDCC 43-11-11

CHAPTER 32-04-01

32-04-01-07. Student transfers.

1. **Domestic transfers.** A student of a North Dakota cosmetology school ~~desiring-to-transfer~~ transferring to another school shall ~~petition--the-school-and-the-board-before-transferring,~~ and ~~approval-of-the-board-must-be-given-in-writing-before--any~~ transfer ~~--is--made~~ be granted full credit for the hours completed.
2. **Foreign transfer.** Any student of a cosmetology school located in another state, country, or territory desiring to transfer to a North Dakota school shall make an application to the board in the same manner as a new student. A certified copy of the student's records shall accompany the application. Approval of the board must be given in writing before any transfer is made. If the board approves the application and the student completed the course, the student shall receive full credit hours for the course. If the board approves the application and the student did not complete the course, the student shall be granted two-thirds credit hour for the hours completed.
3. **Credit hours.**
 - a. North Dakota school credit hours will be credited for five years.
 - b. Out-of-state credit hours will be credited for two years.
 - c. ~~All--credit-hours-will-be-honored-if-the-student-completes~~ ~~the-course-in-the-student's-home-state.---If--the--student~~ ~~transfers--before--completing--the-course,-only-credit-for~~ ~~two-thirds-of-the-student's-credit-hours-will-be--honored.~~

History: Amended effective July 1, 1988; July 1, 2000.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-15, 43-11-16, 43-11-19

32-04-01-18. Curriculum. Each cosmetology school shall teach branches and areas of cosmetology, which shall include theory and practice in subjects required, provided, and approved by the board.

1. **Hours.** The course of instruction shall consist of one thousand eight hundred hours for cosmetology, nine hundred hours for esthetics, and three hundred fifty hours for manicuring.

2. **Theory classes.** Each cosmetology school shall conduct theory classes a minimum of one hour per day for a minimum of four days per week.
3. **Student---credit---hour---and---credit Credit record.** The requirements set forth in the student hour and credit record provided by the board shall be completed within a twelve-month period for cosmetology students enrolled in a forty-hour-week course--or--within a twenty-month period for students enrolled in--a--twenty-four-hour-week--course:----Esthetics---students enrolled--in--a--forty-hour-week--course--must--be--completed--in--seven--months;--or--a--twenty-four-hour-week--course--in--eleven months;---Manicurist--students--enrolled--in--a--forty-hour-week course--must--be--completed--in--a--three-month--period;--or--a--twenty-four-hour-week--course--completed--in--a--five-month--period. Each cosmetology school shall keep the student hour and credit record current for each student, and the record shall be current by the fifth of each month the student is enrolled. Within five days of a school's knowledge that a student has either completed the course, transferred, or discontinued and fulfilled all school requirements accordingly, the school shall furnish the board with the record.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; July 1, 2000.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-16, 43-11-22

32-04-01-25. Examinations.

1. **School examinations.** Each student must have successfully passed eighty percent of the weekly examinations and secured a seventy-five percent average in the cosmetology school final examination in both written and practical work.
2. **Board examinations.** The time, place, and date of board examinations must be submitted to the board two weeks prior to test date. A cosmetologist, manicurist, and esthetician examination shall consist of a theoretical portion and a practical portion. The theoretical portion shall be ~~administered~~ administered by the board members or staff. The practical portion of the cosmetologist examination will be ~~administered~~ administered by the cosmetology school if the examinee graduated from a North Dakota cosmetology school in the past year. If the examinee graduated from a North Dakota cosmetology school more than one year prior to making application, the practical portion of the cosmetologist examination may be administered by the cosmetology school or the board. The board will administer the practical portion of the cosmetologist examination to applicants who did not graduate from a North Dakota cosmetology school. A board member shall be present to observe during practical

examination. There shall be no more than one test date per month.

The practical portion of the cosmetologist examination shall consist of the candidate demonstrating:

- a. Hairstyling.
- b. Basic hair shaping using entire mannequin (full head haircut).
- c. Hair coloring.
- d. Permanent waving.
- e. Chemical hair relaxing.

In order to be certified as passing an examination, a candidate shall score at least seventy-five percent or more on the theoretical and practical portions of the examination. Candidates' scores shall be submitted to the board five days after the examination date.

3. **Failing applicant.** Applicants who fail any portion of the examination shall reregister and pay the required fee before being permitted to retake the portion of the examination they have failed. An applicant for an esthetician or manicurist license who fails any portion of the examination twice must wait until six months have passed since the last examination before retesting.
4. **Applicant complaint.** An applicant shall notify the board in writing if there is reason to believe that there has been discrimination during any portion of the examination.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; July 1, 2000.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-16, 43-11-22, 43-11-23

32-04-01-26.1. Cosmetology course curriculum. The hours of the cosmetology course curriculum must include the following:

Hair shaping	250 hours
Hairstyling	250 hours
Nails	50 hours
Facials, skin care	25 hours
Chemical services	250 hours
Study of theory, law, and sanitation	400 hours
Related subjects (classroom or clinic for instructions)	575 hours
Total minimum hours	1,800 hours

History: Effective July 1, 2000.
General Authority: NDCC 43-11-05
Law Implemented: NDCC 43-11-16

32-04-01-27. Esthetician course curriculum. The curriculum for students enrolled in an esthetician course for a complete course of ~~nine~~ six hundred hours ~~at forty hours per week in at least seven months or twenty-four hours per week in eleven months;~~ training must be as follows: No school or licensed instructor may permit a student to render clinical services until a student has completed twenty percent of the total hours of instruction required. These hours are to include the following:

Sterilization, sanitation, and safety	115	<u>75</u>	hours
Body treatment, facials, hair removal, and makeup	505	<u>340</u>	hours
Study of law, ethics, management, and salesmanship	115	<u>75</u>	hours
Related subjects	90	<u>60</u>	hours
Unassigned	75	<u>50</u>	hours
Total minimum hours	900	<u>600</u>	hours

History: Effective July 1, 1990; amended effective July 1, 2000.
General Authority: NDCC 43-11-05
Law Implemented: NDCC 43-11-16

32-04-01-29. Curriculum for esthetician instructor training.

1. Persons receiving esthetician instructor training in a cosmetology school shall spend all of their training time under the direct supervision of a licensed instructor and may not be left in charge of students or schools at any time without the direct supervision of a licensed instructor.
2. Persons receiving instructor training are not permitted to perform clinical services on a client for compensation, either by appointment or otherwise. Persons receiving instructor training must be furnished a teacher's training manual.
3. The curriculum in a cosmetology school, for an esthetics instructor training course, must include ~~at least seven months and nine hundred hours at forty hours per week or eleven months at twenty-four hours per week:~~
 - a. The teacher - ~~100~~ 65 hours:
 - (1) Personality.
 - (2) Technical knowledge.
 - (3) Teacher's characteristics.

- (4) Teachers as professionals.
- b. Preparations for teaching:
 - (1) Planning ~~the course~~ for teaching.
 - (2) Preparing lesson plans:
 - (a) Objectives.
 - (b) Outline.
 - (3) Student activities.
 - (4) Steps of teaching:
 - (a) Preparation.
 - (b) Presentation.
 - (c) Application.
 - (d) Testing.
- c. Student motivation and learning - ~~100~~ 65 hours:
 - (1) State board of cosmetology requirements and recordkeeping.
 - (2) Student motivation.
 - (3) Student participation.
 - (4) Student personalities.
 - (5) Individual:
 - (a) Slow learner.
 - (b) Gifted learners.
- d. Methods, management, and materials - ~~250~~ 170 hours:
 - (1) Methods, procedures, and techniques of teaching:
 - (a) Lectures and discussions.
 - (b) Demonstrations.
 - (c) Conducting practice activities.
 - (d) Questioning techniques.

- (e) Results.
- (f) Special situations.
- (2) Classroom management:
 - (a) Physical environment.
 - (b) Administrative duties.
 - (c) Student discipline.
 - (d) Class supervision.
 - (e) Classroom routine.
 - (f) Corrective measures.
- (3) Teaching materials:
 - (a) Audiovisual aids (types).
 - (b) Values of different teaching aids.
 - (c) Correct usage.
 - (d) Miscellaneous teaching materials.
 - [1] Textbooks.
 - [2] Workbooks.
 - [3] Reference books.
 - [4] Creative aids.
- e. Testing and evaluations - ~~150~~ 100 hours:
 - (1) Testing:
 - (a) Purpose.
 - (b) Performance tests.
 - (c) Written tests.
 - (d) Standardized tests.
 - (2) Evaluation:
 - (a) General student abilities.
 - (b) Student achievement.

(c) Teacher evaluation.

f. Education (vocabulary development) - ~~200~~ 130 hours.

g. Unassigned - ~~100~~ 70 hours.

Total hours - ~~900~~ 600.

History: Effective July 1, 1990; amended effective July 1, 2000.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-16

CHAPTER 32-05-01

32-05-01-01.1. License without examination. Every person desiring to be licensed as an operator, manicurist, or esthetician without taking the examination shall make an application on the form provided by the board and:

1. Pay the application fee.
2. Provide proof that the applicant is licensed as a cosmetologist, manicurist, or esthetician in another jurisdiction and that the applicant's license is in good standing.
3. Demonstrate the other jurisdiction's licensure requirements at the time the applicant was licensed by the other jurisdiction were substantially equal to those in North Dakota at the time the North Dakota application was filed. Three or more years of work experience as a licensed cosmetologist will be considered substantially equal to three hundred hours of cosmetology education.
4. Pass an examination on North Dakota sanitation practices and cosmetology law.

History: Effective July 1, 2000.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-25

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

~~1.--Furnish~~ furnish to the board evidence of having practiced as a licensed esthetician for one hundred twenty-five days.

~~2.--Take-and-pass-the-North-Dakota-law-test-for-master-license.~~

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

History: Effective February 1, 1996; amended effective July 1, 2000.

General Authority: NDCC 43-11-05

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

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

1.--Furnish furnish to the board evidence of having practiced as a licensed manicurist for sixty days.

2.--~~Take and pass the North Dakota law test for master license.~~

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

History: Effective February 1, 1996; amended effective July 1, 2000.

General Authority: NDCC 43-11-05

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

TITLE 33
State Department of Health

AUGUST 2000

CHAPTER 33-17-01

33-17-01-02. Definitions. For the purpose of this chapter the following definitions shall apply:

1. "Action level" means the concentration of lead or copper in water specified in title 40, Code of Federal Regulations, part 141, subpart I, section 141.80(c), that determines, in some cases, the treatment requirements set forth under title 40, Code of Federal Regulations, part 141, subpart I, that a water system is required to complete.
2. "Best available technology" or "BAT" means the best technology, treatment techniques, or other means which the department finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration). For the purposes of setting maximum contaminant levels for synthetic organic chemicals, any best available technology must be at least as effective as granular activated carbon.
3. "Coagulation" means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into flocs.
4. "Community water system" means a public water system which serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents.
5. "Compliance cycle" means the nine-year calendar year cycle during which public water systems must monitor for inorganic

and organic chemicals excluding lead, copper, trihalomethanes, and unregulated contaminants. Each compliance cycle consists of three 3-year compliance periods. The first calendar year cycle begins January 1, 1993, and ends December 31, 2001; the second begins January 1, 2002, and ends December 31, 2010; and the third begins January 1, 2011, and ends December 31, 2019.

6. "Compliance period" means a three-year calendar year period within a compliance cycle during which public water systems must monitor for inorganic and organic chemicals excluding lead, copper, trihalomethanes, and unregulated contaminants. Each compliance cycle has three 3-year compliance periods. Within the first compliance cycle, the first compliance period runs from January 1, 1993, to December 31, 1995; the second from January 1, 1996, to December 31, 1998; and the third from January 1, 1999, to December 31, 2001.
7. "Composite correction program" or "CCP" means a systematic, comprehensive procedure for identifying, prioritizing, and remedying factors that limit water treatment plant performance as set forth in the United States environmental protection agency handbook entitled Optimizing Water Treatment Plant Performance Using The Composite Correction Program, EPA/625/6-91/027, 1998 edition. A composite correction program consists of two phases, a comprehensive performance evaluation and comprehensive technical assistance.
8. "Comprehensive performance evaluation" or "CPE" means a thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation, and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. For purposes of compliance with title 40, Code of Federal Regulations, part 141, subpart P, the comprehensive performance evaluation shall consist of at least the following components:
 - a. Assessment of plant performance;
 - b. Evaluation of major unit processes;
 - c. Identification and prioritization of performance limiting factors;
 - d. Assessment of the applicability of comprehensive technical assistance; and
 - e. Preparation of a comprehensive performance evaluation report.

9. "Comprehensive technical assistance" or "CTA" means the performance improvement phase of a composite correction program that is implemented if the comprehensive performance evaluation results indicate improved performance potential. During the comprehensive technical assistance phase, identified and prioritized factors that limit water treatment plant performance are systematically addressed and eliminated.
10. "Confluent growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion thereof, in which bacterial colonies are not discrete.
- 8- 11. "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.
- 9- 12. "Conventional filtration treatment" means a series of processes including coagulation, flocculation, sedimentation, and filtration resulting in substantial particulate removal.
- 10- 13. "Corrosion inhibitor" means a substance capable of reducing the corrosivity of water toward metal plumbing materials, especially lead and copper, by forming a protective film on the interior surface of those materials.
- 11- 14. "Cross connection" means any connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other either water of unknown or questionable safety or steam, gas, or chemical whereby there may be a flow from one system to the other, the direction of flow depending on the pressure differential between the two systems.
- 12- 15. "CT" or "CT calc" means the product of residual disinfectant concentration (C) in milligrams per liter determined before or at the first customer and the corresponding disinfectant contact time (T) in minutes. If disinfectants are applied, at more than one point prior to the first customer, the CT of each disinfectant sequence must be determined before or at the first customer to determine the total percent inactivation or total inactivation ratio. In determining the total inactivation ratio, the residual disinfectant concentration of each disinfection sequence and the corresponding contact time must be determined before any subsequent disinfection application points. CT ninety-nine point nine is the CT value required for ninety-nine point nine percent (three-logarithm) inactivation of giardia lamblia cysts. CT ninety-nine point nine values for a wide variety of disinfectants and conditions are set forth under title 40, Code of Federal Regulations, part 141, subpart H. CT calculated divided by CT ninety-nine point nine is the inactivation ratio. The total inactivation ratio is determined by adding together the inactivation ratio for each disinfection sequence. A total inactivation ratio

equal to or greater than one point zero is assumed to provide a three-logarithm inactivation of giardia lamblia cysts.

- ~~13:~~ 16. "Department" means the North-Dakota state department of health and consolidated laboratories.
- ~~14:~~ 17. "Diatomaceous earth filtration" means a process resulting in substantial particulate removal in which a precoat cake of diatomaceous earth filter media is deposited on a support membrane or septum, and while the water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the feed water to maintain the permeability of the filter cake.
- ~~15:~~ 18. "Direct filtration" means a series of processes including coagulation and filtration but excluding sedimentation resulting in substantial particulate removal.
- ~~16:~~ 19. "Disinfectant" means any oxidant, including, but not limited to, chlorine, chlorine dioxide, chloramines, and ozone added to water in any part of the treatment or distribution process, that is intended to kill or inactivate pathogenic microorganisms.
- ~~17:~~ 20. "Disinfectant contact time" (T in CT calculations) means the time in minutes that it takes for water to move from the point of disinfectant application or the previous point of disinfectant residual measurement to a point before or at the point where residual disinfectant concentration (C) is measured. Where only one C is measured, T is the time in minutes that it takes for water to move from the point of disinfectant application to a point before or at where C is measured. Where more than one C is measured, T, for the first measurement of C, is the time in minutes that it takes the water to move from the first or only point of disinfectant application to a point before or at the point where the first C is measured. For subsequent measurements of C, T is the time in minutes that it takes for water to move from the previous C measurement point to the C measurement point for which the particular T is being calculated. Disinfectant contact time in pipelines must be calculated by dividing the internal volume of the pipe by the maximum hourly flow rate through that pipe. T within mixing basins and storage reservoirs must be determined by tracer studies or an equivalent demonstration.
- ~~18:~~ 21. "Disinfection" means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.
22. "Disinfection profile" means a summary of daily giardia lamblia inactivation through the treatment plant. The disinfection profile shall be developed as set forth under title 40, Code of Federal Regulations, section 141.172.

- 19: 23. "Domestic or other nondistribution system plumbing problem" means a coliform contamination problem in a public water system with more than one service connection that is limited to the specific service connection from which the coliform-positive sample was taken.
- 20: 24. "Effective corrosion inhibitor residual", for the purpose of title 40, Code of Federal Regulations, part 141, subpart I only, means a concentration sufficient to form a passivating film on the interior walls of pipe.
25. "Enhanced coagulation" means the addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment.
26. "Enhanced softening" means the improved removal of disinfection byproduct precursors by precipitative softening.
27. "Filter profile" means a graphical representation of individual filter performance based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from startup to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed.
- 21: 28. "Filtration" means a process for removing particulate matter from water by passage through porous media.
- 22: 29. "First draw sample" means a one-liter sample of tap water, collected in accordance with title 40, Code of Federal Regulations, part 141, section 141.86(b)(2), that has been standing in plumbing pipes at least six hours and is collected without flushing the tap.
- 23: 30. "Flocculation" means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settleable particles through gentle stirring by hydraulic or mechanical means.
31. "Granular activated carbon ten" or "GAC10" means granular activated carbon filter beds with an empty-bed contact time of ten minutes based on average daily flow and a carbon reactivation frequency of every one hundred eighty days.
- 24: 32. "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.
- 25: 33. "Ground water under the direct influence of surface water" means any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as giardia lamblia; or, for systems serving ten thousand or more persons,

cryptosporidium. Ground water under the direct influence of surface water also means significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions.

34. "Haloacetic acids five" or "HAA5" means the sum of the concentrations in milligrams per liter of the haloacetic acid compounds monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid, rounded to two significant figures after addition.
- 26- 35. "Halogen" means one of the chemical elements chlorine, bromine, or iodine.
- 27- 36. "Initial compliance period" means the first full compliance period that begins January 1, 1993, during which public water systems must monitor for inorganic and organic chemicals excluding lead, copper, trihalomethanes, and unregulated contaminants.
- 28- 37. "Large water system", for the purpose of title 40, Code of Federal Regulations, part 141, subpart I only, means a water system that serves more than fifty thousand persons.
- 29- 38. "Lead service line" means a service line made of lead that connects the water main to the building inlet and any pigtail, gooseneck, or other fitting that is connected to a lead line.
- 30- 39. "Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called legionnaires disease.
- 31- 40. "Maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.
41. "Maximum residual disinfectant level" or "MRDL" means a level of a disinfectant added for water treatment that must not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects.
- 32- 42. "Maximum total trihalomethane potential" means the maximum concentration of total trihalomethanes produced in a given water containing a disinfectant residual after seven days at a temperature of twenty-five degrees Celsius [77 degrees Fahrenheit] or above.
- 33- 43. "Medium-size water system", for the purpose of title 40, Code of Federal Regulations, part 141, subpart I only, means a water system that serves three thousand one to fifty thousand persons.

- 34- 44. "Near the first service connection" means at one of the twenty percent of all service connections in the entire system that are nearest the water supply treatment facility as measured by water transport time within the distribution system.
- 35- 45. "Noncommunity water system" means a public water system that is not a community water system that primarily provides service to other than year-round residents. A noncommunity water system is either a "nontransient noncommunity" or "transient noncommunity" water system.
- 36- 46. "Nontransient noncommunity water system" means a noncommunity water system that regularly serves at least twenty-five of the same persons over six months per year.
- 37- 47. "Optimal corrosion-control treatment", for the purpose of title 40, Code of Federal Regulations, part 141, subpart I only, means the corrosion-control treatment that minimizes the lead and copper concentrations at users' taps while ensuring that the treatment does not cause the water system to violate any national primary drinking water regulations.
- 38- 48. "Person" means an individual, corporation, company, association, partnership, municipality, or any other entity.
- 39- 49. "Point of disinfectant application" means the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water runoff.
- 40- 50. "Point-of-entry treatment device" means a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in the drinking water distributed throughout the house or building.
- 41- 51. "Point-of-use treatment device" means a treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one tap.
- 42- 52. "Potable water" means water free from impurities in amounts sufficient to cause disease or harmful physiological effects, with the physical, chemical, biological, or radiological quality conforming to applicable maximum permissible contaminant levels.
- 43- 53. "Product" means any chemical or substance added to a public water system, any materials used in the manufacture of public water system components or appurtenances, or any pipe, storage tank, valve, fixture, or other materials that come in contact with water intended for use in a public water system.
- 44- 54. "Public water system" means a system for the provision to the public of piped water for human consumption through pipes or other constructed conveyances, if such system has at least

fifteen service connections or regularly serves at least twenty-five individuals sixty or more days out of the year. A public water system includes any collection, treatment, storage, and distribution facilities under control of the operator of the system and used primarily in connection with the system; and, any collection or pretreatment storage facilities that are not under control of the operator which are used primarily in connection with the system. A public water system does not include systems that provide water through pipes or constructed conveyances other than pipes that qualify for the exclusions set forth under section 1401(4)(B)(i) and (ii) of the Federal Safe Drinking Water Act [42 U.S.C. 300f(4)(B)(i) and (ii)]. A public water system is either a "community" or a "noncommunity" water system.

- 45- 55. "Repeat compliance period" means any subsequent compliance period after the initial compliance period during which public water systems must monitor for inorganic and organic chemicals excluding lead, copper, trihalomethanes, and unregulated contaminants.
- 46- 56. "Residual disinfectant concentration" (C in CT calculations) means the concentration of disinfectant measured in milligrams per liter in a representative sample of water.
- 47- 57. "Sampling schedule" means the frequency required for submitting drinking water samples to a certified laboratory for examination.
- 48- 58. "Sanitary survey" means an onsite review of the water source, facilities, equipment, operation, and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation, and maintenance for producing and distributing safe drinking water.
- 49- 59. "Sedimentation" means a process for removal of solids before filtration by gravity or separation.
- 50- 60. "Service line sample" means a one-liter sample of water, collected in accordance with title 40, Code of Federal Regulations, part 141, section 141.86(b)(3), that has been standing for at least six hours in a service line.
- 51- 61. "Single-family structure", for the purpose of title 40, Code of Federal Regulations, part 141, subpart I only, means a building constructed as a single-family residence that is currently used either as a residence or a place of business.
- 52- 62. "Slow sand filtration" means a process involving passage of raw water through a bed of sand at low velocity resulting in substantial particulate removal by physical and biological mechanisms.

- 53- 63. "Small water system", for the purpose of title 40, Code of Federal Regulations, part 141, subpart I only, means a water system that serves three thousand three hundred or fewer persons.
64. "Specific ultraviolet absorption" or "SUVA" means specific ultraviolet absorption at two hundred fifty-four nanometers, an indicator of the humic content of water. It is a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wavelength of two hundred fifty-four nanometers in meters to the minus one by its concentration of dissolved organic carbon, the fraction of the total organic carbon that passes through a zero point four five micrometer pore diameter filter, in milligrams per liter.
65. "Subpart H systems" means public water systems using surface water or ground water under the direct influence of surface water as a source that are subject to the requirements of title 40, Code of Federal Regulations, part 141, subpart H.
- 54- 66. "Supplier of water" means any person who owns or operates a public water system.
- 55- 67. "Surface water" means all water which is open to the atmosphere and subject to surface runoff.
- 56- 68. "System with a single service connection" means a system which supplies drinking water to consumers with a single service line.
- 57- 69. "Too numerous to count" means that the total number of bacterial colonies exceeds two hundred on a forty-seven millimeter membrane filter used for coliform detection.
70. "Total organic carbon" means total organic carbon in milligrams per liter measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two significant figures.
- 58- 71. "Total trihalomethanes" means the sum of the concentration in milligrams per liter of the trihalomethane compounds (trichloromethane [chloroform], dibromochloromethane, bromodichloromethane, and tribromomethane [bromoform]), rounded to two significant figures.
- 59- 72. "Transient noncommunity water system" means a noncommunity water system that primarily provides service to transients.
- 60- 73. "Trihalomethane" means one of the family of organic compounds, named as derivatives of methane, wherein three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.

74. "Uncovered finished water storage facility" means a tank, reservoir, or other facility used to store water that will undergo no further treatment except residual disinfection and is open to the atmosphere.

61: 75. "Virus" means a virus of fecal origin which is infectious to humans by waterborne transmission.

62: 76. "Waterborne disease outbreak" means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment, as determined by the appropriate local or state agency.

63: 77. "Water system" means all sources of water and their surroundings and includes all structures, conducts, and appurtenances by means of which the water is collected, treated, stored, or delivered.

History: Amended effective December 1, 1982; July 1, 1988; December 1, 1990; August 1, 1991; February 1, 1993; August 1, 1994; August 1, 2000.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC 61-28.1-02, 61-28.1-03

33-17-01-05. Approved laboratories and analytical procedures. All samples shall be examined by the department or by any other laboratory certified by the department for drinking water purposes, except that measurements for turbidity and free chlorine may be performed by any person deemed qualified by the department. Turbidity measurements shall be made by a nephelometric method approved by the department. All methods of sample preservation and analyses shall be as prescribed by the department and set forth under title 40, Code of Federal Regulations, part 141.

History: Amended effective December 1, 1982; July 1, 1988; December 1, 1990; February 1, 1993; August 1, 2000.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC 61-28.1-03, 61-28.1-07

33-17-01-06. Maximum contaminant levels, action levels, and treatment technique requirements, and maximum residual disinfectant levels.

1. **Inorganic chemicals.** The maximum contaminant levels, action levels, and treatment technique requirements for inorganic chemical contaminants excluding disinfection byproducts are as follows:

CONTAMINANT	MAXIMUM CONTAMINANT LEVEL MILLIGRAM(S) PER LITER	ACTION LEVEL MILLIGRAM(S) PER LITER	TREATMENT TECHNIQUES REQUIREMENTS
Antimony	0.006		
Arsenic	0.05		
Asbestos	7 million fibers per liter (longer than ten micrometers)		
Barium	2		
Beryllium	0.004		
Cadmium	0.005		
Chromium	0.1		
Copper		The 90th percentile level must be less than or equal to 1.3	Source water and corrosion control treatment
Cyanide (as free cyanide)	0.2		
Fluoride	4.0		
Lead		The 90th percentile level must be less than or equal to 0.015	Source water and corrosion control treatment, public education, and lead service line replacement
Mercury	0.002		
Nickel	0.1		
Nitrate (as N)	10		
Nitrite (as N)	1		
Selenium	0.05		
Thallium	0.002		
Total Nitrate and Nitrite (as N)	10		

At the discretion of the department, nitrate levels not to exceed twenty milligrams per liter may be allowed in a noncommunity water system if the supplier of water demonstrates to the satisfaction of the department that:

- a. Such water will not be available to children under six months of age;
 - b. There will be continuous posting of the fact that nitrate levels exceed ten milligrams per liter and the potential health effect of exposure;
 - c. Local and state public health authorities will be notified annually of nitrate levels that exceed ten milligrams per liter; and
 - d. No adverse health effects shall result.
2. **Organic chemicals.** The maximum contaminant levels and treatment technique requirements for organic chemical contaminants excluding disinfection byproducts and disinfection byproduct precursors are as follows:

CONTAMINANT	MAXIMUM CONTAMINANT LEVEL MILLIGRAM(S) PER LITER	TREATMENT TECHNIQUE REQUIREMENTS
Nonvolatile Synthetic Organic Chemicals:		
Acrylamide		The combination (or product) of dose and monomer level may not exceed

0.05 percent dosed
at 1 part per mil-
lion (or equivalent)

Alachlor	0.002
Atrazine	0.003
Benzo (a) pyrene	0.0002
Carbofuran	0.04
Chlordane	0.002
Dalapon	0.2
Dibromochloropropane (DBCP)	0.0002
Di (2-ethylhexyl) adipate	0.4
Di (2-ethylhexyl) phthalate	0.006
Dinoseb	0.007
Diquat	0.02
Endothall	0.1
Endrin	0.002
Epichlorohydrin	

The combination (or
product) of dose
and monomer level
may not exceed
0.01 percent dosed
at 20 parts per mil-
lion (or equivalent)

Ethylene dibromide (EDB)	0.00005
Glyphosate	0.7
Heptachlor	0.0004
Heptachlor epoxide	0.0002
Hexachlorobenzene	0.001
Hexachlorocyclopentadiene	0.05
Lindane	0.0002
Methoxychlor	0.04
Oxamyl (Vydate)	0.2
Polychlorinated biphenyls (PCBs)	0.0005
Pentachlorophenol	0.001
Picloram	0.5
Simazine	0.004
Toxaphene	0.003
2,3,7,8-TCDD (Dioxin)	0.00000003
2,4-D	0.07
2,4,5-TP Silvex	0.05

Total-Trihalomethanes---The-sum
of-the-concentrations-of:

Bromodichloromethane
Dibromochloromethane
Tribromomethane-(Bromoform)-and
Trichloromethane-(Chloroform)-----0.10

Volatile Synthetic Organic Chemicals:

Benzene 0.005

Carbon tetrachloride	0.005
p-Dichlorobenzene	0.075
o-Dichlorobenzene	0.6
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
cis-1,2-Dichloroethylene	0.07
trans-1,2-Dichloroethylene	0.1
Dichloromethane	0.005
1,2-Dichloropropane	0.005
Ethylbenzene	0.7
Monochlorobenzene	0.1
Styrene	0.1
Tetrachloroethylene	0.005
Toluene	1
1,2,4-Trichlorobenzene	0.2 <u>0.07</u>
1,1,1-Trichloroethane	0.2
1,1,2-Trichloroethane	0.005
Trichloroethylene	0.005
Vinyl chloride	0.002
Xylenes (total)	10

3. Turbidity:

a. General: All public water systems that utilize surface water sources shall provide filtration and disinfection treatment. Public water systems that utilize ground water sources deemed by the department to be under the direct influence of surface water shall provide disinfection treatment and may be required to provide filtration treatment as set forth under title 40, Code of Federal Regulations, part 141, subpart H.

b. Interim requirements: The following maximum contaminant levels for turbidity in drinking water, measured at a representative entry point to the distribution system, apply to public water systems that utilize surface water sources and provide filtration treatment until June 29, 1993, and to public water systems that utilize surface water sources but do not provide filtration treatment that the department has determined in writing must install filtration until June 29, 1993, or until filtration is installed, whichever is later:

(1) One turbidity unit as determined by a monthly average except that five or fewer turbidity units may be allowed if the system can demonstrate to the department that the higher turbidity does not:

(a) Interfere with disinfection;

(b) Prevent maintenance of an effective disinfectant agent throughout the distribution system; or

(e) -- Interfere with microbiological determinations.

(2) -- Five -- turbidity -- units -- based -- on -- an average -- for -- two consecutive days.

e. -- Final requirements: -- Beginning June 29, 1993, public water systems that utilize surface water sources or ground water sources -- deemed -- by -- the department -- to -- be -- under -- the -- direct influence of surface water shall comply with the treatment technique -- requirements for turbidity and disinfection set forth -- under -- title 40, -- Code -- of -- Federal -- Regulations, part 141, subpart H.

Filtration and disinfection treatment.

a. General requirements. All subpart H systems that utilize surface water sources shall provide filtration and disinfection treatment. All subpart H systems that utilize ground water sources deemed by the department to be under the direct influence of surface water shall provide disinfection treatment and shall either comply with filtration avoidance criteria or provide filtration treatment.

b. Treatment technique requirements. The department hereby identifies filtration and disinfection as treatment techniques to protect against the potential adverse health effects of exposure to giardia lamblia, cryptosporidium, legionella, viruses, heterotrophic plate count bacteria, and turbidity. The treatment techniques apply only to subpart H systems. Subpart H systems that serve ten thousand or more persons shall be deemed to be in compliance with the treatment techniques if the requirements set forth under title 40, Code of Federal Regulations, part 141, subparts H and P, are met. Subpart H systems that serve fewer than ten thousand persons shall be deemed to be in compliance with the treatment techniques if the requirements set forth under title 40, Code of Federal Regulations, part 141, subpart H, are met.

4. **Radioactivity.** The maximum contaminant levels for radioactivity are as follows:

CONTAMINANT	LEVEL PICOCURIES PER LITER
Combined radium-226 and radium-228	5
Gross alpha particle activity, including radium-226, but excluding radon and uranium	15

5. **Microbiological.** The maximum contaminant levels for coliform bacteria are as follows:

a. Monthly maximum contaminant level violations.

- (1) No more than one sample per month may be total coliform-positive for systems collecting less than forty samples per month.
- (2) No more than five point zero percent of the monthly samples may be total coliform-positive for systems collecting forty or more samples per month.

All routine and repeat total coliform samples must be used to determine compliance. Special purpose samples, such as those taken to determine whether disinfection practices following pipe placement, replacement, or repair are sufficient, and samples invalidated by the department, may not be used to determine compliance.

b. Acute maximum contaminant level violations.

- (1) No repeat sample may be fecal coliform or E. coli-positive.
- (2) No repeat sample may be total coliform-positive following a fecal coliform or E. coli-positive routine sample.

c. Compliance must be determined each month that a system is required to monitor. The department hereby identifies the following as the best technology, treatment techniques, or other means generally available for achieving compliance with the maximum contaminant levels for total coliform bacteria: protection of wells from contamination by appropriate placement and construction; maintenance of a disinfection residual throughout the distribution system; proper maintenance of the distribution system including appropriate pipe replacement and repair procedures, cross-connection control programs, main flushing programs, proper operation and maintenance of storage tanks and reservoirs, and continual maintenance of a positive water pressure in all parts of the distribution system; filtration and disinfection or disinfection of surface water and disinfection of ground water using strong oxidants such as chlorine, chlorine dioxide, or ozone; and the development and implementation of a department-approved wellhead protection program.

6. Disinfectants. The maximum residual disinfectant levels for disinfectants are as follows:

<u>DISINFECTANT</u>	<u>MAXIMUM RESIDUAL DISINFECTANT LEVEL IN MILLIGRAMS PER LITER</u>
Chlorine	4.0 as free chlorine
Chloramines	4.0 as combined chlorine
Chlorine dioxide	0.8 as chlorine dioxide

The department identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum residual disinfectant levels: control of treatment processes to reduce disinfectant demand and control of disinfection treatment processes to reduce disinfectant levels.

7. Disinfection byproducts.

- a. Interim maximum contaminant level for total trihalomethanes. The interim maximum contaminant level for total trihalomethanes is zero point one zero milligrams per liter.
- b. Final maximum contaminant level for total trihalomethanes and maximum contaminant levels for other disinfection byproducts. The final maximum contaminant level for total trihalomethanes and the maximum contaminant levels for haloacetic acids five, bromate, and chlorite are as follows:

<u>DISINFECTION BYPRODUCT</u>	<u>MAXIMUM CONTAMINANT LEVEL IN MILLIGRAMS PER LITER</u>
Total trihalomethanes	0.080
Haloacetic acids five	0.060
Bromate	0.010
Chlorite	1.0

Systems installing granular activated carbon or membrane technology for compliance purposes may apply to the department for an extension of up to twenty-four months, but not beyond January 1, 2004. In granting an extension, the department shall establish a compliance schedule and may require that the system take interim treatment measures. Failure to meet a schedule or interim treatment requirements established by the department constitutes a violation as set forth under title 40, Code of Federal Regulations, part 141, subpart G.

The department identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the final maximum contaminant level for total trihalomethanes and the maximum contaminant levels for haloacetic acids five,

bromate, and chlorite: for total trihalomethanes and haloacetic acids five, enhanced coagulation, enhanced softening, or granular activated carbon ten with chlorine as the primary and residual disinfectant; for bromate, control of the ozone treatment process to reduce production of bromate; and for chlorite, control of treatment processes to reduce disinfectant demand and control of disinfection treatment processes to reduce disinfectant levels.

8. Disinfection byproduct precursors. The department hereby identifies enhanced coagulation and enhanced softening as treatment techniques to control the level of disinfection byproduct precursors in drinking water treatment and distribution systems. The treatment techniques apply only to subpart H community and nontransient noncommunity water systems that use conventional treatment. Such systems shall be deemed to be in compliance with the treatment techniques if the requirements set forth under title 40, Code of Federal Regulations, part 141, subpart L, are met.

9. Confirmation sampling. The department may require confirmation samples and average confirmation sample results with initial sample results to determine compliance. At the discretion of the department, sample results due to obvious monitoring errors may be deleted prior to determining compliance.

History: Amended effective December 1, 1982; July 1, 1988; December 1, 1990; February 1, 1993; August 1, 1994; August 1, 2000.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC 61-28.1-03

33-17-01-07. Inorganic chemical sampling and monitoring requirements.

1. Sampling frequency for community and nontransient noncommunity water systems.
 - a. Inorganics excluding lead and copper. Community and nontransient noncommunity water systems shall conduct monitoring to determine compliance with the maximum contaminant levels for the inorganic chemicals, excluding lead and copper, as set forth under title 40, Code of Federal Regulations, ~~section-141-23~~ part 141, subpart C.
 - b. Lead and copper. Community and nontransient noncommunity water systems shall comply with the monitoring and treatment technique requirements for lead and copper set forth under title 40, Code of Federal Regulations, part 141, subpart I.

- c. Unregulated contaminants. Community and nontransient noncommunity water systems shall monitor for sulfate as set forth under title 40, Code of Federal Regulations, ~~section-141-40~~ part 141, subpart E.
 - d. Monitoring waivers. With the exception of arsenic, copper, lead, nitrate, and nitrite, the department may grant community and nontransient noncommunity water systems waivers from the monitoring requirements for the inorganic chemicals as set forth under title 40, Code of Federal Regulations, part 141, ~~sections-141-23-and--141-40~~ subparts C and E. The department may issue monitoring waivers only if the conditions set forth under title 40, Code of Federal Regulations, part 141 142, ~~section 142-16~~ (e) subpart B, are fully met.
2. Sampling frequency for transient noncommunity water systems. Transient noncommunity water systems shall conduct monitoring to determine compliance with the maximum contaminant levels for nitrate and nitrite as set forth under title 40, Code of Federal Regulations, ~~section-141-23~~ part 141, subpart C.

History: Amended effective July 1, 1988; February 1, 1993; August 1, 1994; August 1, 2000.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC 61-28.1-03

33-17-01-08. Organic chemical sampling and monitoring requirements.

1. Volatile and nonvolatile synthetic organic chemicals.

- a. Coverage. Community and nontransient noncommunity water systems shall conduct monitoring to determine compliance with the maximum contaminant levels for the volatile and nonvolatile synthetic organic chemicals.
- b. Sampling frequency. The number and frequency of samples shall be as prescribed by the department and set forth under title 40, Code of Federal Regulations, part 141, ~~section-141-24~~ subpart C.
- c. Compliance. Compliance for each point that is sampled more frequently than annually must be determined based on a running annual average. Compliance for each point that is sampled on an annual or less frequent basis must be determined based on the initial sample result, or the average of the initial and confirmation sample results.

2. Total-trihalomethanes:

a. Coverage: Community water systems which serve a population of ten thousand or more individuals and which add a disinfectant to the water in any part of the drinking water treatment process shall collect samples for the purpose of analysis for total trihalomethanes.

b. Sampling frequency: The minimum number of samples required to be taken by the system shall be based on the number of treatment plants used by the system. Multiple wells drawing raw water from a single aquifer may, with the department's approval, be considered one treatment plant.

All samples taken within an established frequency shall be collected within a twenty-four-hour period.

(1) Routine sampling: Analyses for total trihalomethanes shall be performed at quarterly intervals on at least four water samples for each treatment plant used by the system. At least twenty-five percent of the samples shall be taken at locations within the distribution system reflecting the maximum residence time of the water in the system. The remaining seventy-five percent shall be taken at representative locations in the distribution system, taking into account number of persons served, different sources of water, and different treatment methods employed.

(2) Reduced sampling frequency:

(a) Systems utilizing surface water or a combination of surface and ground water: The sampling frequency may be reduced to a minimum of one sample analyzed per quarter taken at a point in the distribution system reflecting the maximum residence time of the water in the system.

The system's sampling frequency may only be reduced upon written request by the system and upon a determination by the department that data from at least one year of sampling at a frequency of four samples collected per calendar quarter per water treatment plant used by the system and local conditions demonstrate that total trihalomethane concentrations will be consistently below the maximum contaminant level.

If at any time during which the reduced sampling frequency is in effect, the result from any analysis exceeds the maximum contaminant level and such results are confirmed by at least one check sample taken promptly after such results

are received, or if the system makes any significant change to its source of water or treatment program, the system shall immediately resume sampling on a routine basis of four samples per quarter per treatment plant used by the system. Such increased sampling shall continue for at least one year before the frequency may be reduced again.

(b) Systems utilizing only ground water. The sampling frequency may be reduced to a minimum of one sample analyzed per year per water treatment plant taken at a point in the distribution system reflecting the maximum residence time of the water in the system.

The system's sampling frequency may only be reduced upon written request by the system and upon a determination by the department that the system has a maximum total trihalomethane potential of less than the maximum contaminant level and local conditions demonstrate that the system is not likely to approach or exceed the maximum contaminant level.

If at any time during which the reduced sampling frequency is in effect, the result from any analysis for maximum total trihalomethane potential is equal to or exceeds the maximum contaminant level and such results are confirmed by at least one check sample, the system shall immediately resume sampling on a routine basis of four samples per quarter per treatment plant used by the system. Such increased sampling shall continue for at least one year before the frequency may be reduced again.

In the event of any significant change to the system's source of water or treatment program, the system shall immediately analyze an additional sample for maximum total trihalomethane potential taken at a point in the distribution system reflecting maximum residence time of the water in the system for the purpose of determining whether the system must begin sampling on a routine basis of four samples per quarter per treatment plant used by the system.

(3) Increased sampling frequency. At the option of the department, sampling frequencies may be increased above the minimum in those cases where it is necessary to detect variations of total trihalomethane levels within the distribution system.

e.--Compliance.--Compliance-with-the-maximum-contaminant-level shall-be-determined-based-on-a-running-annual--average--of quarterly-analyses.

If--the--average--of--analyses--covering--any-twelve-month period-exceeds-the--maximum--contaminant--level,--sampling shall--be--at-a-frequency-designated-by-the-department-and shall-continue-until-a-monitoring-schedule-as-a--condition to-a-variance-or-enforcement-action-becomes-effective.

If--the--average--of--analyses--covering--any-twelve-month period-exceeds-the-maximum-contaminant-level,--or--if--the system--fails--to--monitor,--the--system--shall-notify-the department-and-give-notice-to-the-public.

d.--Reporting:----All---analyses--shall--be--reported--to--the department-within-thirty-days-of-the-system's--receipt--of such-results.

e.--Modification--of--treatment-methods-for-reduction-of-total trihalomethanes.--Before-a-system--makes--any--significant modification--to--its--existing--treatment-process-for-the purpose-of-achieving-compliance--with--the--trihalomethane regulations,--the-system-must-submit-and-obtain-department approval-of-a-detailed-plan--setting--forth--its--proposed modification--and--those-safeguards-that-it-will-implement to-ensure-that-the-water-will-not-be-adversely-affected-by such--modification.---Each--system--shall--comply-with-the provisions-set-forth-in-the-department-approved-plan.---At a--minimum,--the-department-approved-plan-shall-require-the system-modifying-its-disinfection-practice-to:

(1)--Evaluate--the--water--system-for-sanitary-defects-and evaluate-the-source-water-for-biological-quality;

(2)--Evaluate---its---existing---treatment--practices--and consider-improvements-that-will-minimize-disinfectant demand-and-optimize-finished-water-quality-throughout the-distribution-system;

(3)--Provide--baseline--water--quality--survey-data-of-the distribution-system-as-the-department-may-require;

(4)--Conduct--additional--monitoring--to--assure-continued maintenance-of-optimal--microbiological--quality--in finished-water;and

(5)--Demonstrate---an---active---disinfectant---residual throughout--the--distribution--system--at--all--times during-and-after-the-modification.

3. Unregulated contaminants.

- a. Coverage. Community and nontransient noncommunity water systems shall monitor for the unregulated organic contaminants.
- b. Monitoring requirements. Systems shall monitor for the following unregulated organic contaminants as set forth under title 40, Code of Federal Regulations, part 141, section 141.40(n): subpart E.

Aldicarb

Aldicarb-sulfoxide

Aldicarb-sulfone

Aldrin

Butachlor

Carbaryl

Dicamba

Dieldrin

3-Hydroxycarbofuran

Methomyl

Metolachlor

Metribuzin

Propachlor

Systems---shall--monitor--for--the--following--unregulated organic contaminants as set forth under title 40, Code of Federal Regulations, part 141, sections 141.40(b) through 141.40-(h):

Chloroform

Bromodichloromethane

Chlorodibromomethane

Bromoform

m-Dichlorobenzene

1,1,-Dichloropropene

1,1-Dichloroethane

1,1,2,2-Tetrachloroethane

1,3-Dichloropropane

Chloromethane

Bromomethane

1,2,3-Trichloropropane

1,1,1,2-Tetrachloroethane

Chloroethane

2,2-Dichloropropane

o-Chlorotoluene

p-Chlorotoluene

Dibromomethane

Bromobenzene

1,3-Dichloropropene

Systems---shall--monitor--for--the--following--unregulated
organic-contaminants-at-the-discretion-of-the--department:

1,2,4-Trimethylbenzene

1,2,3-Trichlorobenzene

n-Propylbenzene

n-Butylbenzene

Naphthalene

Hexachlorobutadiene

1,3,5-Trimethylbenzene

p-Isopropyltoluene

Isopropylbenzene

Tert-butylbenzene

Sec-butylbenzene

Fluorotrichloromethane

Dichlorodifluoromethane

Bromochloromethane

Instead of performing the monitoring for the unregulated organic contaminants, a system serving fewer than one hundred-fifty service connections may send a letter to the department stating that the system is available for sampling. This letter must be sent to the department by January 1, 1994.

4. 3. Monitoring waivers. With the exception of acrylamide, and epichlorohydrin, and total trihalomethanes, the department may grant community and nontransient noncommunity water systems waivers from the monitoring requirements for the organic chemicals as set forth under title 40, Code of Federal Regulations, part 141, sections 141.24 and 141.40 subpart C. The department may issue waivers only if the conditions set forth under title 40, Code of Federal Regulations, part 141.142, section 142.16(e) subpart B, are fully met.

History: Amended effective December 1, 1982; July 1, 1988; December 1, 1990; August 1, 1994; August 1, 2000.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC 61-28.1-03

33-17-01-08.1. Disinfectant, disinfection byproduct, and disinfection byproduct precursor sampling and monitoring requirements.

1. Disinfectants.

a. Coverage. The maximum residual disinfectant levels for disinfectants apply to community and nontransient noncommunity water systems that add a chemical disinfectant to the drinking water in any part of the water treatment process or that provide water that contains a chemical disinfectant. The maximum residual disinfectant level for chlorine dioxide also applies to transient noncommunity water systems that use chlorine dioxide as a disinfectant or oxidant.

b. Compliance dates. Subpart H community and nontransient noncommunity water systems that serve ten thousand or more persons shall comply with the maximum residual disinfectant levels beginning January 1, 2002. All other community and nontransient noncommunity water systems that add a chemical disinfectant to the drinking water in any part of the water treatment process or that provide water that contains a chemical disinfectant shall comply with the maximum residual disinfectant levels beginning January 1, 2004.

Subpart H transient noncommunity water systems that serve ten thousand or more persons and use chlorine dioxide as a disinfectant or oxidant shall comply with the maximum residual disinfectant level for chlorine dioxide beginning January 1, 2002. All other transient noncommunity water systems that use chlorine dioxide as a disinfectant or oxidant shall comply with the maximum residual disinfectant level for chlorine dioxide beginning January 1, 2004.

c. Sampling and monitoring requirements. Systems shall conduct monitoring to determine compliance with the maximum residual disinfectant levels as set forth under title 40, Code of Federal Regulations, part 141, subpart L.

d. Control of disinfectant residuals. Except for chlorine dioxide, systems may increase residual disinfectant levels in the distribution system to a level and for a time necessary to protect public health and address specific microbiological contamination problems caused by circumstances such as distribution line breaks, storm runoff events, source water contamination events, or cross-connection events.

2. Disinfection byproducts.

a. Interim maximum contaminant level for total trihalomethanes. Subpart H community water systems that serve ten thousand or more persons shall comply with the interim maximum contaminant level for total trihalomethanes until December 31, 2001. All other community water systems that serve ten thousand or more persons and add a chemical disinfectant to the drinking water in any part of the water treatment process shall comply with the interim maximum contaminant level for total trihalomethanes until December 31, 2003. The interim maximum contaminant level for total trihalomethanes shall no longer be applicable after December 31, 2003.

Systems shall conduct monitoring to determine compliance with the interim maximum contaminant level for total trihalomethanes as set forth under title 40, Code of Federal Regulations, subpart C.

Before a system makes any significant modifications to its existing treatment process for the purpose of achieving compliance with the interim maximum contaminant level for total trihalomethanes, the system shall submit and obtain department approval of a detailed plan setting forth its proposed modifications and those safeguards that it will implement to ensure that the bacteriological quality of

the drinking water served by the system will not be adversely affected by the modifications. At a minimum, the department-approved plan shall require the system modifying its disinfection practice to:

- (1) Evaluate the water system for sanitary defects and evaluate the source water for biological quality;
- (2) Evaluate its existing treatment practices and consider improvements that will minimize disinfectant demand and optimize finished quality throughout the distribution system;
- (3) Provide baseline water quality survey data of the distribution system as the department may require;
- (4) Conduct additional monitoring to assure continued maintenance of optimal biological quality in the finished water; and
- (5) Demonstrate an active disinfectant residual throughout the distribution system at all times during and after the modifications.

b. Final maximum contaminant level for total trihalomethanes and maximum contaminant levels for other disinfection byproducts. Subpart H community and nontransient noncommunity water systems that serve ten thousand or more persons shall comply with the final maximum contaminant level for total trihalomethanes and the maximum contaminant levels for haloacetic acids five, bromate, and chlorite beginning January 1, 2002. All other community and nontransient noncommunity water systems that add a chemical disinfectant to the drinking water in any part of the water treatment process or that provide water that contains a chemical disinfectant shall comply with the final maximum contaminant level for total trihalomethanes and the maximum contaminant levels for haloacetic acids five, bromate, and chlorite beginning January 1, 2004.

Systems shall conduct monitoring to determine compliance with the final maximum contaminant level for total trihalomethanes and the maximum contaminant levels for haloacetic acids five, bromate, and chlorite as set forth under title 40, Code of Federal Regulations, subpart L.

c. Disinfection byproduct precursors. Subpart H community and nontransient noncommunity water systems that use conventional treatment and serve ten thousand or more persons shall comply with the treatment techniques for control of disinfection byproduct precursors beginning January 1, 2002. Subpart H community and nontransient noncommunity water systems that use conventional treatment

and serve fewer than ten thousand persons shall comply with the treatment techniques for control of disinfection byproduct precursors beginning January 1, 2004.

Systems shall conduct monitoring to determine compliance with the treatment techniques for control of disinfection byproducts as set forth under title 40, Code of Federal Regulations, subpart L.

History: Effective August 1, 2000.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC 61-28.1-03

33-17-01-09. Turbidity--and-disinfectant-residual Filtration and disinfection treatment sampling and monitoring requirements.

1. Interim--requirements.---The-following-sampling-and-monitoring requirements-for-turbidity-in-drinking-water-apply--to--public water--systems--that-utilize-surface-water-sources-and-provide filtration-treatment-until-June-29,-1993,-and-to-public--water systems--that-utilize-surface-water-sources-but-do-not-provide filtration-treatment-that-the--department--has--determined--in writing--must-install-filtration-until-June-29,-1993,-or-until filtration-is-installed,-whichever-is-later:

a. Public--water--systems--that-utilize-surface-water-sources shall-sample-at-a-representative-entry-point-to-the--water distribution--system,-at-least-once-a-day,-for-the-purpose of-making-turbidity-measurements.---The--measurements--must be--made--by--a--nephelometric--method--approved--by--the department.---The-department-may,-in--writing,-reduce--the sampling--frequency-for-noncommunity-systems-that-practice disinfection-and-maintain-an--active--distribution--system disinfectant--residual---if---it--determines---that---no unreasonable-risk-to-health-will-result:

b. Public--water--systems--that-utilize-surface-water-sources shall-confirm-by-resampling-any-turbidity-measurement-that exceeds---the---maximum---contaminant--level--as--soon--as practicable-and-preferably-within-one-hour.---Systems-shall notify--the--department--within--forty-eight--hours-if-the results-of-the--confirmation--sample--exceed--the--maximum contaminant-level.---The-results-of-the-confirmation-sample must-be-used-for-the-purpose-of--calculating--the--monthly average---for---turbidity.---Systems---shall--notify--the department-and-give-notice-to-the-public--if--the--monthly average--of--the--daily--analyses--or--the--average-of-two analyses-taken-on-consecutive--days--exceed--the--maximum contaminant-level:

2. Final--requirements.---Beginning--June-29,-1993,-public-water systems-that-utilize-surface-water--sources--or--ground--water

sources--deemed--by--the--department--to--be--under--the--direct influence-of-surface-water-shall-comply-with-the-turbidity-and disinfectant-residual-sampling-and-monitoring-requirements-set forth-under-title-40,-Code-of-Federal--Regulations,-part-141, subpart-H-

Coverage. All subpart H systems shall conduct monitoring to determine compliance with the treatment technique requirements for filtration and disinfection.

2. Systems utilizing surface water sources. All subpart H systems that utilize surface water sources shall comply with the turbidity and residual disinfectant concentration sampling and monitoring requirements set forth under title 40, Code of Federal Regulations, part 141, subpart H. Those systems serving ten thousand or more persons shall also comply with the disinfection profiling and benchmarking requirements set forth under title 40, Code of Federal Regulations, part 141, subpart P. Beginning January 1, 2002, those systems that serve ten thousand or more persons and provide conventional filtration treatment or direct filtration shall also comply with the individual filter sampling and monitoring requirements set forth under title 40, Code of Federal Regulations, part 141, subpart P.
3. Systems utilizing ground water sources under the direct influence of surface water. The following sampling and monitoring requirements apply to subpart H systems that utilize ground water sources deemed by the department to be under the direct influence of surface water:
 - a. All systems that provide filtration treatment shall comply with the turbidity and residual disinfectant concentration sampling and monitoring requirements set forth under title 40, Code of Federal Regulations, part 141, subpart H. Those systems serving ten thousand or more persons shall also comply with the disinfection profiling and benchmarking requirements set forth under title 40, Code of Federal Regulations, part 141, subpart P. Beginning January 1, 2002, those systems that serve ten thousand or more persons and provide conventional filtration treatment or direct filtration shall also comply with the individual filter sampling and monitoring requirements set forth under title 40, Code of Federal Regulations, part 141, subpart P.
 - b. All systems that do not provide filtration treatment shall comply with the filtration avoidance criteria and applicable disinfection sampling and monitoring requirements set forth under title 40, Code of Federal Regulations, part 141, subpart H. Those systems serving ten thousand or more persons shall also comply with the disinfection profiling and benchmarking requirements and,

beginning January 1, 2002, the filtration avoidance criteria set forth under title 40, Code of Federal Regulations, part 141, subpart P.

History: Amended effective December 1, 1982; July 1, 1988; February 1, 1993; August 1, 2000.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC 61-28.1-03

33-17-01-13. Reporting-and-public Public notification.

1. Reporting--requirements;---Except--where--a--shorter-reporting period-is-specified;-the-system-shall-report-to-the-department the--result--of--any--test;-measurement;-or-analysis-required within-the-first-ten-days-following-the--month--in--which--the results--are--received-or-the-first-ten-days-following-the-end of--the--required--monitoring--period--as--stipulated--by--the department;-whichever-of-these-is-shorter:

The--system--shall--notify--the--department-within-forty-eight hours-of-the-failure-to-comply-with-any-primary-drinking-water regulations---including--failure--to--comply--with--monitoring requirements;-except-that-failure-to-comply-with--the--maximum contaminant---levels--for--total--coliform--bacteria--must--be reported-to-the-department-no-later-than-the-end-of--the--next business-day-after-the-system-learns-of-the-violation:

Systems--that--utilize--surface--water-sources-or-ground-water sources-deemed-by--the--department--to--be--under--the--direct influence--of--surface--water-shall-comply-with-the-applicable reporting-requirements--set--forth--under--title-40;-Code--of Federal---Regulations;-part-141;-subpart-H;-section-141.75. Community-and-nontransient-noncommunity--water--systems--shall comply-with-the-applicable-reporting-requirements-for-lead-and copper-set-forth-under-title-40;-Code-of-Federal--Regulations; part-141;-subpart-I;-section-141.90.

The-system-is-not-required-to-report-analytical-results-to-the department--in--cases--where--the--department--performed--the analysis:

The-system-shall;-within-ten-days-of-completion-of-each-public notification---required;---submit---to---the---department---a representative--copy--of--each--type--of--notice--distributed; published;-posted;-or-made-available-to-the-persons-served--by the-system-or-to-the-media:

The--system--shall--submit--to-the-department;-within-the-time stated-in-the-request;-copies-of-any-records--required--to--be maintained--by--the-department-or-copies-of-any-documents-then in-existence-which-the-department-is-entitled-to-inspect-under the-provisions-of-state-law:

2.--Public-notification-

a. Maximum contaminant level, maximum residual disinfectant level, treatment technique, and variance and exemption schedule violations. A public water system which fails to comply with an applicable maximum contaminant level or an established treatment technique or which fails to comply with the requirements of any schedule prescribed pursuant to a variance or exemption shall notify persons served by the system as follows:

{1} a. By publication in a daily newspaper of general circulation in the area served by the system as soon as possible, but in no case later than fourteen days after notification of the violation or failure. If the area served by the system is not served by a daily newspaper of general circulation, notice must instead be given by publication in a weekly newspaper of general circulation serving the area;

{2} b. By mail delivery, or by hand delivery, not later than forty-five days after the violation or failure. The department may waive mail or hand delivery if it determines that the system has corrected the violation or failure within the forty-five-day period; and

{3} c. A copy of the notice must be furnished to the radio and television stations serving the area served by the system as soon as possible, but in no case later than seventy-two hours after receiving notification of the violation or failure, for ~~the--following~~ violations of the following maximum contaminant levels, maximum residual disinfectant levels of disinfectants, or failures that may pose an acute risk to human health: exceedance of the maximum contaminant level for nitrate or nitrite; exceedance of the maximum contaminant level for coliform bacteria when fecal coliform bacteria or E.coli are present in the water distribution system; occurrence of a waterborne disease outbreak in a system which utilizes surface water sources or ground water sources deemed by the department to be under the direct influence of surface water that does not provide filtration treatment, and violation of the maximum residual disinfectant level for chlorine dioxide within the distribution system as defined and determined under title 40, Code of Federal Regulations, part 141, subparts G and L.

A public water system must give notice at least once every three months by mail delivery or by hand

delivery for as long as the violation or failure exists.

A community water system in an area that is not served by a daily or weekly newspaper of general circulation or a noncommunity water system must give notice within fourteen days after notification of the violation or failure by hand delivery or by continuous posting in conspicuous places within the area served by the system. Posting must continue for as long as the violation or failure exists.

- b- 2. Other violations, variances, and exemptions. A public water system which fails to perform required monitoring, fails to complete required sanitary surveys, fails to comply with an established testing procedure, is granted a variance, or is granted an exemption shall notify persons served by the system as follows:
- {1} a. By publication in a daily newspaper of general circulation in the area served by the system within three months after notification of the violation or grant. If the area served by the system is not served by a daily newspaper of general circulation, notice shall instead be given by publication in a weekly newspaper of general circulation serving the area.
 - {2} b. A public water system must give notice at least once every three months by mail delivery or by hand delivery for as long as the violation exists or the variance or exemption is in existence.
 - {3} c. A community water system in an area that is not served by a daily or weekly newspaper of general circulation or a noncommunity water system must give notice within three months after notification of the violation or grant by hand delivery or by continuous posting in conspicuous places within the area served by the system. Posting must continue for as long as the violation exists or the variance or exemption remains in effect.
- e- 3. Notice to new billing units. A community water system must give a copy of the most recent public notice for any outstanding violation of any maximum contaminant level, maximum residual disinfectant level, or any treatment technique requirement, or any variance or exemption schedule to all new billing units or new hookups prior to or at the time service begins.
- d- 4. General notice content. Each notice must provide a clear and readily understandable explanation of the violation,

any potential adverse health effects, the population at risk, the steps that the public water system is taking to correct such violation, the necessity for seeking alternative water supplies, if any, and any preventive measures the consumer should take until the violation is corrected. Each notice must be conspicuous and may not contain unduly technical language, unduly small print, or similar problems that frustrate the purpose of the notice. Each notice must include the telephone number of a designee of the public water system as a source of additional information concerning the notice. Notices shall be multilingual where appropriate.

- e- 5. Mandatory health effects language. When providing the information on potential adverse health effects required in notices of violations of maximum contaminant levels, maximum residual disinfectant levels, or treatment technique requirements, or notices of the granting or the continued existence of variances or exemptions, or notices of failure to comply with a variance or exemption schedule, public water systems shall include specific language, available from the department, for the following contaminants as set forth under title 40, Code of Federal Regulations, part 141, ~~section-32~~,-paragraph-e; subpart D, and part 143, ~~section-143-5~~.

{1}--Antimony-

{2}--Asbestos-

{3}--Barium-

{4}--Beryllium-

{5}--Cadmium-

{6}--Chromium-

{7}--Copper-

{8}--Cyanide-

{9}--Fluoride-

{10}--Lead-

{11}--Mercury-

{12}--Nickel-

{13}--Nitrate-

{14}--Nitrite-

- {15}--Selenium:
- {16}--Thallium:
- {17}--Fecal-coliform-bacteria-or-E.-coli:
- {18}--Microbiological:
- {19}--Total-coliform-bacteria:
- {20}--Acrylamide:
- {21}--Atrachlor:
- {22}--Aldicarb:
- {23}--Aldicarb-sulfone:
- {24}--Aldicarb-sulfoxide:
- {25}--Atrazine:
- {26}--Benzene:
- {27}--Benzo(a)pyrene:
- {28}--Carbofuran:
- {29}--Carbon-tetrachloride:
- {30}--Chlordane:
- {31}--Dalapon:
- {32}--Dibromochloropropane-(DBCP):
- {33}--ortho-Dichlorobenzene:
- {34}--para-Dichlorobenzene:
- {35}--1,2-Dichloroethane:
- {36}--1,1-Dichloroethylene:
- {37}--cis-1,2-Dichloroethylene:
- {38}--trans-1,2-Dichloroethylene:
- {39}--Dichloromethane:
- {40}--1,2-Dichloropropane:
- {41}--2,4-D:

- {42}--Di-(2-ethylhexyl)-adipate:
- {43}--Di-(2-ethylhexyl)-phthalate:
- {44}--Dinoseb:
- {45}--Diquat:
- {46}--Endothal:
- {47}--Endrin:
- {48}--Epichlorohydrin:
- {49}--Ethylbenzene:
- {50}--Ethylene-dibromide-(EDB):
- {51}--Glyphosate:
- {52}--Heptachlor:
- {53}--Heptachlor-epoxide:
- {54}--Hexachlorobenzene:
- {55}--Hexachlorocyclopentadiene:
- {56}--Lindane:
- {57}--Methoxychlor:
- {58}--Monochlorobenzene:
- {59}--Oxamyl-(Vydate):
- {60}--Pentachlorophenol:
- {61}--Picloram:
- {62}--Polychlorinated-biphenyls-(PCBs):
- {63}--Simazine:
- {64}--Styrene:
- {65}--1,2,4-Trichlorobenzene:
- {66}--2,3,7,8-TCDD-(Dioxin):
- {67}--Tetrachloroethylene:
- {68}--1,1,1-Trichloroethane:

{69}--1,1,2-Trichloroethane:

{70}--Trichloroethylene:

{71}--Toluene:

{72}--Toxaphene:

{73}--2,4,5-TP-Silvex:

{74}--Vinyl-chloride:

{75}--Xylenes:

History: Amended effective December 1, 1982; July 1, 1988; December 1, 1990; August 1, 1991; February 1, 1993; August 1, 1994; August 1, 2000.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC 61-28.1-03, 61-28.1-05

33-17-01-13.1. Consumer confidence reports.

1. Coverage and general requirements. Community water systems shall deliver an annual consumer confidence report to all billing units or service connections provided drinking water by the system. The report shall contain information on the quality of the drinking water delivered by the system and characterize risks from exposure to contaminants detected in the drinking water. For the purpose of the report, detected means at or above the levels set forth under title 40, Code of Federal Regulations, part 141, subpart 0.

2. Effective dates. Existing community water systems shall deliver the first report by October 19, 1999, and subsequent reports by July first of each year. The first report shall contain information collected by December 31, 1998. Subsequent reports shall contain information collected by December thirty-first of the previous calendar year.

New community water systems shall deliver the first report by July first of the year after its first full calendar year in operation and subsequent reports by July first of each year. Community water systems that sell water to other community water systems shall provide applicable information to the buyer systems as set forth under title 40, Code of Federal Regulations, part 141, subpart 0.

3. Content. Each report shall contain the information set forth under title 40, Code of Federal Regulations, subpart 0.

4. Report delivery. Community water systems shall comply with the report delivery requirements set forth under title 40, Code of Federal Regulations, subpart 0.

History: Effective August 1, 2000.
General Authority: NDCC 61-28.1-03
Law Implemented: NDCC 61-28.1-03

33-17-01-14. Record--maintenance Reporting and recordkeeping requirements. Public-water-systems-that-utilize-surface--water--sources or--ground-water-sources-deemed-by-the-department-to-be-under-the-direct influence--of--surface--water---shall---comply---with---the---applicable recordkeeping--requirements--set--forth--under--title-40,-Code-of-Federal Regulations,-part-141,-subpart-H,-section-141.75,-Community--and nontransient-noncommunity-water-systems-shall-comply-with-the-applicable recordkeeping-requirements-for-lead-and-copper-set-forth-under-title-40, Code-of-Federal-Regulations,-part-141,-subpart-I,-section-141.91.

1. Reporting requirements. Except when a shorter reporting period is specified, the system shall report to the department the result of any test, measurement, or analysis required within the first ten days following the month in which the results are received or the first ten days following the end of the required monitoring period as stipulated by the department, whichever of these is shorter.

The system shall notify the department within forty-eight hours of the failure to comply with any primary drinking water regulations including failure to comply with monitoring requirements, except that failure to comply with the maximum contaminant levels for total coliform bacteria must be reported to the department no later than the end of the next business day after the system learns of the violation.

Community water systems required to comply with the interim maximum contaminant level for total trihalomethanes shall report the results of all analyses to the department within thirty days of the system's receipt of the results. Subpart H systems shall comply with the reporting requirements for filtration and disinfection treatment set forth under title 40, Code of Federal Regulations, part 141, subparts H and P. Community and nontransient noncommunity water systems shall comply with the reporting requirements for lead and copper set forth under title 40, Code of Federal Regulations, part 141, subpart I. Community, nontransient noncommunity, and transient noncommunity water systems shall comply with the applicable reporting requirements for disinfectants, disinfection byproducts, and disinfection byproduct precursors set forth under title 40, Code of Federal Regulations, part 141, subpart L.

The system is not required to report analytical results to the department in cases when the department performed the analysis.

Within ten days of completion of each public notification required, the system shall submit to the department a representative copy of each type of notice distributed, published, posted, or made available to the persons served by the system or to the media.

The system shall submit to the department, within the time stated in the request, copies of any records required to be maintained by the department or copies of any documents then in existence which the department is entitled to inspect under the provisions of state law.

2. Recordkeeping requirements. Subpart H systems shall comply with the recordkeeping requirements for filtration and disinfection treatment set forth under title 40, Code of Federal Regulations, part 141, subparts H and P. Community and nontransient noncommunity water systems shall comply with the recordkeeping requirements for lead and copper set forth under title 40, Code of Federal Regulations, part 141, subpart I. Community, nontransient noncommunity, and transient noncommunity water systems shall comply with the applicable recordkeeping requirements for disinfectants, disinfection byproducts, and disinfection byproduct precursors set forth under title 40, Code of Federal Regulations, part 141, subpart L. Community water systems shall retain copies of consumer confidence reports for no less than five years.

All public water systems shall retain on their premises or at a convenient location near their premises, the following additional records to document compliance with the remaining provisions of this chapter:

1. a. Bacteriological and chemical analyses. Records of bacteriological analyses shall be kept for not less than five years. Records of chemical analyses shall be kept for not less than ten years. Actual laboratory reports may be kept, or data may be transferred to tabular summaries, provided that the following information is included:
- a- (1) The date, place, and time of sampling and the name of the person who collected the sample;
 - b- (2) Identification of the sample as to whether it was a routine distribution system sample, check sample, or raw or other special purpose sample;
 - e- (3) Date of analysis;
 - d- (4) Laboratory and person responsible for performing analysis;

- e: (5) The analytical technique or method used; and
 - f: (6) The result of the analysis.
- 2: b. Corrective actions taken. Records of action taken by the system to correct violations shall be kept for a period of not less than three years after the last action taken with respect to the particular violation involved.
 - 3: c. Reports and communications. Copies of any written reports, summaries, or communications relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by any local, state, or federal agency, shall be kept for a period not less than ten years after completion of the sanitary survey involved.
 - 4: d. Variances and exemptions. Records concerning a variance or exemption granted to the system shall be kept for a period ending not less than five years following the expiration of such variance or exemption.

History: Amended effective July 1, 1988; December 1, 1990; February 1, 1993; August 1, 2000.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC 61-28.1-03, 61-28.1-05

33-17-01-15. Variance Variances and exemption exemptions.

1. Variance:---The--department--may--not--authorize--a--variance--to--a--public--water--system--from--the--microbiological--maximum--contaminant--level--requirements,--or--the--filtration--and--disinfection--requirements--set--forth--under--title--40,--Code--of--Federal--Regulations,--part--141,--subpart--H.---The--Department--may--authorize--a--variance--to--a--public--water--system--from--the--treatment--technique--requirements--for--lead--and--copper--if--the--conditions--set--forth--under--title--40,--Code--of--Federal--Regulations,--part--141,--section--141.62,--are--met.---The--department--may--also--authorize--a--variance--to--a--public--water--system--from--other--maximum--contaminant--level--requirements--when:
 - a:---The--raw--water--sources--which--are--available--to--a--system--cannot--meet--the--maximum--contaminant--level--despite--application--of--the--best--technology,--treatment--techniques,--or--other--means--which--the--department--finds--are--generally--and--reasonably--available,--taking--cost--into--consideration.---The--department--hereby--identifies--the--following--as--the--best--technology,--treatment--techniques,--or--other--means--generally--available--for--achieving--compliance--with--the--maximum--contaminant--level--for--volatile--synthetic--organic--chemicals:--central--treatment--using--packed--tower--aeration;--central--treatment--using--granular--activated--carbon--for--all--these--chemicals--except--vinyl--chloride;

b.--The--concentration--of--the--contaminant--will--not--result--in unreasonable-risk-to-health;-and

e.--Within--one--year--of--the--date--of--variance--authorization;-a schedule-for-compliance-is--issued--and--under--which--the system-agrees-to-implement-such-schedule-

2.--Exemption:---The--department--may--not--exempt--a--public--water system--from--the--microbiological--maximum--contaminant--level requirements;-or--the--requirements--to--provide--disinfection--set forth--under--title--40;-Code--of--Federal--Regulations;-part--141; subpart--H:---The--department--may--exempt--a--public--water--system from--the--treatment--technique--requirements--for--lead--and--copper only--if--the--conditions--set--forth--under--title--40;-Code--of Federal--Regulations;-part--141;-section--141.62;-are--met:---The department--may--also--exempt--a--public--water--system--from--other maximum--contaminant--level--or--treatment--technique--requirements; or--from--both;-upon--finding--that:

a.--Due--to--compelling--factors;-including--economic;-the--system is--unable--to--comply--with--such--maximum--contaminant--level--or treatment--technique;

b.--The--system--was--in--operation--on--the--effective--date--of--such maximum--contaminant--level--or--treatment--technique regulation;

e.--The--granting--of--the--exemption--will--not--result--in--an unreasonable-risk-to-health;-and

d.--Within--one--year--of--the--date--of--exemption--authorization;-a schedule-for-compliance-is-issued-and-the-system-agrees-to implement-such-schedule-

3.--Procedure-

a.--Action---to--consider--a--variance--or--exemption--may--be initiated-by-the-department-or-by--the--system--through--a written-request-submitted-to-the-department-

b.--Prior--to--authorization--of--a--variance--or--a--compliance schedule-for-a--variance;-the--department--shall--provide notice--and--opportunity--for--a--public--hearing--on--that proposed-variance-or-compliance-schedule-for-a-variance-

e.--Prior--to--authorization--of--a--compliance-schedule-for-an exemption;-the--department--shall--provide--notice--and opportunity--for--a--public--hearing--on--the--proposed compliance-schedule-for-an--exemption; General authority and limitations. The department may grant a variance to a public water system from any maximum contaminant level or treatment technique requirement except the maximum contaminant level for coliform bacteria and the treatment

technique requirements for filtration and disinfection set forth under title 40, Code of Federal Regulations, part 141, subpart H. The department may grant an exemption to a public water system from any maximum contaminant level or treatment technique requirement except the maximum contaminant level for coliform bacteria and the disinfection treatment requirements set forth under title 40, Code of Federal Regulations, part 141, subpart H, section 141.72(a)(3) and (b)(2).

2. Variances. Variances for public water systems serving ten thousand or more persons shall comply with section 1415(a) of the Federal Safe Drinking Water Act [42 U.S.C. 300g-4(a)]. Variances for public water systems serving fewer than ten thousand persons shall comply with one of the following: section 1415(a) of the Federal Safe Drinking Water Act [42 U.S.C. 300g-4(a)]; or section 1415(e) of the Federal Safe Drinking Water Act [42 U.S.C. 300g-4(e)] and title 40, Code of Federal Regulations, part 142, subpart K.

In granting variances pursuant to section 1415(a) of the Federal Safe Drinking Water Act [42 U.S.C. 300g-4(a)], the department identifies as best technology, treatment techniques, or other means generally available for achieving compliance with the maximum contaminant levels and treatment technique requirements those set forth under title 40, Code of Federal Regulations, part 142, subpart G. In granting variances pursuant to section 1415(e) of the Federal Safe Drinking Water Act [42 U.S.C. 300g-4(e)], the department identifies as acceptable technologies those established under section 1412(b)(15) of the Federal Safe Drinking Water Act [42 U.S.C. 300g-1(b)(15)].

3. Exemptions. Exemptions for public water systems shall comply with section 1416 of the Federal Safe Drinking Water Act [42 U.S.C. 300g-5] and title 40, Code of Federal Regulations, part 142, subpart G.
4. Procedures. Actions to consider a variance or exemption may be initiated by the department or by a public water system through a written request to the department. The department shall act on any written variance or exemption request submitted by a public water system within ninety days receipt of the request. The department shall provide notice and opportunity for a public hearing before granting any variance and before prescribing a compliance schedule for any variance or exemption.

History: Amended effective December 1, 1982; July 1, 1988; December 1, 1990; August 1, 1991; February 1, 1993; August 1, 2000.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC 61-28.1-03, 61-28.1-05

33-17-01-19. Protection of public water systems.

1. Cross-connection control.

- a. Cross connections are prohibited except when and where, as approved by the authority having jurisdiction, suitable protective devices are installed, tested, and maintained to ensure proper operation on a continuing basis.
- b. A system shall be designed, installed, and maintained in such a manner as to prevent nonpotable liquids, solids, or gases from being introduced into the water through cross connections or any other piping connections to the system.

2. Interconnections.

- a. Interconnection between two or more systems shall be permitted only with the written approval of the department.
- b. Interconnection between a nonpublic and public water system shall not be permitted unless specifically approved in writing by the department.

3. Return of used water prohibited. Water used for cooling, heating, or other purposes shall not be returned to the system. Such water may be discharged into an approved drainage system through an airgap or may be used for nonpotable purposes.

4. Products in contact with water. All products that may come into contact with water intended for use in a public water system must meet American national standards institute/national sanitation foundation international standards 60-1988 and 61-1991. Suppliers of water for public water systems may not willfully introduce or permit the introduction of a product into the public water system which has not first been determined to meet these standards. At the discretion of the department, suppliers of water for public water systems shall compile and maintain on file for inspection by the department a list of all products used by the system. Prior to using a product not on the list, suppliers of water for public water systems shall either determine that the product meets these standards or notify the department of the type, name, and manufacturer of the product. A product will be considered as meeting these standards if so certified by an organization accredited by the American national standards institute to test and certify such products.

5. Used materials. Containers, piping, or materials which have been used for any purpose other than conveying potable water shall not be used.

6. Water storage structures. Finished water storage structures shall have a watertight cover which excludes the entrance of birds, animals, insects, and excessive dust. Beginning February 16, 1999, public water systems shall not begin construction of uncovered finished water storage facilities.

7. Turbidity control. Subpart H systems that serve ten thousand or more persons and provide conventional filtration treatment or direct filtration shall develop individual filter profiles, perform individual filter self-assessments, and arrange for the completion of comprehensive performance evaluations as set forth under title 40, Code of Federal Regulations, subpart P. At the direction of the department, systems that are required to conduct a comprehensive performance evaluation shall arrange for the completion of a full composite correction program and implement followup recommendations that result from the composite correction program. Comprehensive performance evaluations and composite correction programs shall be conducted by a party other than the system which is approved by the department.

History: Effective December 1, 1982; amended effective July 1, 1988; August 1, 1994; August 1, 2000.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC 61-28.1-03

TITLE 37
Department of Transportation

JULY 2000

CHAPTER 37-08-01

37-08-01-01. Definitions. The definitions provided in North Dakota Century Code title 39 shall apply to this article, except:

1. "Corrective visual device" means glasses or contact lenses ~~with-or-without-field-expander.~~
2. "Field of view vision report" means a report measuring peripheral view-~~{free-from-scotomas}~~ vision arrived at by use of an-~~accepted-device~~ a static or kinetic visual field testing device in the ophthalmologic or optometric profession which checks peripheral and central view visual field, excluding tangent screen and confrontation devices.
3. "~~Glare--recovery~~"--~~means--the--ability--to--resume--normal--vision--within--seconds--after--having--been--"blinded"--by--headlamps--or--other--bright--lights--shining--in--the--eyes.~~
4. ~~"Glare--resistance"~~--~~means--the--ability--to--retain--normal--vision--despite--glare--from--headlamps--or--other--bright--lights--shining--in--the--eyes.~~
5. "Medical advisory board" means driver license medical advisory board consisting of North Dakota licensed physicians or optometrists appointed by the director for the purpose of advising the director concerning the medical aspects of licensing.
- 6: 4. "Outside mirrors" means one unobstructed mirror attached to each side of the vehicle within easy view of the driver.

- 7- 5. "Road test" means a driving demonstration.
- 8- 6. "Special visual devices" means use of telescopic bioptic resulting in a vision acuity of 20/130 in each eye through the carrier lens and 20/40 in the bioptic lens and having a full field peripheral view ~~free-from-seetomas~~ in both eyes.
- 9- 7. "Vision specialist" means a North Dakota licensed physician or optometrist.

History: Effective December 1, 1988; amended effective July 1, 2000.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 39-06-03(7)

37-08-01-03. Visual acuity requiring road test. Visual acuity of ~~20/70-or~~ less than 20/60 requires a road test regardless of the corrective or special visual device being used.

History: Effective December 1, 1988; amended effective May 1, 1994; July 1, 2000.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 39-06-03(7)

37-08-01-04. Medical advisory board review. Whenever the visual acuity is less than 20/80, ~~as stated by the applicant or operator's vision specialist~~ or field of vision less than 105 degrees, the medical advisory board may, upon request of the drivers license and traffic safety division, review the case and make their recommendations to the director of the department of transportation or the director's agent.

History: Effective December 1, 1988; amended effective July 1, 2000.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 39-06-03(7)

37-08-01-05. Minimum vision requirements and restrictions. Applicants and operators requesting or maintaining a North Dakota license or permit and who meet the following minimum vision standards, as established by the drivers license and traffic safety division, shall comply with the associated requirements and restrictions (which are nonexclusive):

Minimum visual acuity	Requirements and restrictions with or without corrective or special device.
1. <u>20/3040</u> for person having <u>single-eye one-eyed</u> vision	(<u>a, h, j, f, h</u>).

2. 20/50
for person having one-eyed vision (a, b, d, f, h).
3. 20/60
for person having one-eyed vision (a, b, d, f, h).
4. 20/40 each eye (a, -h f).
3. 5. 20/50 each eye (b, -e, -d, -h a, b, f).
4. 6. 20/50 better eye
20/60 or less other eye (b, -e, -d, -f, -h
a, b, d, f).
5. 7. 20/60 better eye
20/60 or less other eye (b, -e, -d, -f, -h, -k
a, b, d, f).
- ~~6. --20/60-better-eye
20/70-or-less-other-eye----- (b, -e, -d, -e, -h, -k) :~~
- ~~7. --less-than-20/60-in-each-eye, -but
better-than-20/70-in-each-eye----- (b, -e, -d, -e, -g, -h,
i, -k) :~~
8. 20/70 better eye
20/80 - 20/100 other eye (b, -e, -d, -e, -g, -h, -i,
k, -† a, b, c, e, f, g).
9. 20/80 better eye
20/80 - 20/100 other eye (b, -e, -d, -e, -g, -h, -i,
k, -† a, b, c, e, f, g).
10. Requirements and restriction code:
- a. ~~Minimum-vision-without-corrective-lenses:~~
- b. ~~Corrective-or-special-visual-device-(when-required):~~
- e. Daylight driving only.
- d. b. Vision specialist recommendations.
- e. c. Vision recheck within one year.
- f. d. Vision recheck within two years.
- g. e. Road test.
- h. f. Field of view vision report:
- ~~{i}--if-the-binoocular-horizontal-visual-field-140-degrees
or-better---no-operator's-license-restrictions:~~

- (2)--If the binocular horizontal visual field less than 140 degrees---operator's license restrictions.
- (3)--If the binocular horizontal visual field less than 120 degrees---no operator's license.
- (4)--For a single-eye vision applicant:
 - (a)--A minimum horizontal visual field of 120 degrees:
 - Nasal---50 degrees;
 - Temporal---70 degrees.
 - (b)--A minimum vertical field of:
 - Inferior---50 degrees;
 - Superior---25 degrees.
 - (c)--If the applicant's superior or inferior visual field is impaired, the applicant's better eye must meet the vertical field criteria for a person having single-eye vision.

Horizontal visual field of 105 degrees or better. Can be obtained by totaling the temporal readings of both eyes or temporal plus nasal in one eye.

i. g. Report any eye disease or injury.

j. h. Outside mirror.

k.---Class-"D"-or-"M"-noncommercial-vehicles-only.

l.---Glare-resistance-and-glare-recovery-(for-daylight-only).

11. Except as provided in North Dakota Century Code section 39-08-21, the driver of a commercial class A, B, or C motor vehicle shall comply with the federal motor carrier regulations, pursuant to 49 CFR section 391.41(b)(10).

History: Effective December 1, 1988; amended effective March 1, 1992; May 1, 1994; July 1, 2000.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 39-06-03(7)

TITLE 42

Indian Scholarships, Board for

AUGUST 2000

CHAPTER 42-01-01

42-01-01-01. Organization of Indian scholarship program.

1. **History and function.** The 1963 legislative assembly first provided for the North Dakota Indian scholarship program by a law codified as North Dakota Century Code chapter 15-63.
2. **Program membership.** Members of the North Dakota Indian scholarship program consist of an Indian appointed by the governor, the executive director of the state Indian affairs commission, and the chancellor of higher education or the chancellor's designee. The chancellor of higher education or the chancellor's designee shall serve as chairman and the executive director of the state Indian affairs commission shall serve as secretary of the board for Indian scholarships.
3. **Inquiries.** Inquiries regarding the program may be addressed to:

North Dakota Indian Scholarship Program
North Dakota University System
600 East Boulevard Avenue, Dept. 215
Bismarck, ND 58505 58505-0230

History: Effective February 1, 2000; amended effective August 1, 2000.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 15-63-02

CHAPTER 42-02-02

42-02-02-01. Eligibility of applicants. In accordance with North Dakota Century Code chapter 15-63, the following factors shall be considered in the process used to determine eligibility of applicants:

1. An applicant must either be ~~a resident of North Dakota with one-quarter-degree-Indian-blood~~ or an enrolled member of a federally recognized Indian tribe now and a resident in of North Dakota. Residency for each student shall be determined by the institution that student is attending.
2. An applicant may not be considered eligible until the applicant has gained admission to any institution of higher learning or state vocational education program within North Dakota.
3. An applicant must be in financial need or a valedictorian or demonstrate academic merit.
4. An applicant must show probable and continuing success as a student.
5. The scholarship funds are only available to students who are considered to be full-time students, or to part-time students who may need minimal credits to complete their degree requirements within one semester, in their course of study by the college or university they are attending.
6. Students participating in internships, student teaching, teaching assistance programs, or cooperative education programs shall be eligible for a scholarship award only if participation in that program will earn credits which require tuition and which are required for a degree.

History: Effective February 1, 2000; amended effective August 1, 2000.

General Authority: NDCC 15-63-02

Law Implemented: NDCC 15-63-02, 15-63-04

42-02-02-02. Procedures for application.

1. All applications shall be submitted to the administrator of the Indian scholarship program:

North Dakota Indian Scholarship Program
North Dakota University System
600 East Boulevard Avenue, Dept. 215
Bismarck, ND 58505 58505-0230

2. The deadline for application is the fifteenth of July of each year.
3. Along with a completed application form, all candidates shall also submit the following:
 - a. ~~A--certificate--of--Indian--blood--or--verification--of--North Dakota~~ Verification of tribal enrollment;
 - b. The applicant's most recent transcript (high school, college, university, or general equivalency diploma certificate); and
 - c. A budget form; completed by a financial aid officer at the institution the applicant will be attending.
4. Applicants whose financial circumstances change in the year of the awarded grant may be considered for revision of award or other budget adjustments, or both, through a special request to the scholarship board.
5. Current recipients wishing to apply for continued funding through the following academic year shall submit:
 - a. A new application form;
 - b. ~~A-current~~ An updated transcript; and
 - c. A new budget form completed by the financial aid officer officer at the institution the student is attending.

History: Effective February 1, 2000; amended effective August 1, 2000.

General Authority: NDCC 15-63-02

Law Implemented: NDCC 15-63-02

42-02-02-03. Selection process. All completed applications received before the application deadline will be given full and equal consideration when screening for eligibility. Candidates for scholarship will be in the following three groups:

1. **Awards for valedictorians.** ~~The-recipient-of-the-valedictorian award-must-make~~ All valedictorians meeting the application with--the--North--Dakota-Indian-scholarship-program--The-award will-be-automatic criteria will receive an award if ~~all criteria-and~~ the application deadline have has been met.
2. **Awards for merit-based scholarship.** The recipient of the merit-based scholarship must have a cumulative grade point average of at least 3.50. Financial need is not necessarily a factor. The award is to provide an incentive to students with high academic achievements.

3. **Awards for financial need or basic scholarship.** The recipient of the basic scholarship must show a financial need and maintain a cumulative grade point average of at least 2.00. ~~Awards will be offered to these applicants with the highest financial need.~~ Undergraduates will be given priority over graduate students.

Any eligible student who is not offered an award but whose grant application was received by the fifteenth of July deadline will be placed on a waiting list for funds which may become available throughout the academic year. Students on the waiting list will be ranked according to financial need, cumulative grade point average, and before late applications.

All awardees will be sent notification immediately after the completion of the selection process. A student who has been chosen to be a recipient of an award shall notify the scholarship administrator of the student's acceptance or rejection of the award. Acceptance or rejection notices must be received by the administrator within three weeks of the date on the award notification letter.

History: Effective February 1, 2000; amended effective August 1, 2000.

General Authority: NDCC 15-63-02

Law Implemented: NDCC 15-63-02

CHAPTER 42-02-03

42-02-03-03. Disbursement procedures. Upon receipt of acceptance notices from the students, the North Dakota university system will process award checks according to procedures set out at colleges or universities.

The checks will be sent to the institution's financial aid office for disbursement to the students, ~~with which students.~~ Students are expected to use scholarship disbursements to pay their normal education expenses. Recipients may apply the awards toward the cost of registration, health, activities, room and board, books, and other necessary items.

History: Effective February 1, 2000; amended effective August 1, 2000.

General Authority: NDCC 15-63-02

Law Implemented: NDCC 15-63-02, 15-63-05

CHAPTER 42-02-05

42-02-05-01. Appeals process. Any student who has been denied funding or who has lost funding may appeal to the board. In this case the student must submit, in writing, a description and explanation of the circumstances involved and a summary of the student's concerns, along with any supporting documentation.

The appeal should be addressed to the scholarship board:

North Dakota Indian Scholarship Program
North Dakota University System
600 East Boulevard Avenue, Dept. 215
Bismarck, ND 58505 58505-0230

The board shall consider the appeal and will contact the student regarding its decision within two weeks after the board renders a decision.

History: Effective February 1, 2000; amended effective August 1, 2000.

General Authority: NDCC 15-63-02

Law Implemented: NDCC 15-63-02

TITLE 43
Industrial Commission

SEPTEMBER 2000

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 fourteen and seventy-three hundredths pounds per square inch absolute [1034.19 grams per square centimeter].
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 absolute [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:
- a. Aiding in the lifting of fluids in the well; or (b) stimulation
- 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 [1524 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" 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~~ unsalable 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; September 1, 2000.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-11. Organization reports. Every person acting as principal or agent for another or independently engaged in the drilling

of oil or gas wells, or in the production, storage, transportation, refining, reclaiming, treating, marketing, or processing of crude oil or natural gas in North Dakota shall immediately file with the director the name under which such business is being conducted or operated; and name and post-office address of such person, the business or businesses in which the person is engaged; the plan of organization, and in case of a corporation, the law under which it is chartered; and the names and post-office addresses of any person acting as trustee, together with the names and post-office addresses of any officials thereof on an organization report (form 2). In each case where such business is conducted under an assumed name, such organization report shall show the names and post-office addresses of all owners in addition to the other information required. A new organization report shall be filed when and if there is a change in any of the information contained in the original report.

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

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-12. Reservoir surveys. By special order of the commission, periodic surveys may be made of the reservoirs in this state containing oil and gas. These surveys will be thorough and complete and shall be made ~~under the supervision of~~ using methods approved by the director. The condition of the reservoirs containing oil and gas and the practices and methods employed by the operators shall be investigated. The produced volume and source of crude oil and natural gas, the reservoir pressure of the reservoir as an average, the areas of regional or differential pressure, stabilized gas-oil ratios, and the producing characteristics of the field as a whole and the individual wells within the field shall be specifically included.

All operators of oil wells are required to permit and assist the agents of the commission in making any and all special tests that may be required by the commission on any or all wells.

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

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-14.2. Oil and gas metering systems.

1. **Application of section.** This section is applicable to all metering stations measuring production from oil and gas wells within the state of North Dakota, including private, state, and federal wells. If these rules differ from federal requirements on measurement of production from federal oil and gas wells, the federal rules take precedence.

2. **Definitions.** As used in this section:

- a. "Allocation meter" means a meter used by the producer to determine the volume from an individual well before it is commingled with production from one or more other wells prior to the custody transfer point.
- b. "Calibration test" means the process or procedure of adjusting an instrument, such as a gas meter, so its indication or registration is in satisfactorily close agreement with a reference standard.
- c. "Custody transfer meter" means a meter used to transfer oil or gas from the producer to transporter or purchaser.
- d. "Gas gathering meter" means a meter used in the custody transfer of gas into a gathering system.
- e. "Meter factor" means a number obtained by dividing the net volume of fluid (liquid or gaseous) passed through the meter during proving by the net volume registered by the meter.
- f. "Metering proving" means the procedure required to determine the relationship between the true volume of a fluid (liquid or gaseous) measured by a meter and the volume indicated by the meter.

3. **Inventory filing requirements.** Within sixty days of adoption of these rules, the owner of metering equipment shall file with the commission an inventory of all meters used for custody transfer and allocation of production from oil or gas wells, or both. Inventories must be updated on an annual basis, and filed with the commission on or before the first day of each year, or they may be updated as frequently as monthly, at the discretion of the operator. Inventories must include the following:

- a. Well name and legal description of location or meter location if different.
- b. North Dakota industrial commission well file number.
- c. Meter information:
 - (1) Gas meters:
 - (a) Make and model.
 - (b) Differential, static, and temperature range.
 - (c) Orifice tube size (diameter).

- (d) Meter station number.
- (2) Oil meters:
- (a) Make and model.
 - (b) Size.
 - (c) Meter station number.
4. **Installation and removal of meters.** The commission must be notified of all custody transfer meters placed in service. The owner of the custody transfer equipment shall notify the commission of the date a meter is placed in service, the make and model of the meter, and the meter or station number. The commission must also be notified of all metering installations removed from service. The notice must include the date the meter is removed from service, and the meter or station number. The required notices must be filed with the commission within thirty days of the installation or removal of a meter.

All allocation meters must be approved prior to installation and use. The application for approval must be on a sundry notice (form 4) and shall include the make and model number of the meter, the meter or station number, the well name, its location, and the date the meter will be placed in service.

Meter installations for measuring production from oil or gas wells, or both, must be constructed to American petroleum institute or American gas association standards or to meter manufacturer's recommended installation. Meter installations constructed in accordance with American petroleum institute or American gas association standards in effect at the time of installation shall not automatically be required to retrofit if standards are revised. The commission will review any revised standards, and when deemed necessary will amend the requirements accordingly.

5. **Registration of persons proving or testing meters.** All persons engaged in meter proving or testing of oil and gas meters must be registered with the commission. Those persons involved in oil meter testing, by flowing fluid through the meter into a test tank and then gauging the tank, are exempted from the registration process. However, such persons must notify the commission prior to commencement of the test to allow a representative of the commission to witness the testing process. A report of the results of such test shall be filed with the commission within thirty days after the test is completed. Registration must include the following:
- a. Name and address of company.

- b. Name and address of measurement personnel.
- c. Qualifications, listing experience, or specific training.

Any meter tests performed by a person not registered with the commission will not be accepted as a valid test.

6. **Calibration requirements.** Oil and gas metering equipment must be proved or tested to American petroleum institute or American gas association standards or to the meter manufacturer's recommended procedure to establish a meter factor or to ensure measurement accuracy. The owner of a custody transfer meter or allocation meter shall notify the commission at least ten days prior to the testing of any meter.
- a. Oil allocation meter factors shall be maintained within two percent of original meter factor. If the factor change between provings or tests is greater than two percent, the meter must be repaired or adjusted and tested within forty-eight hours of repair or replaced.
 - b. Copies of all oil allocation meter test procedures are to be filed with and reviewed by the commission to ensure measurement accuracy.
 - c. All gas meters must be tested with a minimum of a three-point test for static and differential pressure elements and a two-point test for temperature elements. The test reports must include an as-found and as-left test and a detailed report of changes.
 - d. Test reports must include the following:
 - (1) Producer name.
 - (2) Lease name.
 - (3) Pipeline company or company name of test contractor.
 - (4) Test personnel's name.
 - (5) Station or meter number.
 - e. Unless required more often by the director, minimum frequency of meter proving or calibration tests are as follows:
 - (1) Oil meters used for custody transfer shall be proved monthly for all measured volumes which exceed two thousand barrels per month. For volumes two thousand barrels or less per month, meters shall be proved at

each two thousand barrel interval or more frequently at the discretion of the operator.

- (2) Quarterly for oil meters used for allocation of production.
- (3) Semiannually for gas meters used for allocation of production.
- (4) Semiannually for gas meters in gas gathering systems.
- (5) For meters measuring more than one hundred thousand cubic feet [2831.68 cubic meters] per day on a monthly basis, meter tubes shall be inspected at least every five years to ensure continued conformance with the American gas association meter tube specifications.
- (6) Semiannually for orifice plates and annually for any meter measuring one hundred thousand cubic feet [2831.68 cubic meters] per day or less on a monthly basis.

f. Meter test reports must be filed within thirty days of completion of proving or calibration tests unless otherwise approved. Test reports are to be filed on, but not limited to, all meters used for allocation measurement of oil or gas and all meters used in crude oil custody transfer.

g. Accuracy of all equipment used to test oil or gas meters must be traceable to the standards of the national institute of standards and technology. The equipment must be certified as accurate either by the manufacturer or an independent testing facility. The certificates of accuracy must be made available upon request. Certification of the equipment must be updated as follows:

- (1) Annually for all equipment used to test the pressure and differential pressure elements.
- (2) Annually for all equipment used to determine temperature.
- (3) Biennially for all conventional pipe provers.
- (4) Annually for all master meters.
- (5) Five years for equipment used in orifice tube inspection.

7. **Variations.** Variations from all or part of this section may be granted by the commission on the basis of economic necessity

providing the variance does not affect measurement accuracy. All requests for variances must be ~~in writing and receive written approval~~ on a sundry notice (form 4).

A register of variances requested and approved must be maintained by the commission.

History: Effective May 1, 1994; amended effective July 1, 1996; September 1, 2000.

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 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 provided the bond shall be limited to no more than five of the following in aggregate and a blanket bond covering more than ten wells shall be in the amount of one hundred thousand dollars, provided the bond shall be limited to no more than ten of the following in aggregate:
 - a. A well that is a dry hole and is not properly plugged 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~~ the required limit, or the operator files the appropriate bond to

cover the permits, at which time the rights given by the drilling permits are reinstated. A well with an approved temporary abandoned status shall have the same status as an oil, gas, or injection well. ~~With regard to cash bonds, the~~ The commission may, after notice and hearing, require higher bond amounts than those referred to in this section. Such additional amounts for cash bonds must be related to the economic value of the well or wells and the expected cost of plugging and well site reclamation, as determined by the commission. The commission may refuse to accept a bond or to add wells to a blanket bond if the operator or surety company has failed in the past to comply with statutes and rules relating to the operation of wells, if a civil or administrative action brought by the commission is pending against the operator or surety company, or for other good cause.

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

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

4. Bond terms. The bond herein required 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~~ quarter-quarter, section, township, and range, is to be transferred to a certain transferee, naming such transferee, for the purpose of ownership or operation. The date of assignment or transfer must be stated and the form signed by a party duly authorized 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. The director may refuse to transfer any well from a bond if the well is in violation of a rule or order of the commission.
- c. The transferee (new operator) of any oil, gas, or injection well shall be responsible for the plugging and site reclamation of any such well. For that purpose the transferee shall submit a new bond or, in the case of a surety bond, produce the written consent of the surety of the original or prior bond that the latter's responsibility shall continue. 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. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota. The amount of the bond must be as prescribed in section 43-02-03-51. It is to remain in force until the operations cease, all equipment is removed from the site, and the site and appurtenances thereto are reclaimed, or liability of the bond is transferred to another bond that provides the same degree of security. If the principal does not satisfy the bond's conditions, then the surety shall satisfy the conditions or forfeit to the commission the face value of the bond.
7. **Bond termination.** The commission shall, in writing, advise the principal and any sureties on any bond as to whether the plugging and reclamation is approved. If approved, liability under such bond may be formally terminated upon receipt of a written request by the principal. The request must be signed by an officer of the principal or a person authorized to sign for the principal.
8. **Director's authority.** The director is vested with the power to act for the commission as to all matters within this section.

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

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-16. Application for permit to drill and recomplete. Before any person shall begin any well-site preparation for the drilling of any well other than surveying and staking, such person shall file an application for permit to drill (form 1) with the director, together with a permit fee of one hundred dollars. Verbal approval may be given for site preparation by the director in extenuating circumstances. No drilling activity shall commence until such application is approved and a permit to drill is issued by the director. Permits to drill or recomplete may contain such terms and conditions as the director deems

necessary. The application must be accompanied by the bond pursuant to section 43-02-03-15 or the applicant must have previously filed such bond with the commission, otherwise the application is incomplete. An incomplete application received by the commission has no standing and will not be deemed filed until it is completed.

The application for permit to drill shall be accompanied by an accurate plat certified by a registered surveyor showing the location of the proposed well with reference to the nearest lines of a governmental section. The plat shall also include latitude and longitude of the proposed well location to the nearest hundredth of a second. Information to be included in such application shall be the proposed depth to which the well will be drilled, estimated depth to the top of important markers, estimated depth to the top of objective horizons, the proposed mud program, the proposed casing program, including size and weight thereof, the depth at which each casing string is to be set, and the proposed amount of cement to be used, including the estimated top of cement. The director may request additional information, if deemed necessary.

Prior to the commencement of recompletion operations, an application for permit shall likewise be filed with the director. Included in such application shall be the notice of intention (form 4) to reenter a plugged well, ~~or to develop~~ by deepening or plugging back to any source of supply other than the producing horizon in an existing well. Such notice to recomplete any well shall include the name and file number and exact location of the well, the approximate date operations will begin, the proposed recompletion procedure, the estimated completed total depth, the casing program to be followed, and the original total depth and the total depth at which the well is to be recompleted with a permit fee of fifty dollars. The director may request additional information, if deemed necessary.

The director shall deny an application for permit to drill if a well drilled in the location applied for would cause, or tend to cause, waste or violate correlative rights. The director of oil and gas shall state in writing to the applicant the reason for the denial of the permit. The applicant may appeal the decision of the director to the commission.

Unless a well is drilling, or has been drilled, below surface casing on the first anniversary of the date of issuance of the permit for the well, the permit shall in all things terminate and be of no further force and effect. Recompletion operations must commence within one year of the date of approval or permission to recomplete shall terminate and be of no further force and effect.

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

General Authority: NDCC 38-08-05

Law Implemented: NDCC 38-08-05

43-02-03-17. Sign on well. Every well associated with the production of oil and gas except plugged wells shall be identified by a sign posted on the derrick or not more than twenty feet [6.10 meters] from the well. The sign shall be of durable construction and the lettering thereon shall be kept in a legible condition and shall be large enough to be legible under normal conditions at a distance of fifty feet [15.24 meters]. The wells on each lease or property shall be numbered in nonrepetitive sequence, unless some other system of numbering was adopted by the owner prior to the adoption of this chapter. Each sign will must show the ~~number-of-the-well,-the--name--of the--lease~~ well name and number (which shall be different or distinctive for each lease well), the name of the ~~lessee,-owner,-or~~ operator, ~~permit~~ file number, and the location by quarter-quarter, section, township, and range.

Existing well identification signs that are otherwise in accord with this section except that well locations are shown by quarter section rather than quarter-quarter section or show the permit number rather than the file number shall be allowed to remain.

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

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-19.2. Disposal of waste. All waste associated with exploration or production of oil and gas must be properly disposed of in an authorized facility in accord with all applicable local, state, and federal laws and regulations.

This is not to be construed as requiring the offsite disposal of drilling mud or drill cuttings associated with the drilling of a well. However, top water remaining in the reserve pit used in the drilling and completion operations is to be removed from the reserve pit and disposed of in an authorized disposal well or used in a manner approved by the director. The disposition or use of the water must be included on the sundry notice (form 4) reporting the plan of reclamation pursuant to section 43-02-03-19.

History: Effective May 1, 1992; amended effective May 1, 1994; September 1, 2000.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-19.3. Earthen pits and open receptacles. Except as otherwise provided in section 43-02-03-19, no saltwater, drilling mud, crude oil, waste oil, or other waste shall be stored in earthen pits or open receptacles except in an emergency and upon approval by the director.

An earthen pit or open receptacle may be temporarily used to retain oil, water, or fluids generated in well servicing or plugging operations. A pit used for this purpose must be sufficiently impermeable to provide adequate temporary containment of the oil, water, or fluids. The contents of the pit or receptacle must be removed within seventy-two hours after operations have ceased and must be disposed of at an authorized facility in accordance with section 43-02-03-19.2.

The director may permit pits used solely for the purpose of flaring casinghead gas. Permission for such a pit will be conditioned on keeping the pit free of any saltwater, crude oil, waste oil, or other waste.

History: Effective September 1, 2000.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

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

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

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

Production or intermediate casing strings shall consist of new or reconditioned pipe that has been previously tested to two thousand

pounds per square inch [13800 kilopascals]. Such strings must be allowed to stand under pressure until the tail cement has reached a compressive strength of at least five hundred pounds per square inch [3450 kilopascals]. All filler cements utilized must reach a compressive strength of at least two hundred fifty pounds per square inch [1725 kilopascals] within twenty-four hours and at least five hundred pounds per square inch [3450 kilopascals] within seventy-two hours. All compressive strengths on production or intermediate casing cement shall be calculated at a temperature found in the Mowry formation using a gradient of 1.2 degrees Fahrenheit per one hundred feet [30.48 meters] of depth plus eighty degrees Fahrenheit [26.67 degrees Celsius].

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; September 1, 2000.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-22. Defective casing or cementing. In any well that appears to have defective casing or cementing, the operator shall report the defect to the director on a sundry notice (form 4) and shall proceed with diligence to correct the defect. If the defect cannot be eliminated, the well shall be properly plugged unless otherwise approved by the director.

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

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-23. Blowout prevention. In all drilling operations, proper and necessary precautions shall be taken for keeping the well under control, including the use of a blowout preventer and high pressure fittings attached to properly cemented casing strings adequate to withstand anticipated pressures. During the course of drilling, the pipe rams shall be functionally operated at least once every twenty-four-hour period. The blind rams shall be functionally operated each trip out of the well bore. The blowout preventer shall be pressure tested at installation on the wellhead and ~~each-fourteen-consecutive-day period-of-drilling;~~ every fourteen days thereafter. The director may postpone such pressure test if the necessity therefor can be demonstrated to the director's satisfaction. All tests shall be noted in the driller's record.

History: Amended effective January 1, 1983; September 1, 2000.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-25. Deviation tests and directional surveys. When any well is drilled or deepened, tests to determine the deviation from the vertical shall be taken at least every one thousand feet [304.8 meters]. When the deviation from the vertical exceeds five degrees at any point, the director may require that the hole be straightened. Directional surveys may be required by the director, whenever, in the director's judgment, the location of the bottom of the well is in doubt.

A directional survey shall be made and filed with the director on any well utilizing a whipstock or any method of deviating the well bore ~~in a predetermined direction except~~. The obligation to run the directional survey may be waived by the director when a well bore is deviated to sidetrack junk in the hole, straighten a crooked hole, or to control a blowout, or if the necessity therefor can be demonstrated to the director's satisfaction. The survey contractor ~~must~~ shall file a two certified survey copies of all surveys with the director free of charge within thirty days of completion. Surveys must be submitted as one paper copy and one electronic copy, or in a form approved by the director. However, the director may require the directional survey to be filed immediately after completion if the survey is needed to conduct the operation of the director's office in a timely manner. Special permits may be obtained to drill directionally in a predetermined direction as provided above, from the director.

If the director denies a request for a permit to directionally drill, the director shall advise the applicant immediately of the reasons for denial. The decision of the director may be appealed to the commission.

History: Amended effective April 1, 1980; April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; September 1, 2000.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-28. Safety regulation. During drilling operations all oil wells shall be cleaned into a pit or tank, not less than forty feet [12.19 meters] from the derrick floor and one hundred fifty feet [45.72 meters] from any fire hazard.

All flowing oil wells must be produced through an approved oil and gas separator or emulsion treater of ample capacity and in good working order. No boiler or portable electric lighting generator shall be placed or remain nearer than one hundred fifty feet [45.72 meters] to any producing well or oil tank. Any rubbish or debris that might constitute a fire hazard shall be removed to a distance of at least one hundred fifty feet [45.72 meters] from the vicinity of wells and tanks. All waste shall be burned or disposed of in such manner as to avoid creating a fire hazard. All vegetation must be removed to a safe distance from any production equipment to eliminate a fire hazard.

No well shall be drilled nor production equipment installed less than three hundred thirty feet [100.58 meters] from a building or

residence unless agreed to in writing by the surface owner or authorized by order of the commission.

Subsurface pressure will must be controlled during all drilling, completion, and well-servicing operations with appropriate drilling fluid weight and pressure control equipment.

History: Amended effective January 1, 1983; May 1, 1990; September 1, 2000.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-31. Well log, completion, and workover reports. Within thirty days after the plugging of a well, a plugging record (form 7) shall be filed with the director. Within thirty days after the completion of a well, or recompletion of a well in a different pool, a completion report (form 6) shall be filed with the director, except a completion report shall be filed immediately after the completion or recompletion of a well in a pool or reservoir not then covered by an order of the commission. In no case shall oil or gas be transported from the lease prior to the filing of a completion report unless approved by the director. The operator shall cause to be run an electrical, radioactivity, or other similar log, or combination of logs, of the operator's choice, from which formation tops and porosity zones can be determined. ~~The obligation to log may be waived by the director or other representative if hole conditions preclude the feasibility of such logging operation or if the well is a replacement well.~~ The operator shall cause to be run a gamma ray log from total depth to ground level elevation of the well bore. The operator shall cause to be run a log from which the presence of cement can be determined in every well in which production or intermediate casing has been set. The obligation to log may be waived by the director if the necessity therefor can be demonstrated to the director's satisfaction. Waiver will be contingent upon such terms and conditions as the director deems appropriate. All logs run shall be available to the director at the well site prior to proceeding with plugging or completion operations. Within thirty days after completion, two copies of all logs and surveys run shall be submitted to the director free of charge. ~~However, if the director finds that the directional survey of a well is needed for the timely conduct of business, the director may require the filing of the survey immediately after completion.~~ Logs shall be submitted as one paper copy and one digital LAS (log ASCII) formatted copy, or a format approved by the director. In addition, operators shall file two copies of drill stem test reports and charts, formation water analyses, ~~porosity, permeability or fluid saturations,~~ core analyses, and noninterpretive lithologic logs or sample descriptions if compiled by the operator.

All information furnished to the director on new permits, except the operator name, well name, location, and any production runs, shall be kept confidential for not more than six months if requested by the operator in writing. The six-month period ~~must~~ shall commence on the

date the well is completed or the date the written request is received, whichever is earlier. If the written request accompanies the application for permit to drill or is filed after permitting but prior to spudding, the six-month period will shall commence on the date the well is spudded.

All information furnished to the director on recompletions or reentries, except the operator name, well name, location, and any production runs, shall be kept confidential for not more than six months if requested by the operator in writing. The six-month period shall commence on the date the well is completed or the date the well was approved for recompletion or reentry, whichever is earlier. Any information furnished to the director prior to approval of the recompletion or reentry shall remain public.

Approval must be obtained on a sundry notice (form 4) from the director prior to perforating or recompleting a well in a reservoir pool other than the reservoir pool in which the well was ~~originally~~ completed is currently permitted.

Upon the completion, or recompletion of a well, the completion of any remedial work, or attempted remedial work such as plugging back or drilling deeper, acidizing, shooting, formation fracturing, squeezing operations, setting liner, perforating, reperforating, or other similar operations not specifically covered herein, a report on the operation shall be filed on a sundry notice (form 4) with the director. The report shall present a detailed account of all work done and the date of such work; the daily production of oil, gas, and water both prior to and after the operation; the shots per foot, size, and depth of perforations; the quantity of sand, crude, chemical, or other materials employed in the operation; and any other pertinent information or operations which affect the original status of the well and are not specifically covered herein.

Upon the initial installation of pumping equipment, or change in type of pumping equipment designed to increase productivity in a well, the operator shall submit a sundry notice (form 4) of such installation. The notice shall include all pertinent information on the pump and the operation thereof including the date of such installation, and the daily production of the well prior to and after the pump has been installed shall also be included.

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

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-40. Gas-oil ratio test. Each operator shall take a gas-oil ratio test within thirty days following the completion or recompletion of an oil well. Each test shall be conducted ~~under the method and conditions as prescribed by the director~~ using standard industry practices unless otherwise specified by the director. The

initial gas-oil ratio must be reported on the well completion or recompletion report (form 6). After the discovery of a new pool, each operator shall make additional gas-oil ratio tests as directed by the director or provided for in field rules. During tests each well shall be produced at a rate equal to or not exceeding its allowable by more than twenty-five percent. No well shall be given an allowable greater than the amount of oil produced on official test during a twenty-four-hour period. The director shall drop from the proration schedule any proration unit for failure to make such test as herein above described until such time as a satisfactory test has been made, or satisfactory explanation given. In the absence of proration, each well shall be produced at a maximum efficient rate during tests. The director will may shut in any well for failure to make such test until such time as a satisfactory test can be made, or satisfactory explanation given. The results of all gas-oil ratio tests shall be submitted to the director on form 9, which shall be accompanied by a statement, made under oath, from the person actually performing such tests, that the data on form 9 is true and correct.

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

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-41. Subsurface pressure tests. The operator shall make a subsurface pressure test on the discovery well of any new pool hereafter discovered and shall report the results thereof to the director within thirty days after the completion of such discovery well. The reports shall include a copy of the pressure chart of the test. Drill stem test pressures are not normally acceptable but may be used if permission is obtained from the director. In the absence of field rules, after the discovery of a new pool, each operator shall make additional reservoir pressure tests as directed by the director. After the discovery of a new pool, each operator shall make additional subsurface pressure tests as directed by the director or provided for in field rules. All tests shall be made by a person qualified by both training and experience to make such tests and with an approved subsurface pressure instrument. All wells shall remain completely shut in for at least ~~twenty-four~~ forty-eight hours prior to the test. The subsurface determination shall be obtained as close as possible to the midpoint of the productive interval of the reservoir. The report of the subsurface reservoir pressure test shall state the name of the pool, the name of the operator and lease, the well name, the well file number, the subsea depth in feet [meters] of the reservoir datum plane, and wellhead elevation above sea level, the depth in feet [meters] to the top of the producing formation or top of perforations, whichever is the lower, the date of the tests, the total number of hours the well was shut in prior to the test, the subsurface temperature in degrees Fahrenheit [Celsius] at the test depth, the depth in feet [meters] at which the subsurface pressure test was made, the observed pressure in pounds [kilograms] per square inch [square centimeters] gauge at the test depth, and the corrected pressure computed from applying to the observed pressure the

~~appropriate--corrections-for-calibration;-temperature;-and-difference-in depth-between-test-depth-and-reservoir-datum-plane~~ be filed on form 9a.

The director may shut in any well for failure to make such test as herein above described until such time as a satisfactory test has been made or satisfactory explanation given.

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

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-44. Metered casinghead gas. All casinghead gas produced shall be reported monthly to the director in units of one thousand cubic feet [28.32 cubic meters] computed at a pressure of fourteen and seventy-three hundredths pounds per square inch absolute [1034.19 grams per square centimeter] at a base temperature of sixty degrees Fahrenheit [15.56 degrees Celsius]. Associated gas production may not be transported from a well premises or central production facility until its volume has been determined through the use of properly calibrated measurement equipment. All measurement equipment and volume determinations must conform to American gas association standards. The operator of a well shall notify the director of the connection date to a gas gathering system, the metering equipment, transporter, and purchaser of the gas. Any gas produced and used on lease for fuel purposes or flared, must be estimated and reported on a gas production report (form 5b) in accordance with section 43-02-03-52.1.

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

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-45. Vented casinghead gas. Pending arrangements for disposition for some useful purpose, all vented casinghead gas shall be burned. Each flare shall be equipped with an automatic ignitor or a continuous burning pilot, unless waived by the director for good reason. The estimated volume of gas used and flared shall be reported to the director on a gas production report (form 5b) or before the fifth day of the second month succeeding that in which gas is produced.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; September 1, 2000.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-47. Produced water. Monthly water production from each well must be determined through the use of properly calibrated meter measurements, tank measurements, or an alternate measurement method

approved by the director. This includes allocating water production back to individual wells on a monthly basis, provided the method of volume determination and allocation procedure results in reasonably accurate production volumes. Operators shall report monthly to the director the amount of water produced by each well on form 5. The reports must be filed on or before the first day of the second month following that in which production occurred.

History: Amended effective January 1, 1983; May 1, 1992; May 1, 1994; September 1, 2000.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

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

1. The director shall have the authority to approve requests to consolidate production equipment at a central location.
2. Commingling of production from two or more wells in a central production facility is prohibited unless approved by the director. There are two types of central production facilities in which production from two or more wells is commingled that may be approved by the director.
 - a. A central production facility in which all production going into the facility has common ownership (working interests, royalty interests, and overriding royalties).
 - b. A central production facility in which production going into the facility has diverse ownership.
3. The commingling of production in a central production facility from two or more wells having common ownership may be approved by the director provided the production from each well can be accurately determined at reasonable intervals. Commingling of production in a central production facility from two or more wells having diverse ownership may be approved by the director provided the production from each well is accurately metered prior to commingling. Commingling of production in a central production facility from two or more wells having diverse ownership that is not metered prior to commingling may only be approved by the commission after notice and hearing.
 - a. Common ownership central production facility. The application for permission to commingle oil and gas in a central production facility with common ownership must be submitted on a sundry notice (form 4) and shall include the following:
 - (1) A plat or map showing thereon the location of the central facility and the name, well file number, and

location of each well and flow lines from each well that will produce into the facility.

- (2) A schematic drawing of the facility which diagrams the testing, treating, routing, and transferring of production. All pertinent items such as treaters, tanks, flow lines, valves, meters, recycle pumps, etc., should be shown.
- (3) A current or most recent division order or title opinion showing the ownership of each well to be commingled.
- (4) An explanation of the procedures or method to be used to determine, accurately, individual well production at periodic intervals. Such procedures or method shall be performed at least once every three months.

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

- b. Diverse ownership central production facility. The application for permission to commingle oil and gas in a central production facility having diverse ownership must be submitted on a sundry notice (form 4) and shall include the following:

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

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

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

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

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-49. Oil tanks and, dikes, and seals. ~~Oil shall not be stored or retained in earthen reservoirs or in open receptacles.~~ Dikes must be erected and maintained around oil tanks at any production facility built or rebuilt on or after July 1, 2000. Dikes must be erected and maintained around oil tanks at production facilities built prior to July 1, 2000, when deemed necessary by the director. Dikes must be constructed of sufficiently impermeable material to provide emergency containment and of sufficient dimension to contain the maximum total volume--stored--must--be-erected-and-kept-around-all-oil-tanks-or-battery-of-tanks-when-deemed-necessary-by--the--director;---Accidentally discharged capacity of the largest tank plus one day's fluid production. Discharged oil must be properly removed and may not be allowed to remain standing within the or outside of any diked area areas.

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

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

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-50. Tank cleaning permit. No tank bottom shall be removed from any tank used for the storage of crude oil or a tank in which crude oil accumulates without prior approval by the director. Verbal approval may be given. All tank bottom waste must be disposed of in a manner authorized by the director and in accordance with all applicable local, state, and federal laws and regulations. Within thirty days of completion of the tank bottom cleaning, the owner or operator shall submit a report (form 23) showing an accurate gauge of the contents of the tank and the amount of merchantable oil determinable from a representative sample of the tank bottom by the standard centrifugal test as prescribed by the American petroleum institute's code for measuring, sampling, and testing crude oil. Nothing contained in this section shall apply to reclaiming of pipeline break oil or the treating of tank bottoms at a pipeline station, crude oil storage terminal, or refinery or to the treating by a gasoline plant operator of oil and other catchings collected in traps and drips in the gas gathering lines connected to gasoline plants and in scrubbers at such plants.

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

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-51. Treating plant. Before construction of a treating plant and upon written application for a treating plant permit stating in detail the location, type, capacity of the plant contemplated, method of processing proposed, and the plan of operation for all plant waste, the commission shall set such application for hearing to determine whether the proposed plant and method of processing will actually and efficiently process, treat, and reclaim tank bottom emulsion and other waste oils, and whether there is need for such a plant. The operator of any portable treating plant shall notify the director as to all changes in location of said plant. No treating plant shall operate except by order of the commission. The disposition of all products and waste must be reported monthly on form 5-P 5p. ~~Before-actual--treating--operations are--begun~~ Upon approval of a treating plant and before construction begins, the permittee shall file with the commission a surety bond or cash bond conditioned upon compliance with all laws, rules and regulations, and orders of the commission. The bond amount shall be specified in the commission order authorizing the treating plant and shall be based upon the location, type, and capacity of the plant, processing method, and plan of operation for all plant waste approved in the commission order and shall be payable ~~in-the-amount--of--twenty-five thousand--dollars~~ to the industrial commission of North Dakota. In no case shall the bond amount be set lower than twenty-five thousand dollars.

History: Amended effective January 1, 1983; May 1, 1990; May 1, 1992; September 1, 2000.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-52. Report of oil production. The operator of each well in every pool shall, on or before the first day of the second month succeeding the month in which production occurs, file with the director ~~a-sworn-statement-showing~~ the amount of production made by each such well upon ~~forms-furnished-therefor;~~ form 5 or approved computer sheets no larger than eight and one-half by ~~fourteen~~ eleven inches [21.59 by 35.56 27.94 centimeters]. ~~In-lieu-of-a-notarized-report,-an-operator may-submit-to-the-commission-a-list-of-persons-authorized--to--sign--the monthly--oil--production--report.~~ The ~~commission-will-accept-a~~ report shall be signed by ~~any--person--on--the--list--provided--that--person's signature--is--witnessed~~ both the person responsible for the report and the person witnessing the signature. The printed name and title of both the person signing the report and the person witnessing the signature shall be included. Wells for which reports of production are not received by the close of business on said first day of the month shall may be shut in for a period not to exceed thirty days. The director shall notify, by certified mail, the operator and authorized transporter

of the shut-in period for such wells. Any oil produced during such shut-in period shall be deemed illegal oil and subject to the provisions of North Dakota Century Code section 38-08-15.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; December 1, 1997; September 1, 2000.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-52.1. Report of gas produced in association with oil.

The operator of each well in every pool shall, on or before the fifth day of the second month succeeding the month in which production occurs, file with the director ~~a sworn statement showing~~ the amount of gas produced by each such well upon ~~forms furnished therefor, form 5b or approved computer sheets no larger than eight and one-half by eleven inches [21.59 by 27.94 centimeters].~~ ~~In lieu of a notarized report, an operator may submit to the commission a list of persons authorized to sign the monthly gas production report.~~ The ~~commission will accept a~~ report shall be signed by ~~any person on the list provided that person's signature is witnessed~~ both the person responsible for the report and the person witnessing the signature. The printed name and title of both the person signing the report and the person witnessing the signature shall be included. Wells for which reports of production are not received by the close of business on said fifth day of the month ~~must~~ may be shut in for a period not to exceed thirty days. The director shall notify, by certified mail, the operator and authorized transporter of the shut-in period for such wells. Any gas produced during such shut-in period must be deemed illegal gas and subject to the provisions of North Dakota Century Code section 38-08-15.

History: Effective May 1, 1992; amended effective December 1, 1997; September 1, 2000.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

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

1. All saltwater liquids or brines produced with oil and natural gas shall be processed, stored, and disposed of without pollution of freshwater supplies. At no time shall saltwater liquids or brines be allowed to flow over or pool on the surface of the land or ~~into streams~~ infiltrate the soil.
2. ~~No surface pits shall be used to store saltwater.~~
3. Underground disposal of saltwater liquids and brines shall be in accordance with chapter 43-02-05.
4. 3. Surface tanks are an acceptable facility provided that:

- a. They are devoid of leaks and constructed of materials resistant to the effects of produced saltwater liquids, brines, or chemicals that may be contained therein. The above materials requirement may be waived by the director for tanks presently in service and in good condition.
- b. Dikes must be erected and maintained around saltwater tanks at any saltwater handling facility built or rebuilt on or after July 1, 2000. Dikes must be erected and maintained around saltwater tanks at saltwater handling facilities built prior to July 1, 2000, when deemed necessary by the director. Dikes must be constructed of sufficiently impermeable material to provide emergency containment and of sufficient dimension to contain the maximum total volume--stored--shall--be--erected--and--kept--around--all--saltwater--and--brine--tanks--or--battery--of--tanks when--deemed--necessary--by--the--director capacity of the largest tank plus one day's fluid production. Accidentally--discharged Discharged saltwater liquids or brines must be properly removed and may not be allowed to remain standing within the or outside of any diked area areas.

~~5.--Surface--pits--are--not--an--acceptable--facility.--Lined-pits previously-approved-may-be-utilized-provided-that:~~

~~a.--A--monitoring--system--be--maintained--to--ascertain--the integrity-of-the-impermeability-of-the-sides-and-bottom-of the-facility:~~

~~b.--Provisions--be--made--to--prevent--livestock--from-gaining access-to-the-stored-substances:~~

~~6.--This-section-shall-not-apply-to:~~

~~a.--Reserve---pits--currently--used--in--drilling;--deepening; testing;-reworking;-or-plugging-of-a-well:~~

~~b.--Pits--used--solely--for--the--purpose--of--burning--vented casinghead-gas-as-provided-in-section-43-02-03-45:~~

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

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-57. Determination of gas well potential. After the completion or recompletion of a gas well, the operator shall conduct tests to determine the daily open flow potential of the well. The test results together with an analyses of the gas shall be reported to the director within thirty days after completion of the well.

~~Operators shall conduct tests--to-determine-the-daily-open-flow potential-volumes-of-gas-wells-from-which-gas-is-being-used-or-marketed in--accordance--with-an-order-of-the-commission-or-at-the-request-of-the director.--Test-procedures-shall-be-those-commonly-used-in-the--industry~~ either a stabilized one-point back-pressure test or a multipoint back-pressure test in accordance with the "Manual of Back-Pressure Testing of Gas Wells" published by the interstate oil and gas compact commission unless otherwise approved by the director.

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

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-59. Production from gas wells to be measured and reported. Gas production may not be transported from a gas well premises until its volume has been determined through the use of ~~property~~ properly calibrated measurement equipment. All measurement equipment and volume determinations must conform to American gas association standards and corrected to a pressure of fourteen and seventy-three hundredths pounds per square inch absolute [1034.19 grams per square ~~centimeters~~ centimeter] at a base temperature of sixty degrees Fahrenheit [15.56 degrees Celsius]. Gas production reports (form 5b) shall be filed with the director on or before the fifth day of the second month succeeding that in which production occurs.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; May 1, 1994; July 1, 1996; September 1, 2000.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-64. Rate of producing wells. In allocated oil and gas pools the owner or operator of any producing unit shall not produce from any proration unit during any proration period more oil or gas than the allowable production from such units as shown by the proration schedule, provided that such owners or operators shall be permitted to maintain a uniform rate of production for each unit during the proration period. In order to maintain a uniform rate of production from the pool during any proration period, any operator may produce a total volume of oil and gas equal to that shown on the applicable proration schedule plus or minus five days top unit allowable, and any such overproduction shall be deducted from the total allowable for the well in the second month following; and any such underproduction shall be added to the total allowable on the well for the second month following; provided, that if the underproduction shall exceed five days top unit allowable for the unit, none of the underproduction shall be added to the allowable for the second month following, except as provided in section 43-02-03-65.

A fractional proration unit shall be allowed to produce only in the proportion that the acreage content thereof bears to forty acres [16.19 hectares].

Where the commission has adopted special rules in any pool, wells drilled in accordance with those special rules shall be allowed to produce a daily amount of oil and gas equal to the top unit allowable as set by the commission multiplied by a factor, the numerator of which shall be the number of acres ~~hectares~~ assigned to a spacing unit in the pool and the denominator of which shall be forty.

History: Amended effective January 1, 1983; September 1, 2000.

General Authority: NDCC 38-08-04, 38-08-06

Law Implemented: NDCC 38-08-04, 38-08-06

43-02-03-66. Application for allowable on new oil wells. No well shall be placed on the proration schedule until ~~notice of~~ a completion report (form 6) has been executed and filed with the director.

The first four wells in any field or pool hereafter discovered shall be allowed to produce any amount of oil it is capable of producing but in no case to exceed a maximum of two hundred barrels of oil per day if the same can be done without waste and provided further, that a market can be obtained for such oil produced.

The allowable production provided for above shall continue in effect for a period of not more than eighteen months from the date of completion of the first well in the field or pool, or until the completion of the fifth well in the pool, whichever shall occur first, and shall produce thereafter, only pursuant to the general rules and regulations of the commission.

The producer or operator of any well claiming a discovery allowable under this section shall report to the director, not later than the tenth of each month, the results of a potential test, made on or about the first day of the month, in accordance with the provisions of section 43-02-03-40.

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

General Authority: NDCC 38-08-04, 38-08-06

Law Implemented: NDCC 38-08-04, 38-08-06

43-02-03-80. Reports of purchasers and transporters of crude oil. On or before the first day of the second month succeeding that in which oil is removed, purchasers and transporters, including truckers, shall file with the director the appropriate monthly reporting forms. The purchaser shall file on form 10 and the transporter on form 10a the amount of all crude oil removed and purchased by them from each well or central production facility during the reported month. The transporter shall report the disposition of such crude oil on form 10b. All meter and tank measurements, and volume determinations of crude oil removed and purchased from a well or central production facility must conform to American petroleum institute standards and corrected to a base temperature of sixty degrees Fahrenheit [15.56 degrees Celsius] and

fourteen and seventy-three hundredths pounds per square inch absolute [1034.19 grams per square centimeter].

Prior to removing any oil from a well or central production facility, purchasers and transporters shall obtain an approved copy of a producer's ~~certificate-of-compliance-and~~ authorization to purchase and transport oil from a well or central production facility (form 8) from either the producer or the director.

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

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-81. Authorization to transport oil from a well or central production facility. Before any crude oil is transported from a well or central production facility, the operator of the well or central production facility shall file with the director, and obtain the director's approval, a ~~producer's--certificate--of--compliance-and an~~ authorization to purchase and transport oil from a well or central production facility (form 8).

Oil transported from a well or central production facility before the authorization is obtained or if such authorization has been revoked shall be considered illegal oil.

The director shall may revoke the ~~producers--certificate--of~~ ~~compliance-and~~ authorization to purchase and transport oil from a well or central production facility for failure to comply with any rule, regulation, or order of the commission.

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

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-82. Refinery reports. Each refiner of oil within North Dakota shall furnish for each calendar month a report (form 13) containing information and data respecting crude oil and products involved in such refiner's operations during each month. The report for each month shall be prepared and filed on or before the fifteenth of the next succeeding month with the director.

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

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

CHAPTER 43-02-05

43-02-05-13.1. Books and records to be kept to substantiate reports. All owners, operators, drilling contractors, drillers, service companies, or other persons engaged in drilling, completing, operating, or servicing injection wells shall make and keep appropriate books and records for a period of not less than six years, covering their operations in North Dakota from which they may be able to make and substantiate the reports required by this chapter.

History: Effective September 1, 2000.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

CHAPTER 43-02-06

43-02-06-04. Books and records to be kept to substantiate reports. All operators shall make and keep appropriate books and records for a period of not less than six years, covering their operations in North Dakota from which they may be able to make and substantiate the reports required by this chapter.

History: Effective September 1, 2000.

General Authority: NDCC 38-08-06.3

Law Implemented: NDCC 38-08-06.3

CHAPTER 43-02-08

43-02-08-11. Books and records to be kept to substantiate reports. Any operator desiring to classify a property as a stripper well property pursuant to this chapter shall make and keep records for a period of not less than six years, covering their operations in North Dakota from which they may be able to make and substantiate the reports required by this chapter.

History: Effective September 1, 2000.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

CHAPTER 43-02-09

43-02-09-08. Books and records to be kept to substantiate reports. All operators shall make and keep appropriate books and records for a period of not less than six years, covering their operations in North Dakota from which they may be able to make and substantiate the reports required by this chapter.

History: Effective September 1, 2000.

General Authority: NDCC 57-51.1-03

Law Implemented: NDCC 57-51.1-03

CHAPTER 43-02-10

43-02-10-05. Commission certification of tertiary recovery project. Upon the filing of an application for certification of a qualifying tertiary recovery project, the commission shall promptly set a date for hearing. In determining whether a tertiary recovery project shall be certified as a "qualifying tertiary recovery project", the commission shall determine:

1. Whether the tertiary recovery project meets the requirements of the tertiary recovery methods specified in subsection 6 8 of North Dakota Century Code section 57-51.1-01;
2. The amount of crude oil which would have been recovered from the unit source of supply if the tertiary recovery project had not been commenced; and
3. Whether the tertiary recovery project has achieved for at least one month an average production level of at least fifteen percent above the amount of production which would have been recovered from the unit source of supply (as determined in subsection 2) if the tertiary recovery project had not been commenced; and
4. Whether, for the purposes of the tax exemption and subsequent thereto the tax reduction, there has been incremental production.

The commission will, upon application or its own motion, have a hearing to determine whether the project operator continues to operate the unit as a qualifying tertiary recovery project.

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

General Authority: NDCC 38-08-04

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

43-02-10-08. Books and records to be kept to substantiate reports. Any unit operator desiring to certify a secondary recovery project shall make and keep appropriate books and records for a period of not less than six years, covering their operations in North Dakota from which they may be able to make and substantiate the reports required by this chapter.

History: Effective September 1, 2000.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

CHAPTER 43-02-11

43-02-11-02. Application to certify as qualifying a new-well; horizontal well, horizontal reentry well, or two-year inactive well. Any operator desiring to certify a horizontal, horizontal reentry, or two-year inactive well as a "qualifying well" for purposes of eligibility for the tax incentive provided in North Dakota Century Code chapter 57-51.1 shall submit to the director an application for certification of a qualifying well. The operator has the burden of establishing entitlement to certification and shall submit all data necessary to enable the commission to determine whether a well is a qualifying well and is entitled to the tax reduction and tax exemption provided in North Dakota Century Code sections 57-51.1-02 and 57-51.1-03 respectively. The application must be received by the commission within seventeen months after the qualification period, completion or recompletion, in order to receive the tax exemption and reduction from the first day of eligibility.

History: Effective July 1, 1996; amended effective September 1, 2000.

General Authority: NDCC 38-08-04

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

43-02-11-06. Application for tax exemption and reduction for a two-year inactive well. The application must include the following:

1. The name and address of the applicant and the name and address of the person operating the well, if different.
2. The name and number of the well; and the legal description of the location of the well for which a determination is requested.
3. Monthly production during the two years prior to date of application.
4. An affidavit stating that all working interest owners of the property and all purchasers of the crude oil produced from the property have been notified of the application by certified or registered mail.

Test oil produced from a two-year inactive well prior to recompletion is exempted from the extraction tax. If the application does not contain sufficient information to make a determination, the director may require the applicant to submit additional information.

~~The application must be submitted to the commission within twelve months after the month in which the well was returned to recompletion.~~

History: Effective July 1, 1996; amended effective September 1, 2000.

General Authority: NDCC 38-08-04

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

43-02-11-07. Books and records to be kept to substantiate reports. Any operator desiring to certify a new, horizontal, horizontal reentry, or two-year inactive well shall make and keep appropriate books and records for a period of not less than six years, covering their operations in North Dakota from which they may be able to make and substantiate the reports required by this chapter.

History: Effective September 1, 2000.

General Authority: NDCC 38-08-04

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

CHAPTER 43-02-12

43-02-12-01. Definitions. The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 38-08.1;---As used-in-this-chapter;-"building" except:

1. "Building" means any residence or commercial structure including a barn, stable, or other similar structure;--and "operator."
2. "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.
3. "Operator of the land" means the surface owner or the surface owner's tenant of the land upon which geophysical operations are to be conducted.

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

General Authority: NDCC 38-08.1

Law Implemented: NDCC 38-08.1-01

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

1. Any person applying to the commission for an exploration permit must have a certificate to conduct geophysical exploration pursuant to subsection 3 of North Dakota Century Code section 38-08.1-03.1. A person may not commence geophysical exploration activities in this state without first obtaining an exploration permit from the commission. An application for an exploration permit must include the following:
 - a. The name, permanent address, and telephone number of the geophysical contractor and the geophysical contractor's local representative.
 - b. The name, permanent address, and telephone number of the drilling and hole plugging contractor, if different from the seismic contractor.
 - c. The name and address of the resident agent for service of process of the person intending to engage in geophysical exploration.
 - d. The bond number, type, and amount for the geophysical company.

- e. The geophysical exploration method (i.e., shot hole, nonexplosive, 2D, or 3D).
 - f. The number, depth, and location of the seismic holes and the size of the explosive charges, if applicable.
 - g. The anticipated starting date of seismic and plugging operations.
 - h. The anticipated completion date of seismic and plugging operations.
 - i. A description of hole plugging procedures.
 - j. A description of the identifying marks that will be on the hat or nonmetallic plug to be used in the plugging of the seismic hole.
 - k. A preplot map displaying the proposed seismic project ~~lines and shot hole locations~~ source points and receiver lines and specifically identifying all source points that do not comply with section 43-02-12-05.
1. A fee of one hundred dollars.
 2. The permit holder shall notify the commission at least twenty-four hours, excluding Saturdays and holidays, before commencing geophysical activity.

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

General Authority: NDCC 38-08.1

Law Implemented: NDCC 38-08.1-04.1

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

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

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

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

General Authority: NDCC 38-08.1

Law Implemented: NDCC 38-08.1-08

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

Any person plugging a seismic hole must submit a plugging report and an affidavit of plugging detailing the line number, shot point number, hole depth, drill type, hole condition (wet, dry), bentonite used (sacks, capsules), and the depth at which the surface plug was set, and all other information necessary to describe the conditions of the shot hole.

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

General Authority: NDCC 38-08.1

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

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

1. Prior to commencement of any drilling or plugging operations, the ~~commission~~ director may require a field meeting with the geophysical contractor and subcontractors.
2. Except in those circumstances in which the ~~commission~~ director allows otherwise, all seismic shot holes must be plugged the same day as they were drilled and loaded. Any blown out shot holes must be plugged as soon as reasonably practicable, unless, upon application, the ~~commission~~ director grants an extension which may not exceed ninety days. All seismic shot holes must be temporarily capped until final plugging.
3. If the number of drilling rigs on a proposed project exceeds the ~~commission's~~ director's capacity to provide appropriate inspection, the ~~commission~~ director may limit the number of drilling rigs.
4. Bentonite materials used in seismic hole plugging must be derived from naturally occurring untreated, high swelling sodium bentonite which consists principally of the mineral montmorillonite.
5. A durable nonrusting metal or plastic tag must be set at a depth of approximately three feet [91.44 centimeters] below the surface of every shot hole and shall be imprinted with the name of the operator responsible for the plugging and its permit number.

6. Unless the contractor can prove to the satisfaction of the commission that another method will provide better protection to ground water and long-term land stability, seismic shot hole plugging shall be conducted in the following manner:
 - a. When water is used in conjunction with the drilling of seismic shot holes or when water is encountered in the hole, the shot holes are to be filled with coarse ground bentonite approximately three-fourths of one inch [19.05 millimeters] in diameter from the top of the charge up to a depth above the final water level. Cuttings shall be added from the top of the bentonite to the surface. All cuttings added above the nonmetallic plug shall be tamped.
 - b. When drilling with air only, and in completely dry holes, a plugging may be accomplished by returning the cuttings to the hole. A small mound must be left over the hole for settling allowance.
 - c. Any drilling fluid or cuttings which are deposited on the surface around the seismic hole will be spread out in such a manner that the growth of natural grasses or foliage will not be impaired.
 - d. The existing cap leads must be cut off below ground level.

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

General Authority: NDCC 38-08.1

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

43-02-12-08. Books and records to be kept to substantiate reports. All geophysical, drilling, and plugging contractors shall make and keep appropriate books and records for a period of not less than six years, covering their operations in North Dakota from which they may be able to make and substantiate the reports required by this chapter.

History: Effective September 1, 2000.

General Authority: NDCC 38-08.1

Law Implemented: NDCC 38-08.1-08

TITLE 45
Insurance, Commissioner of

AUGUST 2000

CHAPTER 45-03-20

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

The annual audited financial report must include the following:

1. Report of independent certified public accountant.
2. Balance sheet reporting admitted assets, liabilities, capital, and surplus.
3. Statement of operations.
4. Statement of cash flows.
5. Statement of changes in capital and surplus.
6. Notes to financial statements. These notes must be those required by the appropriate national association of insurance commissioners annual statement instructions and ~~any other notes required by generally accepted accounting principles and~~ the national association of insurance commissioners accounting practices and procedures manual. These notes must also include: a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to North Dakota Century Code section

26.1-03-07 with a written description of the nature of these differences.

a. ~~A reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to North Dakota Century Code section 26.1-03-07 with a written description of the nature of these differences.~~

b. ~~A summary of ownership and relationships of the insurer and all affiliated companies.~~

7. The financial statements included in the audited financial report must be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner, and the financial statement must be comparative, presenting the amounts as of December thirty-first of the current year and the amounts as of the immediately preceding December thirty-first. However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.

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

General Authority: NDCC 28-32-02

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

CHAPTER 45-06-01.1

45-06-01.1-06. Benefit standards for policies or certificates issued or delivered on or after January 1, 1992. The following standards are applicable to all medicare supplement policies or certificates delivered or issued for delivery in this state on or after January 1, 1992. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this state as a medicare supplement policy or certificate unless it complies with these benefit standards:

1. **General standards.** The following standards apply to medicare supplement policies and certificates and are in addition to all other requirements of this rule:
 - a. A medicare supplement policy or certificate may not exclude or limit benefits for losses incurred more than six months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.
 - b. A medicare supplement policy or certificate may not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.
 - c. A medicare supplement policy or certificate must provide that benefits designed to cover cost-sharing amounts under medicare will be changed automatically to coincide with any changes in the applicable medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.
 - d. No medicare supplement policy or certificate may provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.
 - e. Each medicare supplement policy must be guaranteed renewable:
 - (1) The issuer may not cancel or nonrenew the policy solely on the ground of health status of the individual.
 - (2) The issuer may not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

- (3) If the medicare supplement policy is terminated by the group policyholder and is not replaced as provided under paragraph 5 of subdivision e of subsection 1 of section 45-06-01.1-06, the issuer must offer certificate holders an individual medicare supplement policy which (at the option of the certificate holder):
 - (a) Provides for continuation of the benefits contained in the group policy; or
 - (b) Provides for benefits that otherwise meet the requirements of this subsection.
 - (4) If an individual is a certificate holder in a group medicare supplement policy and the individual terminates membership in the group, the issuer must:
 - (a) Offer the certificate holder the conversion opportunity described in paragraph 3 of subdivision e of subsection 1 of section 45-06-01.1-06; or
 - (b) At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.
 - (5) If a group medicare supplement policy is replaced by another group medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy must offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy may not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.
- f. Termination of a medicare supplement policy or certificate must be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.
- g. (1) A medicare supplement policy or certificate must provide that benefits and premiums under the policy or certificate must be suspended at the request of the policyholder or certificate holder for the period (not to exceed twenty-four months) in which the policyholder or certificate holder has applied for and is determined to be entitled to medicaid under

title XIX of the Social Security Act [42 U.S.C. 1396, et seq.], but only if the policyholder or certificate holder notifies the issuer of the policy or certificate within ninety days after the date the individual becomes entitled to assistance. Upon receipt of timely notice, the issuer shall return to the policyholder or certificate holder that portion of the premium attributable to the period of medicaid eligibility, subject to adjustment for paid claims.

(2) If suspension occurs and if the policyholder or certificate holder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstated (effective as of the date of termination of entitlement) as of the termination of entitlement if the policyholder or certificate holder provides notice of loss of entitlement within ninety days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

(3) Reinstitution of coverages:

(a) May not provide for any waiting period with respect to treatment of preexisting conditions;

(b) Must provide for coverage which is substantially equivalent to coverage in effect before the date of suspension; and

(c) Must provide for classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended.

2. **Standards for basic (core) benefits common to all benefit plans.** Every issuer must make available a policy or certificate including only the following basic core package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other medicare supplement insurance benefit plans in addition to the basic core package, but not in lieu thereof:

a. Coverage of part A medicare eligible expenses for hospitalization to the extent not covered by medicare from the sixty-first day through the ninetieth day in any medicare benefit period.

b. Coverage of part A medicare eligible expenses incurred for hospitalization to the extent not covered by medicare for each medicare lifetime inpatient reserve day used.

- c. Upon exhaustion of the medicare hospital inpatient coverage including the lifetime reserve days, coverage of the medicare part A eligible expenses for hospitalization paid at the diagnostic related group day outlier per diem or other appropriate standard of payment, subject to a lifetime maximum benefit of an additional three hundred sixty-five days. The provider must accept the issuing payment as payment in full and may not bill the insured for any balance.
 - d. Coverage under medicare parts A and B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations.
 - e. Coverage for the coinsurance amount of medicare eligible expenses under part B regardless of hospital confinement, subject to the medicare part B deductible.
3. **Standards for additional benefits.** The following additional benefits must be included in medicare supplement benefit plans "B" through "J" only as provided by section 45-06-01.1-07:
- a. Medicare part A deductible: Coverage for all of the medicare part A inpatient hospital deductible amount per benefit period.
 - b. Skilled nursing facility care: Coverage for the actual billed charges up to the coinsurance amount from the twenty-first day through the one hundredth day in a medicare benefit period for posthospital skilled nursing facility care eligible under medicare part A.
 - c. Medicare part B deductible: Coverage for all of the medicare part B deductible amount per calendar year regardless of hospital confinement.
 - d. Eighty percent of the medicare part B excess charges: Coverage for eighty percent of the difference between the actual medicare part B charge as billed, not to exceed any charge limitation established by the medicare program or state law, and the medicare-approved part B charge.
 - e. One hundred percent of the medicare part B excess charges: Coverage for all of the difference between the actual medicare part B charge as billed, not to exceed any charge limitation established by the medicare program or state law, and the medicare-approved part B charge.
 - f. Basic outpatient prescription drug benefit: Coverage for fifty percent of outpatient prescription drug charges, after a two hundred fifty dollar calendar year deductible,

to a maximum of one thousand two hundred fifty dollars in benefits received by the insured per calendar year, to the extent not covered by medicare.

- g. Extended outpatient prescription drug benefit: Coverage for fifty percent of outpatient prescription drug charges, after a two hundred fifty dollar calendar year deductible to a maximum of three thousand dollars in benefits received by the insured per calendar year, to the extent not covered by medicare.
- h. Medically necessary emergency care in a foreign country: Coverage to the extent not covered by medicare for eighty percent of the billed charges for medicare-eligible expenses for medically necessary emergency hospital, physician, and medical care received in a foreign country, which care would have been covered by medicare if provided in the United States and which care began during the first sixty consecutive days of each trip outside the United States, subject to a calendar year deductible of two hundred fifty dollars, and a lifetime maximum benefit of fifty thousand dollars. For purposes of this benefit, "emergency care" means care needed immediately because of an injury or an illness of sudden and unexpected onset.
- i. Preventive medical care benefit: Coverage for the following preventive health services:
 - (1) An annual clinical preventive medical history and physical examination that may include tests and services from subparagraph paragraph 2 and patient education to address preventive health care measures.
 - (2) Any one or a combination of the following preventive screening tests or preventive services, the frequency of which is considered medically appropriate:
 - (a) Fecal occult blood test or digital rectal examination, or both.
 - (b) Mammogram.
 - (c) Dipstick urinalysis for hematuria, bacteriuria, and proteinuria.
 - (d) Pure tone, air only, hearing screening test, administered or ordered by a physician.
 - (e) Serum cholesterol screening every five years.
 - (f) Thyroid function test.
 - (g) Diabetes screening.

- (3) Influenza vaccine administered at any appropriate time during the year and tetanus and diphtheria booster every ten years.
- (4) Any other tests or preventive measures determined appropriate by the attending physician.

Reimbursement must be for the actual charges up to one hundred percent of the medicare-approved amount for each service, as if medicare were to cover the service as identified in American medical association current procedural terminology codes, to a maximum of one hundred twenty dollars annually under this benefit. This benefit may not include payment for any procedure covered by medicare.

j. At-home recovery benefit: Coverage for services to provide short-term, at-home assistance with activities of daily living for those recovering from an illness, injury, or surgery.

(1) For purposes of this benefit, the following definitions apply:

(a) "Activities of daily living" includes, but is not limited to bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

(b) "Care provider" means a duly qualified or licensed home health aide or homemaker, personal care aide, or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry. "At-home recovery visit" means the period of a visit required to provide at-home recovery care, without limit on the duration of the visit, except each consecutive four hours in a twenty-four-hour period of services provided by a care provider is one visit.

(c) "Home" means any place used by the insured as a place of residence, provided that such place would qualify as a residence for home health care services covered by medicare. A hospital or skilled nursing facility may not be considered the insured's place of residence. "Care provider" means a duly qualified or licensed home health aide or homemaker, personal care aide, or nurse provided through a licensed home health care agency or referred by a

licensed referral agency or licensed nurses registry.

(d) "At-home--recovery--visit"--means--the--period--of--a--visit--required--to--provide--at--home--recovery--care, without--limit--on--the--duration--of--the--visit, except--each--consecutive--four--hours--in--a twenty-four-hour--period--of--services--provided--by--a--care--provider--is--one--visit. "Home" means any place used by the insured as a place of residence, provided that such place would qualify as a residence for home health care services covered by medicare. A hospital or skilled nursing facility may not be considered the insured's place of residence.

(2) Coverage requirements and limitations.

(a) At-home recovery services provided must be primarily services which assist in activities of daily living.

(b) The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by medicare.

(c) Coverage is limited to:

{i} [1] No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits may not exceed the number of medicare-approved home health care visits under a medicare-approved home care plan of treatment.

{ii} [2] The actual charges for each visit up to a maximum reimbursement of forty dollars per visit.

{iii} [3] One thousand six hundred dollars per calendar year.

{iv} [4] Seven visits in any one week.

{v} [5] Care furnished on a visiting basis in the insured's home.

{vi} [6] Services provided by a care provider as defined in this section.

{viii} [7] At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded.

{viii} [8] At-home recovery visits received during the period the insured is receiving medicare-approved home care services or no more than eight weeks after the service date of the last medicare-approved home health care visit.

(3) Coverage is excluded for:

(a) Home care visits paid for by medicare or other government programs; and

(b) Care provided by family members, unpaid volunteers, or providers who are not care providers.

k. New or innovative benefits. An issuer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner which is consistent with the goal of simplification of medicare supplement policies. New or innovative benefits should offer uniquely different or significantly expanded coverages.

History: Effective January 1, 1992; amended effective April 1, 1996; July 8, 1997; August 1, 2000.

General Authority: NDCC 26.1-36.1-02(1)(2), 26.1-36.1-03

Law Implemented: NDCC 26.1-36.1-02

CHAPTER 45-06-06.1

45-06-06.1-06. Requirement to insure entire groups.

1. a. A small employer carrier that offers coverage to a small employer shall offer to provide coverage to each eligible employee and to each dependent of an eligible employee. Except as provided in subdivision b, the small employer carrier shall provide the same health benefit plan to each such employee and dependent.
- b. A small employer carrier may offer the employees of a small employer the option of choosing among one or more health benefit plans, provided that each employee may choose any of the offered plans. Except as provided in subsection 3 of North Dakota Century Code section 26.1-36.3-06, with respect to exclusions for preexisting conditions, the choice among benefit plans may not be limited, restricted, or conditioned based upon the risk characteristics of the employees or their dependents.
2. a. A small employer carrier shall require each small employer that applies for coverage, as part of the application process, to provide a complete list of eligible employees and dependents of eligible employees as defined in subsections 12 and 13 of North Dakota Century Code section 26.1-36.3-01. The small employer carrier shall require the small employer to provide appropriate supporting documentation, such as the W-2 summary wage and tax form, or certification, to verify the information required under this subdivision.
- b. A small employer carrier shall secure a waiver with respect to each eligible employee and each dependent of such an eligible employee who declines an offer of coverage under a health benefit plan provided to a small employer. The waiver shall be signed by the eligible employee, on behalf of such employee or the dependent of such employee, and shall certify that the individual who declined coverage was informed of the availability of coverage under the health benefit plan. The waiver form shall require that the reason for declining coverage be stated on the form and shall include a written warning of the penalties imposed on late enrollees. Waivers shall be maintained by the small employer carrier for a period of six years.
- c. (1) A small employer carrier may not issue coverage to a small employer that refuses to provide the list required under subdivision a or a waiver required under subdivision b.

- (2) (a) A small employer carrier shall not issue coverage to a small employer if the carrier, or a producer for such carrier, has reason to believe that the small employer has induced or pressured an eligible employee, or dependent of an eligible employee, to decline coverage due to the individual's risk characteristics.
- (b) A producer shall notify a small employer carrier, prior to submitting an application for coverage with the carrier on behalf of a small employer, of any circumstances that would indicate that the small employer has induced or pressured an eligible employee, or dependent of an eligible employee, to decline coverage due to the individual's risk characteristics.
3. a. New entrants to a small employer group shall be offered an opportunity to enroll in the health benefit plan currently held by such group. A new entrant that does not exercise the opportunity to enroll in the health benefit plan within the period provided by the small employer carrier may be treated as a late enrollee by the carrier, provided that the period provided to enroll in the health benefit plan extends at least thirty days after the date the new entrant is notified of ~~his--or--her~~ the entrant's opportunity to enroll. If a small employer carrier has offered more than one health benefit plan to a small employer group pursuant to subdivision b of subsection 1, the new entrant shall be offered the same choice of health benefit plans as the other members of the group.
- b. A small employer carrier may not apply a waiting period, elimination period, or other similar limitation of coverage, other than an exclusion for preexisting medical conditions consistent with subdivision b of subsection 3 of North Dakota Century Code section 26.1-36.3-06, with respect to a new entrant that is longer than sixty ninety days.
- c. New entrants to a group shall be accepted for coverage by the small employer carrier without any restrictions or limitations on coverage related to the risk characteristics of the employees or their dependents, except that a carrier may exclude coverage for preexisting medical conditions, consistent with the provisions provided in subsection 3 of North Dakota Century Code section 26.1-36.3-06.
- d. A small employer carrier may assess a risk load to the premium rate associated with a new entrant, consistent with the requirements of North Dakota Century Code section 26.1-36.3-04. The risk load shall be the same risk load

charged to the small employer group immediately prior to acceptance of the new entrant into the group.

4. a. (1) In the case of an eligible employee or dependent of an eligible employee who, prior to the effective date of subsection 1 of North Dakota Century Code section 26.1-36.3-06, was excluded from coverage or denied coverage by a small employer carrier in the process of providing a health benefit plan to an eligible small employer, as defined in subdivision c of subsection 1 of North Dakota Century Code section 26.1-36.3-06, the small employer carrier shall provide an opportunity for the eligible employee or dependent of such eligible employee to enroll in the health benefit plan currently held by the small employer.
- (2) A small employer carrier may require an individual who requests enrollment under this subsection to sign a statement indicating that such individual sought coverage under the group contract other than as a late enrollee and that the coverage was not offered to the individual.
- b. The opportunity to enroll must meet the following requirements:
 - (1) The opportunity to enroll shall begin September 1, 1994, and shall last for a period of at least three months.
 - (2) Eligible employees and dependents of eligible employees who are provided an opportunity to enroll pursuant to this subsection shall be treated as new entrants. Premium rates related to such individuals shall be set in accordance with subsection 3.
 - (3) The terms of coverage offered to an individual described in paragraph 1 of subdivision a may exclude coverage for preexisting medical conditions if the health benefit plan currently held by the small employer contains such an exclusion, provided that the exclusion period shall be reduced by the number of days between the date the individual was excluded or denied coverage and the date coverage is provided to the individual pursuant to this subsection.
 - (4) A small employer carrier shall provide written notice at least forty-five days prior to the opportunity to enroll provided in paragraph 1 of subdivision a to each small employer insured under a health benefit plan offered by such carrier. The notice shall clearly describe the rights granted under this

subsection to employees and dependents who were previously excluded from or denied coverage and the process for enrollment of such individuals in the employer's health benefit plan.

History: Effective August 1, 1994; amended effective December 1, 1997; August 1, 2000.

General Authority: NDCC 26.1-01-08

Law Implemented: NDCC 26.1-36.3

STAFF COMMENT: Chapter 45-06-13 contains all new material and is not underscored so as to improve readability.

**CHAPTER 45-06-13
PROVIDER-SPONSORED ORGANIZATIONS**

Section	
45-06-13-01	Definitions
45-06-13-02	General
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45-06-13-01. Definitions.

1. "Commissioner" means the insurance commissioner of North Dakota.
2. "Department" means the North Dakota insurance department.
3. "Health care services" means the following medically necessary services: preventive care, emergency care, inpatient and outpatient hospital and physician care, diagnostic laboratory, and diagnostic and therapeutic radiological services.
4. "Medicare+choice program" means the criteria developed by the Balanced Budget Act of 1997 [Pub. L. 105-33; 111 Stat. 312; 42 U.S.C. 1345 et seq.], whereby risk-bearing organizations are permitted to offer health insurance or health benefits coverage to medicare-eligible enrollees through a medicare+choice plan.
5. "Provider" means any physician, hospital, or other person licensed or otherwise authorized to furnish health care services.
6. "Provider-sponsored organization" means a public or private entity that:
 - a. Is established or organized, and operated, by a health care provider, or group of affiliated health care providers;
 - b. Provides a substantial proportion of the health care items and services under the medicare+choice program directly through the provider or affiliated group of providers; and

- c. With respect to which the affiliated providers share, directly or indirectly, substantial financial risk with respect to the provision of such items and services and have at least a majority financial interest in the entity.

History: Effective August 1, 2000.

General Authority: NDCC 26.1-01-07.6

Law Implemented: NDCC 26.1-01-07.6

45-06-13-02. General. The commissioner shall issue a certificate of authority for the purpose of providing health care to medicare enrollees only to a provider-sponsored organization that meets each requirement for the issuance of a certificate of authority as a health maintenance organization as in North Dakota Century Code chapter 26.1-18.1 and other applicable insurance laws and regulations of this state except when preempted by federal law.

History: Effective August 1, 2000.

General Authority: NDCC 26.1-01-07.6

Law Implemented: NDCC 26.1-01-07.6

45-06-13-03. Action. The department shall take action on an application required in section 45-06-13-02 within ninety days of the date of receipt of a substantially complete application.

History: Effective August 1, 2000.

General Authority: NDCC 26.1-01-07.6

Law Implemented: NDCC 26.1-01-07.6

45-06-13-04. Minimum net worth requirements. Prior to the issuance of a certificate of authority, a provider-sponsored organization must have a minimum net worth amount of:

1. At least one million five hundred thousand dollars except as provided in subsection 2.
2. No less than one million dollars based on evidence from the organization's financial plan demonstrating to the department's satisfaction that the organization has available to it an administrative infrastructure that the department considers appropriate to reduce, control, or eliminate startup administrative costs.
 - a. After the effective date of a provider-sponsored organization's certificate of authority, a provider-sponsored organization shall maintain a minimum net worth amount equal to the greater of:

- (1) One million dollars;

- (2) Two percent of annual premium revenues as reported on the most recent annual financial statement filed with the department for up to and including the first one hundred fifty million dollars of annual premiums and one percent of annual premium revenues on premiums in excess of one hundred fifty million dollars;
 - (3) An amount equal to the sum of three months of uncovered health care expenditures as reported on the most recent financial statement filed with the department; or
 - (4) Using the most recent annual financial statement filed with the department, an amount equal to the sum of:
 - (a) Eight percent of annual health care expenditures paid on a noncapitated basis to nonaffiliated providers;
 - (b) Four percent of annual health care expenditures paid on a capitated basis to nonaffiliated providers plus annual health care expenditures paid on a noncapitated basis to affiliated providers; and
 - (c) Annual health care expenditures that are paid on a capitated basis to affiliated providers are not included in the calculation of the net worth requirement under subsection 1 and this paragraph.
- b. The minimum net worth amount shall be calculated as follows:
- (1) Cash requirement:
 - (a) At the time of the application for a certificate of authority, the provider-sponsored organization shall maintain at least seven hundred fifty thousand dollars of the minimum net worth amount in cash or cash equivalents.
 - (b) After the effective date of a provider-sponsored organization's certificate of authority, a provider-sponsored organization shall maintain the greater of seven hundred fifty thousand dollars or forty percent of the minimum net worth amount in cash or cash equivalents.
 - (2) Intangible assets. An organization may include intangible assets, the value of which is based on generally accepted accounting principles, in the

minimum net worth amount calculation subject to the following limitations:

(a) At the time of application:

[1] Up to twenty percent of the minimum net worth amount, provided at least one million dollars of the minimum net worth amount is met through cash or cash equivalents; or

[2] Up to ten percent of the minimum net worth amount, if less than one million dollars of the minimum net worth is met through cash or cash equivalents, or if the department has used its discretion under this subsection.

(b) From the effective date of the provider-sponsored organization's certificate of authority:

[1] Up to twenty percent of the minimum net worth amount if the greater of one million dollars or sixty-seven percent of the minimum net worth is met by cash or cash equivalents; or

[2] Up to ten percent of the minimum net worth amount if the greater of one million dollars or sixty-seven percent of the minimum net worth amount is not met by cash or cash equivalents.

(3) Health care delivery assets. Subject to the other provisions of this section, a provider-sponsored organization may apply one hundred percent of the generally accepted accounting principles depreciated value of health care delivery assets to satisfy the minimum net worth amount.

(4) Other assets. A provider-sponsored organization may apply other assets not used in the delivery care provided that those assets are valued according to statutory accounting practices as defined by the department.

(5) Subordinated debts and subordinated liabilities. Fully subordinated debt and subordinated liabilities are excluded from the minimum net worth amount calculation.

- (6) Deferred acquisition costs. Deferred acquisition costs are excluded from the calculation of the minimum net worth amount.

History: Effective August 1, 2000.

General Authority: NDCC 26.1-01-07.6

Law Implemented: NDCC 26.1-01-07.6

45-06-13-05. Financial plan requirements.

1. General rule. At the time of application under section 45-06-13-03, an applicant must submit a financial plan acceptable to the department.
2. A financial plan must include:
 - a. A detailed marketing plan;
 - b. Statements of revenue and expense on an accrual basis;
 - c. Statements of sources and uses of funds;
 - d. Balance sheets;
 - e. Detailed justifications and assumptions in support of the financial plan including, when appropriate, certification of reserves and actuarial liabilities by a qualified health maintenance organization actuary; and
 - f. If applicable, statements of the availability of financial resources to meet projected losses.
3. Period covered by the plan. A financial plan shall:
 - a. Cover the first twelve months after the estimated effective date of a provider-sponsored organization's medicare+choice contract; or
 - b. If the provider-sponsored organization is projecting losses, cover twelve months beyond the end of the period for which losses are projected.
4. Funding for projected losses. Except for the use of guarantees, letters of credit, and other means as provided in section 45-06-13-08, an organization shall have the resources for meeting projected losses on its balance sheet in cash or a form that is convertible to cash in a timely manner, in accordance with the provider-sponsored organization's financial plan.

5. Guarantees and projected losses. Guarantees will be an acceptable resource to fund projected losses, provided that a provider-sponsored organization:
 - a. Meets the department's requirements for guarantors and guarantee documents as specified in section 45-06-13-08; and
 - b. Obtains from the guarantor cash or cash equivalents to fund the projected losses timely, as follows:
 - (1) Prior to the effective date of a provider-sponsored organization's medicare+choice contract, the amount of the projected losses for the first two quarters;
 - (2) During the first quarter and prior to the beginning of the second quarter of a provider-sponsored organization's medicare+choice contract, the amount of projected losses through the end of the third quarter; and
 - (3) During the second quarter and prior to the beginning of the third quarter of a provider-sponsored organization's medicare+choice contract, the amount of projected losses through the end of the fourth quarter.
 - c. If the guarantor complies with the requirements in subdivision b, the provider-sponsored organization, in the third quarter, may notify the department of its intent to reduce the period of advance funding of projected losses. The department shall notify the provider-sponsored organization within sixty days of receiving the provider-sponsored organization's request if the requested reduction in the period of advance funding will not be accepted.
 - d. If the guarantee requirements in subdivision b are not met, the department may take appropriate action, such as requiring funding of projected losses through means other than a guarantee. The department retains discretion to require other methods or timing of funding, considering factors such as the financial condition of the guarantor and the accuracy of the financial plan.
6. Letters of credit. Letters of credit are an acceptable resource to fund projected losses, provided they are irrevocable, unconditional, and satisfactory to the department. They shall be capable of being promptly paid upon presentation of a sight draft under the letters of credit without further reference to any other agreement, document, or entity.

7. Other means. If satisfactory to the department, and for periods beginning one year after the effective date of a provider-sponsored organization's medicare+choice contract, a provider-sponsored organization may use the following to fund projected losses:
 - a. Lines of credit from regulated financial institutions;
 - b. Legally binding agreements for capital contributions; or
 - c. Legally binding agreements of a similar quality and reliability as permitted in subdivisions a and b.
8. Application of guarantees, letters of credit, or other means of funding projected losses. Notwithstanding any other provision of this section, a provider-sponsored organization may use guarantees, letters of credit, and, beginning one year after the effective date of a provider-sponsored organization's medicare+choice contract, other means of funding projected losses, but only in a combination or sequence that the department considers appropriate.

History: Effective August 1, 2000.
General Authority: NDCC 26.1-01-07.6
Law Implemented: NDCC 26.1-01-07.6

45-06-13-06. Liquidity.

1. A provider-sponsored organization shall have sufficient cash flow to meet its financial obligations as they become due and payable.
2. To determine whether the provider-sponsored organization meets the requirement in subsection 1, the department will examine the following:
 - a. The provider-sponsored organization's timeliness in meeting current obligations;
 - b. The extent to which the provider-sponsored organization's current ratio of assets to liabilities is maintained at a one to one ratio including whether there is a declining trend in the current ratio over time; and
 - c. The availability of outside financial resources to the provider-sponsored organization.
3. If the department determines that a provider-sponsored organization fails to meet the requirement in subdivision a of subsection 2, the department will require the provider-sponsored organization to initiate corrective action and pay all overdue obligations.

4. If the department determines that a provider-sponsored organization fails to meet the requirement of subdivision b of subsection 2, the department will require the provider-sponsored organization to initiate corrective action to:
 - a. Change the distribution of its assets;
 - b. Reduce its liabilities; or
 - c. Make alternative arrangements to secure additional funding to restore the provider-sponsored organization's current ratio to one to one.
5. If the department determines that a provider-sponsored organization fails to meet the requirement of subdivision c of subsection 2, the department will require the provider-sponsored organization to obtain funding from alternative financial resources.

History: Effective August 1, 2000.

General Authority: NDCC 26.1-01-07.6

Law Implemented: NDCC 26.1-01-07.6

45-06-13-07. Deposits.

1. Insolvency deposit.

- a. At the time of application, an organization shall deposit one hundred thousand dollars in cash or securities, or any combination thereof, into an account in a manner that is acceptable to the department.
- b. The deposit must be restricted to use in the event of insolvency to help assure continuation of services or pay costs associated with receivership or liquidation.
- c. At the time of the provider-sponsored organization's application for a certification of authority, and, thereafter, upon the department's request, a provider-sponsored organization shall provide the department with proof of the insolvency deposit, such proof to be in a form that the department considers appropriate.

2. Uncovered expenditures deposit.

- a. If at any time uncovered expenditures exceed ten percent of a provider-sponsored organization's total health care expenditures, then the provider-sponsored organization must place an uncovered expenditures deposit into an

account with any organization or trustee that is acceptable to the department.

- b. The deposit must at all times have fair market value of an amount that is one hundred twenty percent of the provider-sponsored organization's outstanding liability for uncovered expenditures for enrollees, including incurred, but not reported, claims.
 - c. The deposit must be calculated as of the first day of each month required and maintained for the remainder of each month required.
 - d. If a provider-sponsored organization is not otherwise required to file a quarterly report, it must file a report within forty-five days of the end of the calendar quarter with information sufficient to demonstrate compliance with this section.
 - e. The deposit required under this section is restricted and in trust for the department's use to protect the interests of the provider-sponsored organization's medicare enrollees and to pay the costs associated with administering the insolvency. It may be used only as provided under this section.
3. **Deposit as asset.** A provider-sponsored organization may use the deposits required under subsections 1 and 2 to satisfy the provider-sponsored organization's minimum net worth amount required under section 45-06-13-04.
 4. **Income.** All income from the deposits or trust accounts required under subsections 1 and 2 is considered assets of the provider-sponsored organization. Upon the department's approval, the income from the deposits may be withdrawn.
 5. **Withdrawal.** On prior written approval from the department, a provider-sponsored organization that has made a deposit under subsection 1 or 2 may withdraw that deposit or any part thereof if:
 - a. A substitute deposit of cash or securities of equal amount and value is made;
 - b. The fair market value exceeds the amount of the required deposit; or
 - c. The required deposit under subsection 1 or 2 is reduced or eliminated.

History: Effective August 1, 2000.
General Authority: NDCC 26.1-01-07.6
Law Implemented: NDCC 26.1-01-07.6

45-06-13-08. Guarantees.

1. **General policy.** A provider-sponsored organization, or the legal entity of which the provider-sponsored organization is a component, may apply to the department to use the financial resources of a guarantor for the purpose of meeting the requirements in section 45-06-13-05. The department has the discretion to approve or deny approval of the use of a guarantor.
2. **Request to use a guarantor.** To apply to use the financial resources of a guarantor, a provider-sponsored organization must submit to the department the following material:
 - a. Documentation that the guarantor meets the requirements for a guarantor under subsection 3; and
 - b. The guarantor's independently audited financial statements for the current year-to-date and for the two most recent fiscal years. The financial statements must include the guarantor's balance sheets, the profit and loss statements, and cash flow statements.
3. **Requirements for guarantor.** To serve as a guarantor, an organization must meet the following requirements:
 - a. Be a legal entity authorized to conduct business within a state of the United States.
 - b. Not be under federal or state bankruptcy or rehabilitation proceedings.
 - c. Have a net worth, not including other guarantees, intangibles, and restricted reserves, equal to three times the amount of the provider-sponsored organization guarantee.
 - d. If the guarantor is regulated by a state insurance commissioner, or other state official with authority for risk-bearing entities, it must meet the net worth requirement in subdivision c with all guarantees and all investments in and loans to organizations covered by guarantees excluded from its assets.
 - e. If the guarantor is not regulated by a state insurance commissioner or other similar state official, it must meet the net worth requirement in subdivision c with all guarantees and all investments in and loans to organizations covered by a guarantee and to related parties, subsidiaries, and affiliates excluded from its assets.

4. **Guarantee document.** If the guarantee request is approved, a provider-sponsored organization must submit to the department a written guarantee document signed by an appropriate authority of the guarantor. The guarantee document must contain the following provisions:
 - a. State the financial obligation covered by the guarantee;
 - b. Agree to unconditionally fulfill the financial obligation covered by the guarantee;
 - c. Agree not to subordinate the guarantee to any other claim on the resources of the guarantor;
 - d. Declare that the guarantor must act on a timely basis, in any case not more than five business days, to satisfy the financial obligation covered by the guarantee; and
 - e. Meet other conditions as the department may establish from time to time.
5. **Reporting requirement.** A provider-sponsored organization shall submit to the department the current internal financial statements and annual financial statements of the guarantor according to the schedule, manner, and form that the department requests.
6. **Modification, substitution, and termination of a guarantee.** A provider-sponsored organization may not modify, substitute, or terminate a guarantee unless the provider-sponsored organization:
 - a. Requests the department's approval at least ninety days before the proposed effective date of the modification, substitution, or termination;
 - b. Demonstrates to the department's satisfaction that the modification, substitution, or termination will not result in insolvency of the provider-sponsored organization; and
 - c. Demonstrates how the provider-sponsored organization will meet the requirements of this section.
7. **Nullification.** If at any time the guarantor or the guarantee ceases to meet the requirements of this section, the department shall notify the provider-sponsored organization that it ceases to recognize the guarantee document. In the event of this nullification, a provider-sponsored organization shall:
 - a. Meet the applicable requirements of this section within fifteen business days; and

- b. If required by the department, meet a portion of the applicable requirements in less than the time period granted in subdivision a.

History: Effective August 1, 2000.

General Authority: NDCC 26.1-01-07.6

Law Implemented: NDCC 26.1-01-07.6

CHAPTER 45-10-02

45-10-02-04. Notification of release procedures. ~~Once the administrator has received~~ Upon receiving notice of a release from the state department of health, the administrator shall ~~undertake or cause to be undertaken~~ the following procedures as applicable:

1. ~~Enter the release information into the claim register.~~
2. Verify that the tank ~~owner or operator has registered the tank involved in the release, and all other tanks owned or operated.~~ Verification must be made by comparing the registration list and the original registration form on file with the administrator and all other tanks owned or operated by the operator are registered with the fund.
2. Record the release information in the claim register.
3. If the owner or operator has not registered all of the tanks owned or operated by the operator, send a letter of denial to inform the owner or operator of the requirements with a carbon copy to the state department of health and close the claim file.
4. If ~~the tank is~~ all tanks are registered, each notify the owner to explain how the fund works of the fund's claim filing procedures and send the tank owner or operator the fund's tank release guidelines with an application for reimbursement. ~~Upon receipt of the completed application, the administrator shall investigate the release through the use of one of the following:~~
 - a. ~~A fund employee;~~
 - b. ~~Employ an independent adjuster; or~~
 - c. ~~Coordinate with an insurance company.~~
5. ~~Review and summarize all final claims reports with the advisory board.~~
6. ~~Reimburse the owner or operator or make payment to the owner's or operator's assigned representative.~~

History: Effective November 25, 1991; amended effective June 1, 1994; August 1, 2000.

General Authority: NDCC 28-32-02; S.L. 1991, ch. 299, § 5

Law Implemented: S.L. 1991, ch. 299, §§ 10, 19

45-10-02-05. Procedures for investigation of claims.

1. Appointment of claims representative: If the administrator appoints a claims representative to investigate the release, the claims representative's functions are as follows:

a. Ensure the fairness of cleanup costs, making sure they are necessary, reasonable, and not excessive.

b. Obtain the adjuster's first report within twenty days of the adjuster's receipt of the claim.

c. The adjuster's subsequent progress reports must be submitted to the fund at least every thirty days.

d. Submit all required documents to the fund.

e. Function as a liaison between the owner or operator and all other parties involved in the cleanup operation.

2. Qualifications of the claims representative: The claims representative must have a general knowledge of insurance policy coverages and exclusions and must also have at least three years of experience as an investigator of claims or equivalent experience to be evaluated by the administrator.

3. Investigation procedure: In each release investigation, the claims representative administrator shall perform each of the following duties as applicable:

a. 1. Examine the location of the release.

b. 2. Interview persons to elicit information regarding with knowledge of the release.

c. 3. Examine all records and documentation concerning the release, including documentation of the corrective action taken and all expenses incurred.

d. 4. Prepare a written report concerning determining the validity of the claim, including an estimate of the and the estimated eligible cleanup costs.

e. 5. Complete any and all other tasks or duties specified by the administrator as required.

History: Effective November 25, 1991; amended effective August 1, 2000.

General Authority: NDCC 28-32-02; S.L. 1991, ch. 299, § 5

Law Implemented: S.L. 1991, ch. 299, §§ 18, 20, 23

45-10-02-06. Payment Reimbursement.

1. ~~No payment may be made from the fund unless the subject tank has been properly registered and the registration fee paid prior to the discovery of the release. The fund will reimburse only reasonable and necessary cleanup expenses as determined by the administrator in consultation with the state department of health and only if all tanks are properly registered prior to the discovery of the release.~~
2. No payment will be made from the fund unless a completed application form has been received by the administrator. The application must contain at least the following information:
 - a. Name and address of the owner or operator.
 - b. Street or highway description of the petroleum release location.
 - c. The legal description of the release location.
 - d. The substance released.
 - e. The date the release was discovered.
 - f. Name, address, and telephone number of the contact person.
 - g. A narrative description of the release.
3. ~~Payment must be made for eligible costs as determined by the administrator. The fund must make payment to an eligible owner or operator whose tanks were properly registered prior to discovery of the release for ninety percent of the eligible costs between five thousand dollars and one hundred fifty five thousand dollars for corrective action including the investigation, and one hundred percent of the costs of corrective action between one hundred fifty five thousand dollars and one million dollars per occurrence and two million dollars in the annual aggregate.~~
4. Eligible ~~costs~~ expenses for a corrective action include, ~~but are not limited to,~~ the following:
 - a. Labor.
 - b. Testing.
 - c. Use of machinery.
 - d. Materials and supplies.
 - e. Professional services.
 - f. ~~Costs~~ Expenses incurred by order of federal, state, or local government.

- g. Any other costs expenses the administrator and the advisory board deem to be reasonable and necessary to remedy cleanup of the release and satisfy liability to any third party.
 - h. Consultant fees if authorized by the North Dakota state department of health or other federal or state agency approving the cleanup procedures.
- 5- 4. The following will not be considered eligible costs expenses under this regulation:
- a. The cost of replacement, repair, and maintenance of affected tanks and associated piping.
 - b. Pumping out of any product, including water, from any tanks which need to be removed.
 - c. The cost of upgrading existing affected tanks and associated piping.
 - d. The loss of income, profits, or petroleum product.
 - e. Decreased property value.
 - f. Bodily injuries or property damages except for injuries or damages suffered by third parties.
 - g. Attorney's fees.
 - h. Costs associated with preparing, filing, and prosecuting an application for reimbursement or assistance under this regulation.
 - i. The costs of making improvements to the facility beyond those that are required for corrective action.
 - j. Any cleanup costs resulting from negligence or misconduct on the part of the owner or operator.
 - k. Costs in excess of those considered reasonable by the fund.
 - l. Fines or penalties imposed by order of federal, state, or local government.
 - m. Finance charges, interest charges, or late payment charges.
- 6- 5. ~~In--order--to~~ To determine what expenses are "reasonable" and necessary, the owner or operator ~~has--to~~ must bid the excavation and consultant work out. ~~When--the~~ The lowest or best bid is-accepted, that meets the requirements of the state

department of health will be deemed by the fund to be the reasonable cost for that project. The bid needs--to must be broken--out--into--unit--costs--for--each--piece--of--equipment--or laborer.--This--can--be--done--by--the--owner--or--operator--requesting bids submitted according to the fund's excavation and consultant worksheets. Any--additional Additional work over and above the original bid will be reimbursed according to unit costs on the original bid.

- 7:--In--making--the--determination--of--the--amount--and--type--of--costs eligible--for--payment--from--the--fund;--the--administrator--shall review--the--written--report--of--the--claims--representative;--if--one is--contracted;--and--all--other--correspondence--and--expense documentation--(including--itemized--bills);--and--shall--also review--the--final--report--from--the--department:
- 8: 6. At--the--discretion--of--the The administrator and--after--review--by the--advisory--board;--the--fund may provide partial payments prior to the final determination of the amount of the loss, if it is determined that the cleanup is proceeding according to the proposed workplan of the state department of health for the site assessment as--required--by--the--department. The payment may be made to the owner or operator or the owner's or operator's assigned representative if the appropriate assignment form;--as--approved--by--the--fund; is completed and submitted to the fund administrator with appropriate invoices; receipts; and canceled checks documentation verifying that the work has been completed by the assignee.
- 9: 7. All claims for payment are subject to the availability of funds in the petroleum tank release compensation fund.
- 10: 8. Subrogation: Prior to payment for any loss, the owner or operator shall subrogate to the fund all rights, claims, and interest which the owner or operator has or may have against any party, person, persons, property, corporation, or other entity liable for the subject loss, and shall authorize the fund to sue, compromise, or settle in the name of the owner or operator or otherwise, all such claims. The subrogation agreement required by this section must be prescribed and produced by the administrator.
- 11: 9. No--payment Reimbursement will be made--until considered when the owner or operator has submitted complete excavation or consultant worksheets along with legible copies of invoices, providing a description of:
- a. Any-work The work performed.
 - b. Who The party who performed the work.
 - c. Where The location where the work was performed.

- d. The dates date the work was performed.
- e. The unit cost.
- f. The total amount.

~~12-~~ 10. The owner or operator must submit, prior to any payment, evidence that the amounts shown on the invoices for which the payment is requested were either paid in full by the owner or operator or, if the owner or operator has assigned the right to receive payment from the fund, that a contractor hired by ~~the owner or operator~~ has expended time and materials for which payment must be made. ~~The evidence must be accompanied by either:~~ This must include documentation that the work has been completed by the assignee.

~~a.--Business receipts indicating payments received;~~

~~b.--Canceled checks;~~

~~c.--The certification of a certified public accountant that the expenses for which reimbursement is requested have been paid in full; or~~

~~d.--Unpaid invoices from a contractor for time and materials expended broken out by unit costs.~~

~~13-~~ 11. Prior to payment, the fund administrator must be satisfied that the corrective action taken has met all state, federal, and local laws or regulations concerning such a cleanup and that the corrective action has adequately addressed the ~~release in terms of~~ satisfied public health, welfare, and the ~~environment~~ environmental concerns.

History: Effective November 25, 1991; amended effective June 1, 1994; August 1, 2000.

General Authority: NDCC 28-32-02; S.L. 1991, ch. 299, § 5

Law Implemented: S.L. 1991, ch. 299, §§ 18, 20, 23, 24

45-10-02-06.1. Reimbursement disputes. If the fund administrator denies or reduces payment to a tank owner or operator, the tank owner may request a review by the advisory board by filing a written request and supporting documentation with both the administrator and the advisory board within thirty days of receiving a proof of loss. The advisory board shall issue a written opinion concerning the issues in dispute within thirty days of receiving the written notice and supporting documentation. The opinion shall be advisory only. If after review by the advisory board a dispute still exists between the fund administrator and the tank owner or operator, the tank owner or operator may request an administrative hearing.

History: Effective August 1, 2000.

General Authority: NDCC 28-32-02; S.L. 1991, ch. 299, § 5
Law Implemented: S.L. 1991, ch. 299

45-10-02-08. Advisory board. The administrator shall keep advise the board apprised of the fund's general operations, ~~---Prior--to--making~~ any ~~--payment;--the-administrator-shall~~ and review all claims against ~~the~~ fund ~~with-the-advisory-board~~ either through written correspondence, telephone conference calls, or board meetings.

History: Effective November 25, 1991; amended effective August 1, 2000.
General Authority: NDCC 28-32-02; S.L. 1991, ch. 299, § 5
Law Implemented: S.L. 1991, ch. 299, § 3

TITLE 51
Milk Marketing Board

JULY 2000

CHAPTER 51-01-01

51-01-01-01. Organization of milk marketing board.

1. **History and purpose.** The 1967 legislative assembly passed milk stabilization legislation which is codified as North Dakota Century Code chapter 4-18.1. This chapter requires the governor to appoint a milk marketing board. The purpose of the chapter is to protect and promote the public welfare and to eliminate unfair and demoralizing trade practices in the milk industry.
2. **Board membership.** The board consists of five members appointed by the governor. One member is a dairy farmer, one member is a processor, one member is a retailer, and two members are consumers and are not otherwise engaged in the milk business. Board members serve five-year terms, with one term expiring each year. The board chooses one of its members as a chairman who holds office for one year. Three members of the board constitute a quorum for the transaction of business.
3. **Director.** The director is the chief executive officer of the board and is the legal custodian of all papers, records, and property. The director is responsible for the administration of the board's activities and also serves as financial officer of the board. The director is authorized to accept and receive all money paid to the board.
4. **Funds and expenditures.** To obtain funds for administration of the chapter, the board levies an assessment upon all licensed processors ~~of not more than twelve cents per hundredweight~~ on milk or milk equivalents used for the manufacture of milk

products and frozen dairy products sold in North Dakota. All such assessments are deposited by the board in the state treasury in a special revolving fund known as the "milk marketing fund". All expenditures under the chapter are paid out of the milk marketing fund. All money in the milk marketing fund is appropriated on a continuing basis to the board for carrying out the purposes of the chapter.

5. **Board office and hours.** The office of the North Dakota milk marketing board is in Bismarck, North Dakota, and is open on each business day from eight a.m. until twelve noon and one p.m. to five p.m.
6. **Communications.** All communications with the board may be addressed to the director:

Director
North Dakota Milk Marketing Board
~~206-1/2-North-Sixth-Street,-No--5~~
410 East Thayer Avenue, No. 2
Bismarck, ND ~~58501-4405~~ 58501-4049
701-328-9588

History: Amended effective April 1, 1994; September 1, 1995; July 1, 2000.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

CHAPTER 51-02-02

51-02-02-01. Discounts, rebates, or allowances. The giving of discounts, rebates, or allowances in connection with the sale of milk products ~~or frozen dairy products~~ unless such discounts, rebates, or allowances are authorized by the board in accordance with subsection 5 of North Dakota Century Code section 4-18.1-07 is prohibited. Nothing contained in this chapter shall be construed to prohibit the issuing of trading stamps by retailers in numbers customary in normal trade, but no trading stamp bonuses shall be given for milk products ~~or frozen dairy products~~.

History: Amended effective July 1, 2000.

General Authority: NDCC 4-18.1-01, 4-18.1-11

Law Implemented: NDCC 4-18.1-11

CHAPTER 51-03-02

51-03-02-06. Prices to be paid dairy farmers and others - Midpoint, differential, and multiple component pricing. Publication--of this--section--would--be--inexpedient--because--it--changes--frequently--on--an emergency-basis.

Copies-of-this-section-may-be-obtained-by-forwarding-a-request-to:

Executive-Secretary
North-Dakota-Milk-Stabilization-Board
206-1/2-North-Sixth-Street
Bismarck,-ND-58505

1. Class I (market area 1). Commencing July 1, 2000, the minimum price to be paid by milk processors to dairy farmers and others coming within the scope of this plan f.o.b. the processor's plant for milk which is ultimately utilized in class I (milk products) shall be the hundredweight price as established by the formula below. However, the minimum price to be paid by milk processors to dairy farmers and others coming within the scope of this plan f.o.b. the processor's plant for milk which is ultimately utilized in class I (milk products) shall not be less than \$13.76 per hundredweight.

The following formula shall be used when the federal market order no. 30 class I dairy farmer hundredweight price increases or decreases to the next higher or lower federal market order no. 30 class I dairy farmer hundredweight trip point. Minimum North Dakota class I dairy farmer and wholesale and retail prices to be adjusted by using the current federal market order no. 30 class I dairy farmer price on the formula below. Move to the next higher increment and utilize the North Dakota minimum class I dairy farmer price as listed on the formula below. Adjustments, if required, will be monthly.

Market Area 1

Federal Market Order No. 30 Class I Dairy Farmer Price	North Dakota Minimum Class I Dairy Farmer Price	Minimum Wholesale Price Per 1/2 Gallon 2 Percent Milk
18.59	19.22	1.541
18.38	19.01	1.531
18.17	18.80	1.521
17.96	18.59	1.511
17.75	18.38	1.501
17.54	18.17	1.491
17.33	17.96	1.481
17.12	17.75	1.471
16.91	17.54	1.461

16.70	17.33	1.451
16.49	17.12	1.441
16.28	16.91	1.431
16.07	16.70	1.421
15.86	16.49	1.411
15.65	16.28	1.401
15.44	16.07	1.391
15.23	15.86	1.381
15.02	15.65	1.371
14.81	15.44	1.361
14.60	15.23	1.351
14.39	15.02	1.341
14.18	14.81	1.331
13.97	14.60	1.321
13.76	14.39	1.311
13.55	14.18	1.301
13.34	13.97	1.291
13.13	13.76 Base	1.281

Based on \$.21 per hundredweight increments and butterfat differential of \$.053.

Differentials above or below the midpoint of 3.5 percent will be those used in federal market order no. 30.

Adjustments in wholesale and retail prices for other sized containers should also increase or decrease, or both, proportionally to the one-half gallon use.

2. Class II. Commencing July 1, 2000, the minimum price to be paid by milk processors to dairy farmers and others, coming within the scope of this stabilization plan f.o.b. the processor's plant after the effective date of this plan for milk which is ultimately utilized in class II, shall be the class II price per hundredweight for federal market order no. 30, adjusted to a 3.5 percent butterfat basis. Butterfat differentials above or below the midpoint of 3.5 percent will be those used in federal market order no. 30.

3. Class III. Commencing July 1, 2000, the minimum price to be paid by milk processors to dairy farmers and others coming within the scope of this stabilization plan f.o.b. the processor's plant for milk, which is ultimately utilized in class III, except that used in the manufacture of butter, shall be priced under a "multiple component pricing" system to include protein, other solids, and somatic cell count. The respective prices for these components, in a given month, and computations thereon will be those used by federal market order no. 30. Two additional components, butterfat and producer price differential, will use as a basis the class III price per hundredweight for federal market order no. 30 less a four percent administrative and transportation allowance to the nearest full cent adjusted to a 3.5 percent butterfat

basis. Butterfat differentials above or below the midpoint of 3.5 percent will be those used in federal market order no. 30. Commencing July 1, 2000, the minimum price to be paid by milk processors to dairy farmers and others coming within the scope of this stabilization plan, f.o.b. the processor's plant for milk and cream which is ultimately used in class III for the manufacture of butter, shall be the monthly national agricultural statistical service (NASS) survey butter price less a \$.05 per pound administrative and transportation allowance rounded to the nearest cent.

If a processing plant pays to its dairy farmers and others a premium above the class III minimum raw milk price as established herein, such price including the premium, shall become the minimum class III raw milk price for audit purposes for said plant, and said plant shall not be entitled to dilute the class I and class II raw milk prices for payment of said premiums on said class III raw milk.

4. The foregoing class I, II, and III dairy farmer prices shall be automatically adjusted each month, without further amendment to this stabilization plan based upon the prices ordered for federal market order no. 30.

History: Amended effective July 1, 2000.

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

51-03-02-10. Minimum wholesale and retail prices for class I milk products - Market area 1. Publication of this section would be inexpedient because it changes frequently on an emergency basis.

Copies of this section may be obtained by forwarding a request to:

Executive-Secretary Director
North Dakota Milk Marketing Board
410 East Thayer Avenue, # No. 2
Bismarck, ND 58501-4049

51-03-02-11. Minimum wholesale and retail prices for class II milk products - Market area 1. Publication of this section would be inexpedient because it changes frequently on an emergency basis.

Copies of this section may be obtained by forwarding a request to:

Executive-Secretary Director
North Dakota Milk Marketing Board
410 East Thayer Avenue, # No. 2
Bismarck, ND 58501-4049

51-03-02-12. Minimum wholesale prices for shake and soft serve mix. Publication of this section would be inexpedient because it changes frequently on an emergency basis.

Copies of this section may be obtained by forwarding a request to:

Executive-Secretary Director
North Dakota Milk Marketing Board
410 East Thayer Avenue, # No. 2
Bismarck, ND 58501-4049

51-03-02-12.2. Minimum dock pickup provisions - Market area 1. Market area 1 will have a minimum dock pickup price list as determined by subsection 11 of twelve percent or twenty-three percent off the respective market areas minimum established wholesale price list (except cultured products) 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 contracted with a third party or 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, whether owned or contracted, must comply with regulations defined by federal and North Dakota state agencies.
3. This program will be available to any single retail place of business and no combination orders by multiple retail places of business shall be permitted.
4. On all charge sales by retailer not paid for within fourteen days from statement date, processor will charge retailer the difference between dock pickup price and wholesale price.
5. All orders must be preordered by retailers prior to dock pickup.
6. No in-store service, i.e., cleaning cases, stamping products, etc., shall be provided by processors.
7. Processor personnel for store resets will be limited to dairy case setting only.
8. No returns on merchandise shall be made by processors, except when product is found to be damaged or defective at time of dock pickup.

9. Delivery of product by processor due to incorrect ordering by customer or special orders shall be charged at wholesale price less appropriate volume discount.
10. All contracts between processors and retailers under this program shall:
 - a. Require delivery at destination being the retailer's place of business;
 - b. Provide that title to said milk products shall pass from the seller (processor) to the buyer (retailer) upon delivery at the buyer's place of business; and
 - c. Provide that the place where the sale of said milk products occurs shall be at the retailer's place of business.
11. Each retail place of business must make a minimum order of twenty-seven to forty-four full cases to each processor to qualify for the twelve percent discount dock pickup program or a minimum of forty-five full cases to each processor to qualify for the twenty-three percent discount dock pickup program. Deliveries of less than forty-five twenty-seven full cases to a retailer's place of business may only be made by a licensed distributor.
12. Retailer must pay contract or third-party hauler direct.
13. Direct billing of product will be completed by the processor and all qualified discounts will be paid by the processors.

History: Effective September 1, 1996; amended August 31, 1998; July 1, 2000.

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

Law Implemented: NDCC 4-18.1-07

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

Any dealer may meet competition without delay in connection with the sale of any such frozen dairy product provided such dealer shall

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

All--price--filings--must--be--available--at--the--office--of--the--milk
 board--for--inspection--and--copying--and--may--be--disclosed--by--the--board--upon
 the--written--request--of--any--person; Repealed effective July 1, 2000.

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

General Authority: NDEC-4-18:1-03,-4-18:1-07,-4-18:1-20,-28-32-03:1(3)

Law Implemented: NDEC-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 30 butterfat differential based on \$.053, the
 following factors will be used in determining adjustments in the class I
 wholesale and retail prices. If the first of the month falls on a
 Monday, Tuesday, or Wednesday, minimum wholesale and retail prices go in
 effect that Monday. If the first of the month falls on a Thursday,
 Friday, Saturday, or Sunday, minimum wholesale and retail prices go in
 effect the following Monday.

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

All price adjustments at the retail level should be made to the nearest
 one cent per unit: wholesale to the nearest \$.001 per unit. Wholesale
 and retail price increases or decreases shall be adjusted for volume
 discounts. The foregoing class I formula price changes shall be
 automatically adjusted without further amendment to this stabilization
 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; July 1, 2000.

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

51-03-02-16. Formula to determine changes in the class II wholesale and retail prices. For each federal market order number-68 no. 30 class II price increase or decrease of fifteen cents per hundredweight above, or price increase or decrease of twenty-three cents per hundredweight below the twelve dollars and seventeen cents base class II hundredweight price, or an increase or decrease of \$.001 in the federal market order number-68 no. 30 butterfat differential based on \$.162, the following factors will be used in determining adjustments in the class II wholesale and retail prices:;

Item	Hundredweight Factor	B.F. Factor
Half & half - pint	\$.0016	\$.0008
Whipping cream - 1/2 pint	.0016	.0015
Sour cream - 8 ounce	.0008	.0008
Cottage cheese - 1 pound	.0140	(.0012)
Yogurt - 8 ounce	.0008	.0008

All price adjustment adjustments at the wholesale and retail level levels should be made to the nearest one cent per unit.

Item	Hundredweight Factor	B.F. Factor
1 gallon shake mix	\$.0110	\$.0004
1 gallon soft serve mix	.0110	.0021

All price adjustment adjustments at the wholesale level should be made at four cents per gallon increments.

History: Amended effective June 1, 1979; November 1, 1983; April 1, 1984; July 1, 2000.

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 31, 1998~~ July 1, 2000, and all prior stabilization plans for market area number 1 are hereby repealed.

History: Effective August 1, 1995; amended effective September 1, 1996; August 31, 1998; July 1, 2000.

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

51-03-03-06. Prices to be paid dairy farmers and others - Midpoint, differential, and multiple component pricing. Publication--of this--section--would--be--inexpedient--because--it--changes--frequently--on--an emergency-basis-

Copies-of-this-section-may-be-obtained-by-forwarding-a-request-to:

Executive-Secretary
North-Dakota-Milk-Stabilization-Board
206-1/2-North-Sixth-Street
Bismarck,-North-Dakota-58505

1. Class I (market areas 2, 5, 7, and 8). Commencing July 1, 2000, the minimum price to be paid by milk processors to dairy farmers and others coming within the scope of this plan f.o.b. the processor's plant for milk which is ultimately utilized in class I (milk products) shall be the hundredweight price as established by the formula below. However, the minimum price to be paid by milk processors to dairy farmers and others coming within the scope of this plan f.o.b. the processor's plant for milk which is ultimately utilized in class I (milk products) shall not be less than \$13.76 per hundredweight.

The following formula shall be used when the federal market order no. 30 class I dairy farmer hundredweight price increases or decreases to the next higher or lower federal market order no. 30 class I dairy farmer hundredweight trip point. Minimum North Dakota class I dairy farmer and wholesale and retail prices to be adjusted by using the current federal market order no. 30 class I dairy farmer price on the formula below. Move to the next higher increment and utilize the North Dakota minimum class I dairy farmer price as listed on the formula below. Adjustments, if required, will be monthly.

Market Areas 2, 5, 7, and 8

<u>Federal Market Order No. 30 Class I Dairy Farmer Price</u>	<u>North Dakota Minimum Class I Dairy Farmer Price</u>	<u>Minimum Wholesale Price Per One-Half Gallon 2 Percent Milk</u>
18.59	19.22	1.541
18.38	19.01	1.531
18.17	18.80	1.521
17.96	18.59	1.511
17.75	18.38	1.501
17.54	18.17	1.491
17.33	17.96	1.481
17.12	17.75	1.471

16.91	17.54	1.461
16.70	17.33	1.451
16.49	17.12	1.441
16.28	16.91	1.431
16.07	16.70	1.421
15.86	16.49	1.411
15.65	16.28	1.401
15.44	16.07	1.391
15.23	15.86	1.381
15.02	15.65	1.371
14.81	15.44	1.361
14.60	15.23	1.351
14.39	15.02	1.341
14.18	14.81	1.331
13.97	14.60	1.321
13.76	14.39	1.311
13.55	14.18	1.301
13.34	13.97	1.291
13.13	13.76 Base	1.281

Based on \$.21 per hundredweight increments and butterfat differential of \$.053.

Differentials above or below the midpoint of 3.5 percent will be those used in federal market order no. 30.

Adjustments in wholesale and retail prices for other sized containers should also increase or decrease, or both, proportionally to the one-half gallon use.

2. Class II. Commencing July 1, 2000, the minimum price to be paid by milk processors to dairy farmers and others, coming within the scope of this stabilization plan f.o.b. the processor's plant after the effective date of this plan for milk which is ultimately utilized in class II, shall be the class II price per hundredweight for federal market order no. 30, adjusted to a 3.5 percent butterfat basis. Butterfat differentials above or below the midpoint of 3.5 percent will be those used in federal market order no. 30.

3. Class III. Commencing July 1, 2000, the minimum price to be paid by milk processors to dairy farmers and others coming within the scope of this stabilization plan f.o.b. the processor's plant for milk, which is ultimately utilized in class III, except that used in the manufacture of butter, shall be priced under a "multiple component pricing" system to include protein, other solids, and somatic cell count. The respective prices for these components, in a given month, and computations thereon will be those used by federal market order no. 30. Two additional components, butterfat and producer price differential, will use as a basis the class III price per hundredweight for federal market order no. 30 less a four percent administrative and transportation allowance to

the nearest full cent adjusted to a 3.5 percent butterfat basis. Butterfat differentials above or below the midpoint of 3.5 percent will be those used in federal market order no. 30. Commencing July 1, 2000, the minimum price to be paid by milk processors to dairy farmers and others coming within the scope of this stabilization plan, f.o.b. the processor's plant for milk and cream which is ultimately used in class III for the manufacture of butter, shall be the monthly national agricultural statistical service (NASS) survey butter price less a \$.05 per pound administrative and transportation allowance rounded to the nearest cent.

If a processing plant pays to its dairy farmers and others a premium above the class III minimum raw milk price as established herein, such price including the premium, shall become the minimum class III raw milk price for audit purposes for said plant, and said plant shall not be entitled to dilute the class I and class II raw milk prices for payment of said premiums on said class III raw milk.

4. The foregoing class I, II, and III dairy farmer prices shall be automatically adjusted each month, without further amendment to this stabilization plan based upon the prices ordered for federal market order no. 30.

History: Amended effective July 1, 2000.

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

51-03-03-10. Minimum wholesale and retail prices for class I milk products - Market areas 2, 5, 7, and 8. Publication of this section would be inexpedient because it changes frequently on an emergency basis.

Copies of this section may be obtained by forwarding a request to:

Executive-Secretary Director
North Dakota Milk Marketing Board
410 East Thayer Avenue, # No. 2
Bismarck, ND 58501-4049

51-03-03-11. Minimum wholesale and retail prices for class II milk products - Market areas 2, 5, 7, and 8. Publication of this section would be inexpedient because it changes frequently on an emergency basis.

Copies of this section may be obtained by forwarding a request to:

Executive-Secretary Director
North Dakota Milk Marketing Board
410 East Thayer Avenue, # No. 2

Bismarck, ND 58501-4049

51-03-03-12. Minimum wholesale prices for shake and soft serve mix. Publication of this section would be inexpedient because it changes frequently on an emergency basis.

Copies of this section may be obtained by forwarding a request to:

Executive Secretary Director
North Dakota Milk Marketing Board
410 East Thayer Avenue, # No. 2
Bismarck, ND 58501-4049

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--(except--cultured--products)---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-two-weeks fourteen-days--from--the--statement--date,--the--processor--or

distributor--will--charge--retailer--the--difference--between--dock price--and--wholesale--price. Repealed effective July 1, 2000.

History: Effective-August-1,-1995;-amended-effective-September-1,-1996; August-31,-1998-

General Authority: NDEC--4-18:1-03;--4-18:1-06;--4-18:1-07;--4-18:1-20; 28-32-03:1(3)

Law Implemented: NDEC-4-18:1-07

51-03-03-13.1. Minimum dock pickup provisions - Market areas 2, 5, 7, and 8. Market areas 2, 5, 7, and 8 will have a minimum dock pickup price list as determined by subsection 11 of twelve percent or twenty-three percent off the respective market areas minimum established wholesale price list (except cultured products) 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 contracted with a third party or 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, whether owned or contracted, must comply with regulations defined by federal and North Dakota state agencies.
3. This program will be available to any single retail place of business and no combination orders by multiple retail places of business shall be permitted.
4. On all charge sales by retailer not paid for within fourteen days from statement date, processor will charge retailer the difference between dock pickup price and wholesale price.
5. All orders must be preordered by retailers prior to dock pickup.
6. No in-store service, i.e., cleaning cases, stamping products, etc., shall be provided by processors.
7. Processor personnel for store resets will be limited to dairy case setting only.
8. No returns on merchandise shall be made by processors, except when product is found to be damaged or defective at time of dock pickup.
9. Delivery of product by processor due to incorrect ordering by customer or special orders shall be charged at wholesale price less appropriate volume discount.

10. All contracts between processors and retailers under this program shall:
 - a. Require delivery at destination being the retailer's place of business;
 - b. Provide that title to said milk products shall pass from the seller (processor) to the buyer (retailer) upon delivery at the buyer's place of business; and
 - c. Provide that the place where the sale of said milk products occurs shall be at the retailer's place of business.
11. Each retail place of business must make a minimum order of twenty-seven to forty-four full cases to each processor to qualify for the twelve percent discount dock pickup program or a minimum of forty-five full cases to each processor to qualify for the twenty-three percent discount dock pickup program. Deliveries of less than ~~forty-five~~ twenty-seven full cases to a retailer's place of business may only be made by a licensed distributor.
12. Retailer must pay contract or third-party hauler direct.
13. Direct billing of product will be completed by the processor and all qualified discounts will be paid by the processors.

History: Effective September 1, 1996; amended effective August 31, 1998; July 1, 2000.

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

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

Any dealer may meet competition without delay in connection with the sale of any such frozen dairy product provided such dealer shall file an amended price specifically stating that such amended price is for the purpose of meeting lawful competition before actually meeting such competition. A dealer desiring to meet the lower prices of a competitor may do so in such portions of the marketing area as are

specified--in--such--dealer's--amended--price--filing--for--the--purpose--of--meeting--competition.--The--wholesale--prices--filed--by--a--processor--for--the--marketing--area--shall--automatically--be--applicable--to--sales--by--distributors--of--that--processor's--products--within--such--area--unless--said--distributors--file--their--own--schedule--of--prices.

All--price--filings--shall--be--available--at--the--office--of--the--milk--board--for--inspection--and--copying--and--may--be--disclosed--by--the--board--upon--the--written--request--of--any--person: Repealed effective July 1, 2000.

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

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

Law Implemented: NDCC-4-18.1-07

51-03-03-16. Formula to determine changes in the class I wholesale and retail prices. Based upon the class I formula as ordered in section 51-03-03-06, for each hundredweight price change to dairy farmers for raw milk or an increase or decrease of \$.001 in the federal market order number 68 30 butterfat differential based on \$.053, the following factors will be used in determining adjustments in the class I wholesale and retail prices. If the first of the month falls on a Monday, Tuesday, or Wednesday, minimum wholesale and retail prices go in effect that Monday. If the first of the month falls on a Thursday, Friday, Saturday, or Sunday, minimum wholesale and retail prices go in effect the following Monday.

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

All price adjustments at the retail level should be made to the nearest one cent per unit: wholesale to the nearest \$.001 per unit. Wholesale and retail price increases or decreases shall be adjusted for volume discounts. The foregoing class I formula price changes shall be automatically adjusted without further amendment to this stabilization 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; July 1, 2000.

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

51-03-03-17. Formula to determine changes in the class II wholesale and retail prices. For each federal market order number-68 no. 30 class II price increase or decrease of fifteen cents per hundredweight above, or price increase or decrease of twenty-three cents per hundredweight below the twelve dollars and seventeen cents base class II hundredweight price, or an increase or decrease of \$.001 in the federal market order number-68 no. 30 butterfat differential based on \$.162, the following factors will be used in determining adjustments in the class II wholesale and retail prices:

Item	Hundredweight Factor	B.F. Factor
Half & half - pint	\$.0016	\$.0008
Whipping cream - 1/2 pint	.0016	.0015
Sour cream - 8 ounce	.0008	.0008
Cottage cheese - 1 pound	.0140	(.0012)
Yogurt - 8 ounce	.0008	.0008

All price adjustment adjustments at the wholesale and retail level levels should be made to the nearest one cent per unit.

Item	Hundredweight Factor	B.F. Factor
1 gallon shake mix	\$.0110	\$.0004
1 gallon soft serve mix	.0110	.0021

All price adjustment adjustments at the wholesale level should be made at four cents per gallon increments.

History: Amended effective June 1, 1979; November 1, 1983; April 1, 1984; July 1, 2000.

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 31, 1998~~ July 1, 2000, and all prior stabilization plans for market areas 2, 5, 7, and 8 are hereby repealed.

History: Effective August 1, 1995; amended effective September 1, 1996; August 31, 1998; July 1, 2000.

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

51-03-04-06. Prices to be paid dairy farmers and others - Midpoint, differential, and multiple component pricing. Publication--of this--section--would--be--inexpedient--because--it--changes--frequently--on--an emergency-basis.

Copies-of-this-section-may-be-obtained-by-forwarding-a-request-to:

Executive-Secretary
North-Dakota-Milk-Stabilization-Board
206-1/2-North-Sixth-Street
Bismarck,-ND-58505

1. Class I (market areas 3, 4, and 6). Commencing July 1, 2000, the minimum price to be paid by milk processors to dairy farmers and others coming within the scope of this plan f.o.b. the processor's plant for milk which is ultimately utilized in class I (milk products) shall be the hundredweight price as established by the formula below. However, the minimum price to be paid by milk processors to dairy farmers and others coming within the scope of this plan f.o.b. the processor's plant for milk which is ultimately utilized in class I (milk products) shall not be less than \$13.76 per hundredweight.

The following formula shall be used when the federal market order no. 30 class I dairy farmer hundredweight price increases or decreases to the next higher or lower federal market order no. 30 class I dairy farmer hundredweight trip point. Minimum North Dakota class I dairy farmer and wholesale and retail prices to be adjusted by using the current federal market order no. 30 class I dairy farmer price on the formula below. Move to the next higher increment and utilize the North Dakota minimum class I dairy farmer price as listed on the formula below. Adjustments, if required, will be monthly.

Market Areas 3, 4, and 6

Federal Market Order No. 30 Class I Dairy Farmer Price	North Dakota Minimum Class I Dairy Farmer Price	Minimum Wholesale Price Per One-Half Gallon 2 Percent Milk
18.59	19.22	1.561
18.38	19.01	1.551
18.17	18.80	1.541
17.96	18.59	1.531
17.75	18.38	1.521
17.54	18.17	1.511
17.33	17.96	1.501
17.12	17.75	1.491
16.91	17.54	1.481

16.70	17.33	1.471
16.49	17.12	1.461
16.28	16.91	1.451
16.07	16.70	1.441
15.86	16.49	1.431
15.65	16.28	1.421
15.44	16.07	1.411
15.23	15.86	1.401
15.02	15.65	1.391
14.81	15.44	1.381
14.60	15.23	1.371
14.39	15.02	1.361
14.18	14.81	1.351
13.97	14.60	1.341
13.76	14.39	1.331
13.55	14.18	1.321
13.34	13.97	1.311
13.13	13.76 Base	1.301

Based on \$.21 per hundredweight increments and butterfat differential of \$.053.

Differentials above or below the midpoint of 3.5 percent will be those used in federal market order no. 30.

Adjustments in wholesale and retail prices for other sized containers should also increase or decrease, or both, proportionally to the one-half gallon use.

2. Class II. Commencing July 1, 2000, the minimum price to be paid by milk processors to dairy farmers and others, coming within the scope of this stabilization plan f.o.b. the processor's plant after the effective date of this plan for milk which is ultimately utilized in class II, shall be the class II price per hundredweight for federal market order no. 30, adjusted to a 3.5 percent butterfat basis. Butterfat differentials above or below the midpoint of 3.5 percent will be those used in federal market order no. 30.

3. Class III. Commencing July 1, 2000, (in the city of Bottineau) the minimum price to be paid by milk processors to dairy farmers and others coming within the scope of this stabilization plan, f.o.b. the processor's plant for milk which is ultimately utilized in class III, except that used in the manufacture of butter, shall be the same as the selling price for said class III raw milk by grade A processing plants to manufacturing plants less a four percent administrative and transportation allowance to the nearest full cent adjusted to a 3.5 percent butterfat basis. Commencing July 1, 2000, in market areas 3, 4, and 6 (except the city of Bottineau) the minimum price to be paid by milk processors to dairy farmers and others coming within the scope of this stabilization plan

f.o.b. the processor's plant for milk which is ultimately utilized in class III, except that used in the manufacture of butter, shall be priced under a "multiple component pricing" system to include protein, other solids, and somatic cell count. The respective prices for these components, in a given month, and computations thereon will be those used by federal market order no. 30. Two additional components, butterfat and producer price differential, will use as a basis the class III price per hundredweight for federal market order no. 30 less a four percent administrative and transportation allowance to the nearest full cent adjusted to a 3.5 percent butterfat basis. Butterfat differentials above or below the midpoint of 3.5 percent will be those used in federal market order no. 30. Commencing July 1, 2000, the minimum price to be paid by milk processors to dairy farmers and others coming within the scope of this stabilization plan, f.o.b. the processor's plant for milk and cream which is ultimately used in class III for the manufacture of butter, shall be the monthly national agricultural statistical service (NASS) survey butter price less a \$.05 per pound administrative and transportation allowance rounded to the nearest cent.

If a processing plant pays to its dairy farmers and others a premium above the class III minimum raw milk price as established herein, such price including the premium, shall become the minimum class III raw milk price for audit purposes for said plant, and said plant shall not be entitled to dilute the class I and class II raw milk prices for payment of said premiums on said class III raw milk.

4. The foregoing class I, II, and III dairy farmer prices shall be automatically adjusted each month, without further amendment to this stabilization plan based upon the prices ordered for federal market order no. 30.

History: Amended effective July 1, 2000.

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

51-03-04-10. Minimum wholesale and retail prices for class I milk products - Market areas 3, 4, and 6. Publication of this section would be inexpedient because it changes frequently on an emergency basis.

Copies of this section may be obtained by forwarding a request to:

Executive-Secretary Director
North Dakota Milk Marketing Board
410 East Thayer Avenue, # No. 2
Bismarck, ND 58501-4049

51-03-04-11. Minimum wholesale and retail prices for class II milk products - Market areas 3, 4, and 6. Publication of this section would be inexpedient because it changes frequently on an emergency basis.

Copies of this section may be obtained by forwarding a request to:

Executive-Secretary Director
North Dakota Milk Marketing Board
410 East Thayer Avenue, # No. 2
Bismarck, ND 58501-4049

51-03-04-12. Minimum wholesale prices for shake and soft serve mix. Publication of this section would be inexpedient because it changes frequently on an emergency basis.

Copies of this section may be obtained by forwarding a request to:

Executive-Secretary Director
North Dakota Milk Marketing Board
410 East Thayer Avenue, # No. 2
Bismarck, ND 58501-4049

51-03-04-13.1. Minimum dock pickup provisions - Market areas 3, 4, and 6. Market areas 3, 4, and 6 will have a minimum dock pickup price list as determined by subsection 11 of twelve percent or twenty-three percent off the respective market areas minimum established wholesale price list (except cultured products) 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 contracted with a third party or 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, whether owned or contracted, must comply with regulations defined by federal and North Dakota state agencies.
3. This program will be available to any single retail place of business and no combination orders by multiple retail places of business shall be permitted.
4. On all charge sales by retailer not paid for within fourteen days from statement date, processor will charge retailer the difference between dock pickup price and wholesale price.

5. All orders must be preordered by retailers prior to dock pickup.
6. No in-store service, i.e., cleaning cases, stamping products, etc., shall be provided by processors.
7. Processor personnel for store resets will be limited to dairy case setting only.
8. No returns on merchandise shall be made by processors, except when product is found to be damaged or defective at time of dock pickup.
9. Delivery of product by processor due to incorrect ordering by customer or special orders shall be charged at wholesale price less appropriate volume discount.
10. All contracts between processors and retailers under this program shall:
 - a. Require delivery at destination being the retailer's place of business;
 - b. Provide that title to said milk products shall pass from the seller (processor) to the buyer (retailer) upon delivery at the buyer's place of business; and
 - c. Provide that the place where the sale of said milk products occurs shall be at the retailer's place of business.
11. Each retail place of business must make a minimum order of twenty-seven to forty-four full cases to each processor to qualify for the twelve percent discount dock pickup program or a minimum of forty-five full cases to each processor to qualify for the twenty-three percent discount dock pickup program. Deliveries of less than ~~forty-five~~ twenty-seven full cases to a retailer's place of business may only be made by a licensed distributor.
12. Retailer must pay contract or third-party hauler direct.
13. Direct billing of product will be completed by the processor and all qualified discounts will be paid by the processor.

History: Effective September 1, 1996; amended August 31, 1998; July 1, 2000.

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

Law Implemented: NDCC 4-18.1-07

51-03-04-14. Price filings on frozen dairy products. ~~On or before February 1, 1992, all dealers in all market areas shall file the~~

uniform-wholesale-price-at-which-ice-cream,-frozen-malt-ice-cream-(frost
malt-ice-cream),-flavored-ice-cream,-fruit-ice-cream,-nut-ice-cream,
french-ice-cream,-ice-milk,-fruit-sherbet,-fruit-sherbines,-and-the-mix
from-which-any-such-product-is-made,-will-be-sold-by-each-dealer-to
retailers-within-the-market-area.-New-prices-and-amended-prices-must-be
filed-at-the-office-of-the-North-Dakota-milk-marketing-board-at
Bismarek,-North-Dakota,-at-least-ten-days-in-advance-of-the-effective
date-of-any-new-price-or-amended-price-together-with-the-date-on-which
such-filing-becomes-effective.-Placing-a-price-schedule-in-the-mail
shall-constitute-a-filing.

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

All-price-filings-must-be-available-at-the-office-of-the-milk
board-for-inspection-and-copying-and-may-be-disclosed-by-the-board-upon
the-written-request-of-any-person. Repealed effective July 1, 2000.

History: Amended-effective-November-1,-1983;-April-1,-1984;-August-1,
1987;-June-26,-1989;-June-1,-1990;-February-1,-1992;-August-1,-1995.
General Authority: NDCC-4-18-1-03,-4-18-1-07,-4-18-1-20,-28-32-03.1(3)
Law Implemented: NDCC-4-18-1-07

**51-03-04-16. Formula to determine changes in the class I
wholesale and retail prices.** Based upon the class I formula as ordered
in section 51-03-04-06, for each hundredweight price change to dairy
farmers for raw milk or an increase or decrease of \$.001 in the federal
market order number-68 no. 30 butterfat differential based on \$.053, the
following factors will be used in determining adjustments in the class I
wholesale and retail prices. If the first of the month falls on a
Monday, Tuesday, or Wednesday, minimum wholesale and retail prices go in
effect that Monday. If the first of the month falls on a Thursday,
Friday, Saturday, or Sunday, minimum wholesale and retail prices go in
effect the following Monday.

Item	Hundredweight Factor	B.F. Factor
Whole milk 1/2 gallon	\$.0098900	\$(.0001075)
2% milk	.0099130	(.0006465)
1% milk	.0099130	(.0010775)
Skim milk	.0099245	(.0012945)
Buttermilk	.0099245	(.0012945)
Whole chocolate	.0094645	(.0001029)
2% chocolate	.0094875	(.0006188)

1% chocolate	.0094875	(.0010313)
Skim chocolate	.0094990	(.0012390)

All price adjustments at the retail level should be made to the nearest one cent per unit: wholesale to the nearest \$.001 per unit. Wholesale and retail price increases or decreases shall be adjusted for volume discounts. The foregoing class I formula price changes shall be automatically adjusted without further amendment to this stabilization 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; July 1, 2000.

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

51-03-04-17. Formula to determine changes in the class II wholesale and retail prices. For each federal market order number-68 no. 30 class II price increase or decrease of fifteen cents per hundredweight above, or price increase or decrease of twenty-three cents per hundredweight below the twelve dollars and seventeen cents base class II hundredweight price, or an increase or decrease of \$.001 in the federal market order number-68 no. 30 butterfat differential based on \$.162, the following factors will be used in determining adjustments in the class II wholesale and retail prices:

Item	Hundredweight Factor	B.F. Factor
Half & half - pint	\$.0016	\$.0008
Whipping cream - 1/2 pint	.0016	.0015
Sour cream - 8 ounce	.0008	.0008
Cottage cheese - 1 pound	.0140	(.0012)
Yogurt - 8 ounce	.0008	.0008

All price adjustment adjustments at the wholesale and retail level levels should be made to the nearest one cent per unit.

Item	Hundredweight Factor	B.F. Factor
1 gallon shake mix	\$.0110	\$.0004
1 gallon soft serve mix	.0110	.0021

All price adjustment adjustments at the wholesale and retail level levels should be made at four cents per gallon increments.

History: Amended effective June 1, 1979; November 1, 1983; April 1, 1984; June 26, 1989; July 1, 2000.

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 31, 1998~~ July 1, 2000, and all prior stabilization plans for market areas 3, 4, and 6 are hereby repealed.

History: Effective August 1, 1995; amended effective September 1, 1996; August 31, 1998; July 1, 2000.

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 60
Pesticide Control Board

AUGUST 2000

CHAPTER 60-03-01

60-03-01-05. Certification - Commercial applicators, dealers, private applicators.

1. Categories of certification.

- a. Agricultural pest control (plant and animal). This category includes commercial applicators using restricted use pesticides in production of agricultural crops including cereal grain, feed grains, soybeans, forages, large and small seeded legumes, small fruits, tree fruits, nuts, and vegetables, as well as application to grasslands and noncrop lands. This also includes the use of restricted use pesticides on animals, beef cattle, dairy cattle, swine, sheep, horses, goats, poultry, and other livestock, and also to places on or in which animals are confined.
- b. Seed treatment. This category includes commercial applicators using restricted use pesticides on agricultural crop seeds, other seeds, and vegetative seed stocks.
- c. Fumigation. This category includes applicators using restricted use fumigants for controlling pests in stored and transported agricultural crops, grain milling equipment, and storage facilities. (Effective April 1, 1991, private applicators.)
- d. Ornamental and turf pest control. This category includes commercial applicators using restricted use pesticides to

control pests in the production and maintenance of ornamental trees, shrubs, flowers, and turf.

- e. Greenhouse. This category includes commercial applicators using restricted use pesticides to control pests in a greenhouse.
- f. Right of way. This category includes commercial applicators using restricted use pesticides to control pests in the maintenance of public roads, electric powerlines, pipelines, railways, right of ways, parking lots, or other similar areas.
- g. Public health pest control. This category includes state, federal, or other government employees, or applicators working under government contract, using restricted use pesticides in public health programs for the management and control of pests having medical and public health impacts.
- h. Research and demonstration pest control. This category is for those individuals who demonstrate or apply restricted use pesticides for education and research or education or research. These would include county agents, extension specialists, state, federal, and commercial employees, plus other persons conducting research or demonstrating the proper application of restricted use pesticides.
- i. Home, industrial, and institutional pest control. This category includes commercial applicators using restricted use pesticides in, on, or around food handling establishments, human dwellings, public or private institutions, warehouses, grain elevators, and any other structures or adjacent area, for the control of pests.
- j. Wood preservatives. This category includes commercial applicators who apply and treat with restricted use wood preservatives to preserve and protect wood, posts, and various lumber products from pests.
- k. Vertebrate. This category includes commercial applicators who use restricted use pesticides for the control of certain pest vertebrate, such as rodents, certain predators, and bats.
- l. ~~Other. ---This---is---reserved---for---any---future---categories---that---may---be---required---by---the---United---States---environmental protection---agency---or---become---necessary---by---order---of---the pesticide control board.~~ Metam-sodium. This category includes commercial applicators who use or sell the restricted use pesticide metam-sodium (sodium N-methyldithiocarbamate dihydrate) for the purpose of

controlling tree or other plant roots infesting sewer systems.

2. Commercial applicators and dealers.

- a. A commercial applicator or dealer, or commercial applicator and dealer certificate shall be issued in accordance with North Dakota Century Code section 4-35-09 or 4-35-12 or sections 4-35-09 and 4-35-12 respectively, only to those persons who successfully complete the certification examination established by the board, and who pay the certification fee.
- b. The board shall establish a certification examination which shall be administered by any North Dakota state university extension designate in accordance with North Dakota Century Code section 4-35-09 or 4-35-12 or sections 4-35-09 and 4-35-12. The examination shall be given by the North Dakota state university extension designate only to those persons who:
 - (1) Are eighteen years of age or older; and
 - (2) Complete a certificate application in such form as the board shall require.
- c. Commercial applicator's or dealer or commercial applicator and dealer certificates shall expire on April first following the third anniversary of the year of certification or recertification. Every commercially certified person shall be recertified by an approved seminar or an approved examination at least every third year and must complete an approved examination at least every ninth year.
- d. Any person who fails an examination may retake such examination after three or more days.
- e. All commercial applicators must be certified in the proper category of application.
- f. All dealers must be certified in the category of the labels' intended target site.
- g. Situations--where In situations in which the pesticide is labeled for more than one of the certification target sites, the dealer only needs to be certified in one of the categories.

3. Private applicators.

- a. A private applicator certification shall be issued in accordance with North Dakota Century Code section 4-35-14 only to those persons who:
 - (1) Are eighteen years of age or older; and
 - (2) Demonstrate competence in the application of pesticides as provided in subdivisions b, c, d, and e.
- b. Persons purchasing, storing, or applying restricted use grain fumigants must be commercially trained and must pass a fumigation exam. At the option of the applicant upon successfully passing the exam, the certificate issued will be for either private or commercial application of restricted use fumigants. The fee for the private and commercial certification will be set by the North Dakota state university extension service.
- c. Competence to apply restricted use pesticides shall be demonstrated by a showing of any one of the following to the North Dakota state university extension designate in the applicant's area:
 - (1) Attendance at an approved educational seminar, signing of a certificate of attendance, and passing an examination.
 - (2) Completion of a course of self-instruction and passing an examination at the North Dakota state university extension designate's office in the applicant's area.
 - (3) Completion of a take-home self-study program and passing an examination.
 - (4) Passing the dealer or commercial applicator certification examination and submitting the passing grade to the appropriate North Dakota state university extension designate.
- d. Every private applicator shall be recertified by an approved seminar or an approved examination at least every third year and must complete an approved examination at least every ninth year.
- e. Competence to apply a single restricted use pesticide by a person who cannot read shall be demonstrated by completion of a course of oral instruction and completion of a procedure to determine teaching-learning effectiveness to the North Dakota state university extension designate in the applicant's area. Such private applicator certification for a single restricted use pesticide shall

be for no more than one year and the notation; "Restricted to" followed by the common name of the restricted use pesticide in bold lettering shall appear on the private applicator certificate.

- f. In an emergency situation, competence to apply a single restricted use pesticide by a person shall be demonstrated by completion of a course of oral instruction and completion of a procedure to determine teaching-learning effectiveness to the North Dakota state university extension designate in the applicant's area. Such private applicator certification for a single restricted use pesticide shall expire sixty days from issuance and shall be issued to a person only once. The notation; "Restricted to" followed by the common name of the restricted use pesticide shall appear on the private applicator certificate in bold lettering.

History: Amended effective February 1, 1982; October 1, 1990; November 1, 1991; March 1, 1996; August 1, 2000.

General Authority: NDCC 4-35-06, 4-35-12

Law Implemented: NDCC 4-35-08, 4-35-09, 4-35-12, 4-35-14

TITLE 66

Psychologist Examiners, Board of

SEPTEMBER 2000

CHAPTER 66-01-01

66-01-01-01. Organization of board of psychologist examiners.

1. **History.** The 1967 legislative assembly passed legislation establishing the state board of psychologist examiners, codified as North Dakota Century Code chapter 43-32. The board of psychologist examiners licenses psychologists who practice psychology in this state.
2. **Board membership.** The board consists of five members appointed by the governor. Each member must be a licensed psychologist and at least one member must be currently engaged primarily in ~~rendering~~ providing service in psychology and at least one member must be engaged primarily in teaching, training, or research in psychology. Members of the board serve three-year terms, with at least one but not more than two terms expiring each year.
3. **Board officers.** The board annually elects from its membership a president, and vice president, ~~and a secretary-treasurer who needs not be a member of the board. The secretary-treasurer is responsible for administration of the board's activities.~~

4. **Inquiries.** Inquiries regarding the board may be addressed to the ~~secretary-treasurer~~ executive secretary:

~~Carey-P.-Bullinger~~ Shelly Hanson, Executive Secretary
State Board of Psychologist Examiners
~~1406-Second-Street-N.W.~~ P.O. Box 8380
Mandan Grand Forks, ND 58554 58202

History: Amended effective September 1, 1983; March 1, 1985; April 1, 1988; September 1, 2000.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

CHAPTER 66-02-01

66-02-01-01.1. Regionally accredited school or college. A regionally accredited educational institution means one which is accredited by any one of the following:

1. Southern association of colleges and schools;
2. Middle states association of colleges and schools;
3. New England association of colleges and schools;
4. North central association of colleges and schools;
5. North western association of colleges and schools; and
6. Western association of schools and colleges. Accreditation means accreditation by one of the aforementioned associations at level 4 (doctoral degree granting institution) or at level 5 (graduate or professional degree granting institution).

History: Effective September 1, 2000.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-01

~~66-02-01-02. Licensure without examination. The board may issue a license without examination, upon payment of the required fee, to any diplomate of the American board of examiners in professional psychology.~~
Repealed effective September 1, 2000.

~~History: Amended effective March 1, 1985.~~

~~General Authority: NDCC-43-32-08~~

~~Law Implemented: NDCC-43-32-18~~

66-02-01-03. Licensure-by-reciprocity Licensing of psychologists from other states. Licensing of psychologists of other states will follow the procedures described in North Dakota Century Code section 43-32-19. A psychologist licensed pursuant to North Dakota Century Code section 43-32-19 must pass the North Dakota oral examination.

History: Amended effective September 1, 2000.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-19

~~66-02-01-05. Licensure of master's level psychologists. Licensing of master's level psychologists to practice under the~~

supervision--of--a--licensed--psychologist--will--follow--the--procedures described--in--chapter--66-02-03: Repealed effective September 1, 2000.

General Authority: NDEC-43-32-08

Law Implemented: NDEC-43-32-30

66-02-01-07. Application of code of ethics. The American psychological association code-of-ethics--and--the--standards--for--the providers--of--psychological--services ethical principles of psychologists and code of conduct (1992) shall apply to licensed psychologists.

History: Amended effective September 1, 2000.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-27

66-02-01-08. Fees. The license fee is two-hundred the actual cost of the examination for the professional practice of psychology (EPPP) plus seventy-five dollars for all persons receiving licensure under sections 66-02-01-02, 66-02-01-03, 66-02-01-04, and 66-02-01-06 and two hundred fifty dollars for all persons receiving licensure under section 66-02-01-05 66-02-01-03. An Prior to January 2000, an annual renewal license fee of fifty seventy-five dollars will be charged all licensed psychologists regardless--of--the--procedure--by--which--they obtained--licensing. Starting January 1, 2000, an annual license fee of one hundred dollars will be charged all licensed psychologists.

History: Amended effective March 1, 1985; April 1, 1988; September 1, 2000.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-12, 43-32-13

66-02-01-09. Number of examinations. The written and oral licensing examination examinations will be administered twice each calendar year.

History: Amended effective September 1, 2000.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-22

66-02-01-09.1. Written examination. The written examination is the examination for the professional practice of psychology. The passing score is one-fourth standard deviation below the mean for Ph.D. first-time candidates.

History: Effective September 1, 2000.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-23

66-02-01-11. Additional documentation for clinical work or counseling or therapy. For an applicant desiring to do clinical work or provide counseling or therapy, there must be additional evidence of training in applying academic course content in a service setting. This must include therapy, diagnosis, intelligence/personality testing, or other specialized examination procedures, and a relevant supervised internship of not less than twelve months full-time (forty-hour week). The internship should be supervised by a licensed psychologist practicing in the designated specialty. The documentation of the additional evidence of training must be a detailed description of the internship as to the setting, nature of clients, precisely what the applicant's routine was, how the applicant was supervised as well as the amount of supervision, what skills were exposed to the applicant, and the specific skills in which the applicant is proficient. Successful completion of an American psychological association approved internship will be accepted as fulfilling this requirement. Repealed effective September 1, 2000.

History: Effective March 1, 1985; amended effective April 1, 1988.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-20

66-02-01-11.1. Supervised professional experience. Applicants for licensure must complete two thousand hours of supervised internship and two thousand hours of supervised postdoctoral experience. Internship and postdoctoral experience supervision must be provided by a licensed psychologist or licensed psychologists practicing in the areas of competence claimed by the applicant. At least one hundred hours of supervision at each level is required, at least fifty of which must be one to one at each level. Successful completion of an American psychological association accredited internship or accredited postdoctoral program will be accepted as fulfilling these requirements, respectively. Any other supervised experience must be described in detail by the applicant, including nature of service setting or settings, nature of consumers served, nature and amount of supervision, and specific skills in which the applicant demonstrated proficiency. The supervisor or supervisors must corroborate the areas of competence claimed by the applicant.

History: Effective September 1, 2000.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-20, 43-32-20.1

66-02-01-12. Identifying doctoral program as professional psychology program. The following criteria will be used to identify doctoral programs as professional psychology programs:

1. Programs that are accredited by the American psychological association are recognized as meeting the definition of a professional psychology program. The criteria for

accreditation serving as a model for professional psychology training; or

2. All of Programs that meet the following criteria; subdivisions a through i:

a. Training in professional psychology is doctoral training offered in a regionally accredited institution of higher education.

b. The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists.

c. The psychology program must stand as a recognizable, coherent organizational entity within the institution.

d. There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines.

e. The program must be an integrated, organized sequence of study.

f. There must be an identifiable psychology faculty and a psychologist responsible for the program.

g. The program must have an identifiable body of students who are matriculated in that program for a degree.

h. The program must include supervised practicum, internship, field, or laboratory training appropriate to the practice of psychology.

i. The curriculum must encompass a minimum of three academic years of full-time resident graduate study. In addition to instruction in scientific and professional ethics and standards, research design and methodology, statistics, and psychometrics, the core program must require each student to demonstrate competence in each of the following substantive content areas. This typically will be met by including a minimum of three or more graduate hours (five or more graduate quarter hours) in each of these four substantive content areas:

(1) Biological basis of behavior: physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology.

(2) Cognitive-affective basis of behavior: learning, thinking, motivation, emotion.

(3) -- Social -- basis -- of -- behavior: -- social -- psychology; -- group processes; -- organizational -- and -- systems -- theory;

(4) -- Individual -- differences: -- personality -- theory; -- human development; -- abnormal -- psychology;

- a. Training in professional psychology is doctoral training sponsored by an institution of higher education accredited by a nationally recognized regional accrediting body in the United States or, in the case of Canadian programs, the institution is publicly recognized by the association of universities and colleges of Canada as a member in good standing.
- b. The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogs and brochures the explicit philosophy of training by which it intends to prepare students for the practice of psychology and its intent to educate and train professional psychologists. The program's philosophy, educational model, and curriculum plan should be substantially consistent with the mission, goals, and culture of the program's sponsor institution. They must also be consistent with the principle of the discipline that psychological practice is based on the science of psychology, which, in turn, is influenced by the professional practice of psychology.
- c. The psychology program must be an integral part of the mission of the academic department, college, school, or institution in which it resides. It must be represented in the institution's operating budget and plans in a manner designed to enable the program to achieve its goals and objectives.
- d. There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines.
- e. The program must be an integrated, organized sequence of study that is sequential, cumulative, and graded in complexity and designed to prepare students for further organized training.
- f. There must be an identifiable core (i.e., full-time) psychology faculty and a psychologist responsible for the program.
- g. The program must have an identifiable body of students who are matriculated in the program for a degree. There must be a sufficient number of such students and the facilities

necessary to ensure meaningful peer interaction, support, and socialization.

h. The program must include supervised practicum, internship, field, or laboratory training appropriate to the practice of psychology. To this end the program should:

(1) Place students in settings that are clearly committed to training, supervise students using an adequate number of appropriate professionals, and provide a wide range of training and educational experiences through applications of empirically supported intervention procedures;

(2) Integrate the practicum component of the students' education and training with the other elements of the program and provide adequate forums for the discussion of practicum experiences; and

(3) Ensure that the sequencing, duration, nature, and content of these experiences are both appropriate for and consistent with the program's immediate and long-term training goals and objectives.

i. The curriculum must encompass a minimum of three academic years of full-time resident graduate study. In addition, the program must specify education and training goals in terms of the competencies expected of its graduates. Those competencies must be consistent with the program's philosophy and training model, the substantive areas of professional psychology for which the program prepares students, and an understanding of professional issues, including ethical, legal, and quality assurance principles.

j. In achieving its objectives, the program has and implements a clear and coherent curriculum plan that provides the means whereby all students can acquire and demonstrate substantial understanding of and competence in the following areas:

(1) The breadth of scientific psychology, its history of thought and development, its research methods, and its applications. To achieve this end, the students shall be exposed to the current body of knowledge in at least the following areas:

(a) Biological aspects of behavior;

(b) Cognitive and affective aspects of behavior;

(c) Social aspects of behavior;

- (d) History and systems of psychology;
 - (e) Psychological measurement;
 - (f) Research methodology; and
 - (g) Techniques of data analysis;
- (2) The scientific, methodological, and theoretical foundations of practice in the substantive areas of professional psychology in which the program has its training emphasis. To achieve this end, the students shall be exposed to the current body of knowledge in at least the following areas:
- (a) Individual differences in behavior;
 - (b) Human development;
 - (c) Dysfunctional behavior or psychopathology; and
 - (d) Professional standards and ethics;
- (3) Diagnosing and defining problems through psychological assessment and measurement and formulating and implementing intervention strategies, including training in empirically supported procedures. To achieve this end, the students shall be exposed to the current body of knowledge in at least the following areas:
- (a) Theories and methods of assessment and diagnosis;
 - (b) Effective intervention;
 - (c) Consultation and supervision; and
 - (d) Evaluating the efficacy of interventions;
- (4) Issues of cultural and individual diversity that are relevant to all of the above; and
- (5) Attitudes essential for lifelong learning, scholarly inquiry, and professional problem solving as psychologists in the context of an evolving body of scientific and professional knowledge.

In addition, all professional education programs in psychology must include course requirements in specialty areas.

History: Effective March 1, 1985; amended effective April 1, 1988; September 1, 2000.

General Authority: NDCC 43-32-08
Law Implemented: NDCC 43-32-20

66-02-01-13. Psychology resident. A person intending to perform services as a psychology resident shall inform the board on a form prepared by the board. A psychology resident may sit for the required written examination if the required application and fee have been filed with the board and the board determines the psychology resident to be eligible for licensure upon completion of examination and postdoctoral requirements. A psychology resident who has passed the written examination may sit for the oral examination after completion of six months of residency if the required application and fee have been filed with the board. The psychology resident and supervising psychologist or psychologists must complete a report of completed supervised postdoctoral experience for approval of the board prior to licensure. A person may have psychology resident status for up to five years.

History: Effective September 1, 2000.
General Authority: NDCC 43-32-08
Law Implemented: NDCC 43-32-20, 43-32-20.1, 43-32-30

66-02-01-14. Nonpayment of annual license fee. If a licensed psychologist fails to pay the annual fee by January first, the board shall send a certified letter to that psychologist with notice of the invalid status of the license and notice that the psychologist may not practice psychology in the state of North Dakota unless the license is renewed by payment of the annual renewal fee and late fee.

History: Effective September 1, 2000.
General Authority: NDCC 43-32-08
Law Implemented: NDCC 43-32-13, 43-32-14

CHAPTER 66-02-02

66-02-02-01. General equivalency requirements. If the applicant is applying for licensure under the equivalency provision described in subsection 3 of North Dakota Century Code section 43-32-20, all provisions of this chapter must be met as judged by the board of psychologist-examiners. The substantial portion of the applicant's doctorate program must be in an organized program within the department deemed equivalent to a department of psychology and deemed equivalent to coursework in a psychology program, as judged by the board of psychologist-examiners.

History: Amended effective April 1, 1988; September 1, 2000.
General Authority: NDCC 43-32-08
Law Implemented: NDCC 43-32-20

66-02-02-02. Letter from department chairperson. If the school or college of which the degree is obtained also has a department of psychology at a graduate level offering a doctorate in psychology, the applicant shall present a letter from that department and the applicant's own department chairperson attesting to the fact that the coursework in the candidate's program is substantially psychological in nature. The letter will be given great evidentiary weight by the board of psychologist-examiners in judging the candidate's program.

History: Amended effective March 1, 1985; September 1, 2000.
General Authority: NDCC 43-32-08
Law Implemented: NDCC 43-32-20

66-02-02-03. Documentation of training and coursework. There must be training in the specific skills related to the specialty which the applicant desires to practice. There must be documented evidence, in the form illustrated in the appendix to this chapter, of the coursework considered equivalent, substantially graduate level, in four or more of the following areas: learning, personality, statistics, research design, psychological test theory, abnormal and developmental psychology, physiological psychology, educational psychology, industrial psychology, and social and therapeutic theory or technique as follows following:

1. The curriculum must encompass a minimum of three academic years of full-time resident graduate study.
2. In addition to instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, the core program must require each student to demonstrate competence in each of the following substantive content areas: This typically will be met by including a minimum of three or more graduate semester

hours--(five--or-more-graduate-quarter-hours)-in-each-of-these
four-substantive-content-areas:

a.--Biological--basis--of-behavior:--physiological-psychology,
comparative--psychology;--neuropsychology;--sensation--and
perception;--psychopharmacology:

b.--Cognitive-affective----basis---of---behavior:----learning,
thinking;-motivation;-emotion:

c.--Social---basis--of--behavior:---social--psychology;--group
processes;-organizational-and-systems-theory:

d.--Individual---differences:----personality---theory;---human
development;-abnormal-psychology:

The--documentation--should-be-in-the-form-illustrated-in-the-appendix-to
this-chapter:

1. The doctoral training must be sponsored by an institution of higher education accredited by a nationally recognized regional accrediting body in the United States or, in the case of Canadian programs, the institution must be publicly recognized by the association of universities and colleges of Canada as a member in good standing.
2. The program must be an integral part of the mission of the academic department, college, school, or institution in which it resides. It must be represented in the institution's operating budget and plans in a manner designed to enable the program to achieve its goals and objectives.
3. There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines.
4. The program must be an integrated, organized sequence of study that is sequential, cumulative and grading in complexity and designed to prepare students for further organized training.
5. There must be an identifiable core (i.e., full-time faculty with a director, chair, or head whom is clearly administratively responsible for the functioning of the program).
6. The program must have an identifiable body of students who are matriculated in the program for a degree. There must be a sufficient number of such students and the facilities necessary to ensure meaningful peer interaction, support, and socialization.

7. The program must include supervised practicum, internship, field, or laboratory training appropriate to the practice of psychology. To this end the program should:
 - a. Place students in settings that are clearly committed to training, supervise students using an adequate number of appropriate professionals, and provide a wide range of training and educational experiences through applications of empirically supported intervention procedures;
 - b. Integrate the practicum component of the students' education and training with the other elements of the program and provide adequate forums for the discussion of practicum experience; and
 - c. Ensure that the sequencing, duration, nature, and content of these experiences are both appropriate for and consistent with the program's immediate and long-term training goals and objectives.
8. The curriculum must encompass a minimum of three academic years of full-time resident graduate study. The program must specify education and training goals in terms of the competencies expected of its graduates. Those competencies must be consistent with the program's philosophy and training model, the substantive areas of professional psychology for which the program prepares students, and an understanding of professional issues, including ethical, legal, and quality assurance principles.
9. In achieving its objectives, the program has and implements a clear and coherent curriculum plan that provides the means whereby all students can acquire and demonstrate substantial understanding of and competence in the following areas:
 - a. The breadth of scientific psychology, its history of thought and development, its research methods, and its applications. To achieve this end, the students shall be exposed to the current body of knowledge in at least the following areas:
 - (1) Biological aspects of behavior;
 - (2) Cognitive and affective aspects of behavior;
 - (3) Social aspects of behavior;
 - (4) History and systems of psychology;
 - (5) Psychological measurement;
 - (6) Research methodology; and

(7) Techniques of data analysis;

b. The scientific, methodological, and theoretical foundations of practice in the substantive areas in which the program has its training emphasis. To achieve this end, the students shall be exposed to the current body of knowledge in at least the following areas:

(1) Individual differences in behavior;

(2) Human development;

(3) Dysfunctional behavior or psychopathology; and

(4) Professional standards and ethics;

c. Diagnosing and defining problems through psychological assessment and measurement and formulating and implementing intervention strategies, including training in empirically supported procedures. To achieve this end, the students shall be exposed to the current body of knowledge in at least the following areas:

(1) Theories and methods of assessment and diagnosis;

(2) Effective intervention;

(3) Consultation and supervision; and

(4) Evaluating the efficiency of interventions;

d. Issues of cultural and individual diversity that are relevant to all of the above; and

e. Attitudes essential for lifelong learning, scholarly inquiry, and professional problem solving in the context of an evolving body of scientific and professional knowledge.

History: Amended effective March 1, 1985; April 1, 1988; September 1, 2000.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-20

66-02-02-04. Additional documentation for clinical work or counseling or therapy. ~~For an applicant desiring to do clinical work or provide counseling or therapy, there must be additional evidence of training in applying academic course content in a service setting. This must include therapy, diagnosis, intelligence/personality testing, or other specialized examination procedures, and a relevant supervised internship of not less than twelve months full-time (forty-hour week). The internship should be supervised by a licensed psychologist~~

~~practicing--in--the--designated--specialty.---The--documentation--of--the
additional--evidence--of--training--must--be--a--detailed--description--of--the
internship--as--to--the--setting;--nature--of--clients;--precisely--what--the
applicant's--routine--was;--how--the--applicant--was--supervised--as--well--as--the
amount--of--supervision;--what--skills--were--exposed--to--the--applicant;--and
the--specific--skills--in--which--the--applicant--is--proficient.~~ As part of
the program, the applicant must have completed two thousand hours of
supervised internship and two thousand hours of supervised postdoctoral
experience. Internship and postdoctoral experience supervision must be
provided by a licensed psychologist or licensed psychologists practicing
in the areas of competence claimed by the applicant. At least one
hundred hours of supervision at each level is required, at least fifty
of which must be one to one at each level. Successful completion of an
American psychological association accredited internship or accredited
postdoctoral program will be accepted as fulfilling these requirements,
respectively. Any other supervised experience must be described in
detail by the applicant, including nature of service setting or
settings, nature of consumers served, nature and amount of supervision,
and specific skills in which the applicant demonstrated proficiency.
The supervisor or supervisors must corroborate the areas of competence
claimed by the applicant.

History: Amended effective September 1, 2000.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-20

OUTLINE FOR DOCUMENTING PRINCIPLE III COURSEWORK

The applicant must document the aforementioned principle(s) coursework by specifying the following information for each:

COLLEGE	DEPARTMENT	COURSE TITLE	CATALOG DESCRIPTION	TEXT NAME & AUTHOR	*INSTRUCTOR	**ACADEMIC AREA

* Full name; and highest degree; ~~and whether or not APA member, licensed psychologist, and/or ABEP.~~

**Academic area as listed in Principle III section 66-02-02-03(9).

CHAPTER 66-02-03

66-02-03-01. Application of chapter. This chapter pertains to all federal, state, county, and or municipal agencies, political subdivisions, nonprofit corporations, and educational institutions chartered by North Dakota which employ psychologists. North Dakota Century Code chapter 43-32 provides for the licensing of psychologists who hold a doctoral degree in psychology or have training deemed equivalent by the board. Exemptions to any employee of the above agencies who for hardship or other good cause or when the employee holds a master's degree in psychology and whose the employee's activities and services are performed under the supervision of a licensed psychologist may be requested from the board of psychologist examiners.

History: Amended effective September 1, 2000.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-30

66-02-03-02. Application for exemption. ~~Except for these individuals described in subsections 2, 3, and 4~~ An employer seeking an exemption extension under subsection 1 of North Dakota Century Code ~~section 43-32-30; any individual who is not licensed by the board of psychologist examiners and who plans to use the title psychologist or the word psychological in the job or professional title the individual applies to oneself must comply with North Dakota Century Code chapter 43-32 and this chapter. The~~ must file an application for exemption, a copy of which is an appendix to this chapter; must be completed. The agency employing the psychologist must complete the form for anyone using the title of psychologist or the term psychologist and psychological and not licensable by the board. The institution or agency completing the application will be billed fifty dollars for each exempted employee. An annual renewal fee of thirty dollars for each exempted employee will be charged thereafter. The application for exemption should be sent to:

Ruth-Smith, -Secretary
University of North Dakota
Psychology Department
University Station --- Box 7187
Grand Forks, -North Dakota -- 58202

History: Amended effective March 1, 1985; September 1, 2000.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-30

66-02-03-03. Issuance of certificate of exemption. A certificate of exemption will be issued to the agency or institution on an annual basis. The certificate will include the names of exempted employees. If the employee transfers agencies or institutions during the year of licensure, the certificate of exemption ~~does not transfer with the employee~~ expires. ~~The new hiring administration must initiate the procedure again in terms of the new job description and supervising arrangements.~~ Similarly, an agency or institution may not transfer a certificate of exemption to a new employee without going through the board of psychologist examiners with the appropriate application and supporting documents.

History: Amended effective September 1, 2000.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-30

CHAPTER 66-03-01

66-03-01-03. Board approval. Any continuing education program relevant to psychology and to be applied as continuing education credits must receive prior board approval, except continuing education programs sponsored or approved by the American psychological association, the Canadian psychological association, the North Dakota psychological association, other state or provincial psychological associations, or any other scientific or professional organization whose continuing education program is clearly relevant to the needs--of--the--specific psychologist practice of psychology. ~~Each--year-with-the-notice-for license-renewal,-the-board-shall-provide-a-list-of-continuing--education programs-that-are-acceptable-to-the-board-as-of-the-date-of-the-mailing-~~ Other programs may be approved at any time by the board by submission of an application by the sponsoring organization and payment of a twenty-five dollar fee.

History: Effective February 1, 1995; amended effective September 1, 2000.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-08, 43-32-08.1

66-03-01-04. Categories of continuing education programs and credits. The board recognizes the following categories of continuing education programs or activities and established credit hours:

1. Category A formal activities, a minimum of twenty credits per reporting cycle.
 - a. Formal continuing education programs that may consist of courses, workshops, or institutes. The number of continuing education credits assigned by an association recognized by the board will be accepted. Otherwise the credits will be one credit per clock-hour.
 - b. Attendance at conventions including national, international, regional, state or provincial, and substate associations of psychologists. If a convention other than a psychological convention is attended for credit, prior approval must be obtained from the board. One credit is allowed per each two clock-hours of meeting. A maximum of ten credits is allowed per reporting cycle.
2. Category B other activities.
 - a. Regularly scheduled postgraduate courses offered by an accredited college or university which are relevant to the professional growth and development of the applicant. One quarter hour of academic credit constitutes ten continuing

education credits. One semester hour of academic credit constitutes fifteen continuing education credits.

- b. Writing or speaking, including a paper or other presentation at a formal professional meeting, a paper published in a professional journal, or a book or an original chapter in an edited book in the area of psychology or a related field. Credit will be granted for the year of publication or presentation in the case of a paper. Continuing education credits will be granted at the rate of five for each paper or presentation, ten for each chapter in a book, fifteen for editing a book, and twenty for the publication of a book.
- c. Other areas of professional development not covered in the foregoing categories, but deemed by the board to be worthy of continuing education credit. Such a determination must be made on an individual basis, including the number of credits granted.
- d. ~~The board does not recognize correspondence~~ Correspondence courses, tapes, or independent readings, ~~unless these are~~ specifically approved by the board or by one of the associations recognized by the board which include an examination component successfully completed by the licensee.

History: Effective February 1, 1995; amended effective September 1, 2000.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-08

66-03-01-06. Failure to comply with the continuing education requirement. If, after the opportunity for a formal hearing, a psychologist does not satisfy the number of credits required for a two-year cycle, the board may exercise the following options:

1. Extension of time to complete the requirement. A psychologist may request an extension of time because of illness or serious extenuating circumstances amounting to good cause. The approval of an extension and the amount of time granted to complete the requirements are at the sole discretion of the board. In such cases the psychologist will be required to continue to fulfill the continuing education requirement for the next two-year cycle as well.
2. Refuse to renew a license. A license that is not renewed because of failure to meet the continuing education requirements will be renewed if, within one year from the date of nonrenewal, the licenseholder demonstrates to the secretary of the board the continuing education requirements have been

satisfied and pays the renewal fee and a late fee of twenty dollars.

3. Place the license on probationary status.
4. Suspension of a license until such time as the psychologist meets the requirements of the previous two-year cycle, but not to exceed a second two-year cycle.
- 3- 5. Revocation of a license. In the event of license suspension for noncompletion of continuing education requirements, if the psychologist does not complete the requirements during the period of suspension, the license may be revoked.
- 4- 6. Reinstatement. A psychologist whose license has been revoked for failing to satisfy the continuing education requirements must earn forty credits in continuing education, including at least twenty in category A, during the immediately preceding two-year period in order to apply to the board for reinstatement.

History: Effective February 1, 1995; amended effective September 1, 2000.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-08 43-32-08.1, 43-32-08.2

66-03-01-07. Agencies and individual licensure exemptions. All of the provisions of this chapter apply for renewal of exemptions that have been granted by the board with these exceptions:

1. ~~The reporting cycle is one year, not two as in the case of licensed psychologists. The reporting cycle corresponds to the calendar year, beginning January 1, 1993, or January first of the year following the year in which the exemption was granted.~~
2. ~~The total number of credits to be earned in the one year is twenty.~~
3. ~~The minimum number of credits to be earned in category A during the reporting cycle is ten, at least five of which must be from activities described in subdivision a of subsection 1 of section 66-03-01-04.~~
4. ~~The responsibility for insuring the completion of continuing education credits, reporting to the board, and maintaining a file of continuing education verification for the exemption employee is with the agency to which the exemption was granted.~~ Repealed effective September 1, 2000.

History: Effective February 1, 1995.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-08

TITLE 69
Public Service Commission

AUGUST 2000

CHAPTER 69-07-02

69-07-02-02.1. Grain buyer - Bond schedule. The grain buyer bond is determined by the three-year rolling average of grain purchased annually in this state by the grain buyer. The bond amounts are:

Up to 50,000 <u>100,000</u> bushels	\$50,000
For each additional 100,000 bushels or fraction thereof in excess of 50,000 <u>100,000</u> and up to 1,000,000	\$20,000
For each additional 100,000 bushels or fraction thereof in excess of 1,000,000	\$5,000

For a new licensee, the first year's bond shall be based on the projected purchase volume and the second year's bond and third year's bond shall be based on the average actual volume according to the above schedule.

Unless the commission determines that an increase is necessary to accomplish the purpose of North Dakota Century Code chapter 60-02.1, the bond of a facility-based grain buyer shall not exceed one million dollars nor shall the bond of a non-facility-based grain buyer exceed one million five hundred thousand dollars.

History: Effective August 1, 1999; amended effective August 1, 2000.

General Authority: NDCC 60-02.1-03

Law Implemented: NDCC 60-02.1-03, 60-02.1-08

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, 1999 2000, 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
600 East Boulevard, Dept. 408
Bismarck, North-Dakota ND 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; July 1, 1998; September 1, 1999; August 1, 2000.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-01.2

CHAPTER 69-10-01

69-10-01-01. Definitions. As used in this chapter:

1. "Automatic bulk weighing system" means a weighing system which weighs grain in successive drafts, automatically records the no-load and loaded weight values, and accumulates the net weight of each draft.
2. "Batching scale" means a noncommercial weighing or measuring device used to determine, in part, the amount of an ingredient in a finished, manufactured commodity.
3. "Certify" means to seal, if upon testing and inspection, a weighing or measuring device is within the permitted tolerance and properly installed.
4. "Commerce" means the distribution or consumption of quantities, things, produce, commodities, or articles which may be offered or submitted by any person for sale or hire.
5. "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.
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.
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.
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.

11. "Rejected for repair" means a sticker or seal applied to a device which has been inspected and tested and does not meet applicable design or tolerance requirements. A device that is rejected for repair shall be modified or repaired by a registered service person within thirty days of the date it was rejected and may not be used in commerce until placed into service.
12. "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.
- ~~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.~~
13. "Seal" means marking a weighing or measuring device to show certification or rejection.
14. "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.
- ~~14.~~ 15. "Single draft weighing" means simultaneously weighing each end of a vehicle or individual elements of coupled combination vehicles.
- ~~15.~~ 16. "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.
- ~~16.~~ 17. "Standard" means test equipment used for certifying weighing or measuring devices.
- ~~17.~~ 18. "Variance" means a temporary or permanent suspension of a particular rule granted to an owner or operator of a commercial weighing or measuring device because of an economic hardship, a site restriction requiring modification to the design or installation of a device, or a special installation or operational condition, to be determined by the commission on a case-by-case basis.
- ~~18.~~ 19. "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; July 1, 1998; August 1, 2000.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-03

69-10-01-09. Bulk liquid fuel meters. A--newly-manufactured liquid-fuel-meter-placed-into-service-on-or-after-January-1,--2000,--for use--in--the--sale-of-all-types-of-bulk-liquid-fuels,-including-aviation fuels,-must-be-equipped--with--a--ticket--printing--device--meeting--the requirements--of--NIST--Handbook--No--44. Repealed effective August 1, 2000.

History: Effective--August-1,--1993;--amended--effective--July-1,--1997; October-1,--1999.
General Authority: NDCC-64-02-03
Law Implemented: NDCC-64-02-02,--64-02-13

CHAPTER 69-10-02

~~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 of NIST Handbook No. 44, by January 1, 1999. Repealed effective August 1, 2000.~~

~~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~~

69-10-02-19. Single-draft weighing - Exceptions. It shall be unlawful to weigh a vehicle or a combination vehicle in any method other than the single-draft method, as outlined in the National Institute of Standards and Technology NIST Handbook No. 44, section 2.20. scales, UR.3.3., Single-draft Vehicle Weighing, except for the following:

1. When the sale of the commodity being weighed is determined by destination weight;
2. For a motor truck or motor truck dump scale installed prior to April 1, 1965; or
3. For a motor truck or motor truck dump scale installed after April 1, 1965, provided a split-weigh variance has first been granted by the commission under section 69-10-01-04.2, and the parties involved have complied with section 69-10-02-20 prior to split-weighing.

History: Effective February 1, 1996; amended effective August 1, 2000.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-03, 64-02-04

CHAPTER 69-10-03

69-10-03-01. National institute of standards and technology (NIST) Handbook No. 44. Except as modified in this article, the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices in North Dakota shall conform to the following sections and subsections of the 1998 1999 edition of the United States department of commerce, NIST Handbook No. 44, which is adopted by reference: all of section 1, all of section 2, subsections 3.30, 3.31 (except UR.2.2. and UR.2.3.), 3.32 (except UR.2.5. and UR.2.6.), 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~~:

Public Service Commission
600 East Boulevard, Dept. 408
Bismarck, ND 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; July 1, 1998; October 1, 1999; August 1, 2000.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-07

TITLE 71
Retirement Board

JULY 2000

CHAPTER 71-01-02

71-01-02-03. Candidate eligibility.

1. Any active employee of a department of the state of North Dakota, or a political subdivision, who participates in the North Dakota public employees retirement system may become a candidate for election to the board ~~if that department or political subdivision is not currently represented on the retirement board by a board member not up for election.~~ A department or political subdivision may not be represented by more than one elected member.
2. Any person, as of the first day of July of the election year, who is receiving a retirement benefit or who is eligible to receive deferred vested retirement benefits, may become a candidate for the retiree member to the board.

History: Effective April 1, 1992; amended effective July 1, 1994; July 1, 2000.

General Authority: NDCC 54-52-04, 54-52-17(5)

Law Implemented: NDCC 54-52-03

71-01-02-04. Election notification.

1. The director of the North Dakota public employees retirement system shall ensure that notification of an active member vacancy and the election is given to all employees through publication of a notice in the North Dakota public employees retirement system newsletter at least three weeks in advance of a filing date for nomination petitions. The director shall

notify ensure that notification of the vacancy of a retiree member and the election is given to all persons receiving retirement benefits of--the--retiree--member--vacancy--and--the--election or who are eligible to receive deferred vested retirement benefits through publication of a notice in the North Dakota public employees retirement system newsletter at least three weeks in advance of a filing date for nomination petitions.

2. The notice must include a statement of voter and candidate eligibility, the candidate nomination requirements, the date of election, and where to obtain the nomination petitions for filing.

History: Effective April 1, 1992; amended effective July 1, 2000.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

71-01-02-06. Procedure for completing and filing petitions.

1. No public service or funds may be used by the candidates to promote their election except as permitted by the employing agency.
2. Nomination petitions must be filed with the North Dakota public employees retirement system no later than four p.m. on the first Friday of May, and must be validated by the election committee or their representatives following the filing deadline and prior to ballots being distributed.
3. Nomination petitions not furnished by the North Dakota public employees retirement system will be accepted provided they are submitted in the prescribed form.
4. A candidate may withdraw his--or--her that candidate's nomination petition by--providing up until the time the ballots are printed. The notice must be in writing, and duly witnessed,--and--received--by--the--North--Dakota--public--employees retirement--system--no--later--than--five--p.m.--on--the--third--Friday of--May.
5. Nomination petitions should may be accompanied by a three-inch [76.20-millimeter] by five-inch [127.00-millimeter] black--and white photograph of the candidate and a narrative not to exceed one two hundred twenty-five words. The narrative must be signed to be valid. The absence of a photo or narrative will not invalidate the candidate's eligibility, but only the candidate's name will then appear with the other candidates candidates' information which that accompanies the ballots.

6. The retirement board or its representative reserves the right to edit lengthy narratives to the ~~one~~ two hundred ~~twenty-five~~ word limit. Board decisions are final.
7. The board or its representative ~~will~~ shall inform all candidates of the validation of their candidacy by first-class United States mail.

History: Effective April 1, 1992; amended effective July 1, 2000.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

71-01-02-07. Election ballots.

1. Ballots must be prepared by the North Dakota public employees retirement system staff in accordance with the election rules.
2. Ballots must be printed on postcards with return postage supplied and will be mailed to all eligible voters with a narrative on candidates who have provided that information to the North Dakota public employees retirement system.
3. Ballots must first be arranged with the names of each candidate on the ballot, in an order determined by lot. In printing the ballots, the position of the names must be changed as many times as there are candidates' names on the ballot. The change must be accomplished by taking the name at the head of the ballot and placing it at the bottom and moving the name that was second before the change to the head of the names on the ballot. The same number of ballots must be printed after each change of position so as to result in an equal number of ballots with each candidate's name at the head of the ballot. The ballot must provide a space for write-in candidates.
4. If there is only one candidate for an election, the election will nonetheless be conducted in compliance with the provisions of this chapter.

History: Effective April 1, 1992; amended effective July 1, 2000.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

71-01-02-12. Penalties. A violation of any provision under this chapter may result in one or more of the following penalties, as determined by the board:

1. A candidate's petitions may be declared void.
2. A candidate's nomination may be declared void.

3. A candidate's election may be declared void.

4. Within thirty days of beginning an elected member's term in office, the elected member may be removed.

History: Effective July 1, 2000.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

CHAPTER 71-02-01

71-02-01-01. Definitions. As used in North Dakota Century Code chapter 54-52 and this article:

1. "Accumulated contributions" means the total of all of the following:
 - a. The employee account fund balance accumulated under the prior plan as of June 30, 1977.
 - b. The vested portion of the employee's "vesting fund" accumulated under the prior plan as of June 30, 1977.
 - c. The member's mandatory contributions made after July 1, 1977.
 - d. The member's vested employer contributions made after January 1, 2000, pursuant to North Dakota Century Code section 54-52-11.1.
 - e. The interest on the sums determined under subdivisions a, b, and c, and d, compounded annually at the rate of five percent from July 1, 1977, to June 30, 1981, six percent from July 1, 1981, through June 30, 1986, and one-half of one percent less than the actuarial interest assumption from July 1, 1986, to the member's termination of employment or retirement.
 - e- f. The sum of any employee purchase or repurchase payments.
2. "Actuarial equivalent" means a benefit calculated to be of equal value to the benefit otherwise payable when computed on the basis of assumptions and methods adopted for this purpose by the board.
3. "Alternative retirement system" means the teachers' fund for retirement, the highway patrolmen's retirement system, and the teachers' insurance and annuity association of America.
4. "Beneficiary" means any person in receipt of a benefit provided by this plan or any person designated by a participating member to receive benefits.
5. "Bonus" means cash compensation for services performed in addition to base salary excluding commission and shift differentials. Bonus does not include lump sum payments of sick leave provided under North Dakota Century Code section 54-06-14 or lump sum payments of annual leave or vacation pay.

6. "Claim" means the right to receive a monthly retirement allowance, the receiving of a retirement allowance, or the receiving of a disability benefit.
7. "Continuously employed" means any period of employment uninterrupted by voluntary or involuntary termination or discharge. A member who has taken a leave of absence approved by the member's employer, not to exceed a year unless approved by the executive director, and returns to employment shall be regarded as continuously employed for the period.
8. "Contribution" means the payment into the fund of nine and twelve-hundredths percent of the salary of a member.
9. "County judge" means a judge who was elected pursuant to North Dakota Century Code section 27-07.1-01 or an individual holding the position of county judge, county justice, or judge of county court prior to the general election in 1982, who ~~meet~~ meets all the eligibility requirements established under chapter 54-52.
10. "Interruption of employment" is when an individual is inducted (enlists or is ordered or called to active duty into the armed forces of the United States) and leaves an employment position with a state agency or political subdivision, other than a temporary position. The individual must have left employment to enter active duty and must make application for reemployment within ninety days of discharge under honorable conditions.
11. "Leave of absence" means the period of time up to one year for which an individual may be absent from covered employment without being terminated. At the executive director's discretion, the leave of absence may be extended not to exceed two years.
12. "Medical consultant" means a person or committee appointed by the board of the North Dakota public employees retirement system to evaluate medical information submitted in relation to disability applications, recertifications, and rehabilitation programs or other such duties as assigned by the board.
13. "Office" means the administrative office of the public employees retirement system.
14. "Participating employer" means an employer who contributes to the North Dakota public employees retirement system.
15. "Pay status" means a member is receiving a retirement allowance from the fund.

16. "Permanent and total disability" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve months.
17. "Plan administrator" means the executive director of the North Dakota public employees retirement system or such other person or committee as may be appointed by the board of the North Dakota public employees retirement system from time to time.
18. "Plan year" means the twelve consecutive months commencing July first of the calendar year and ending June thirtieth of the subsequent calendar year.
19. "Prior plan" means the state employees' retirement system which existed from July 1, 1966, to June 30, 1977.
20. "Regularly funded" means a legislatively authorized full-time equivalent (FTE) position for state agencies. For all governmental units other than state agencies, regularly funded means a similar designation by the unit's governing board which is created through the regular budgeting process and receives traditional employee benefits such as sick leave and annual leave.
21. "Retiree" means an individual receiving a monthly allowance pursuant to chapter 54-52.
22. "Service credit" means increments of time to be used in the calculation of retirement benefits. Service credit may be earned as stated in section 71-02-03-01 or may be purchased or repurchased according to section 71-02-03-02.1.
23. "Substantial gainful activity" is to be based upon the totality of the circumstances including: consideration of an individual's training, education, and experience; ~~their;~~ an individual's potential for earning at least seventy percent of their the individual's predisability earnings; and other items deemed significant on a case-by-case basis. Eligibility is based on an individual's employability and not actual employment status.
24. "Termination of employment" means a severance of employment by not being on the payroll of a covered employer for a minimum of one month. Approved leave of absence does not constitute termination of employment.

History: Amended effective September 1, 1982; November 1, 1990; September 1, 1991; January 1, 1992; September 1, 1992; June 1, 1993; July 1, 1994; June 1, 1996; July 1, 2000.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52

CHAPTER 71-02-03

71-02-03-01.1. Noneligible service credit. Service credit will not be granted to for:

1. Prior service if the member received a refund of contributions after July 1, 1966, unless service has been repurchased in its entirety.
2. Service if the member received a refund of contributions after July 1, 1966, unless it is repurchased or purchased in its entirety or in part as specified by the member.
3. Prior service for any member whose employer joined the retirement system on or after July 1, 1977, unless purchased for the member at the time the employer joined or unless purchased by the member.
4. Service the member waived when transferring into the defined contribution retirement plan, including service not yet granted pursuant to section 71-02-03-01.

History: Effective November 1, 1990; amended effective April 1, 1992; July 1, 2000.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 54-52-05, 54-52-17, 54-52-19.2

71-02-03-02.5. Costs. The cost must be calculated by applying actuarial factors to the amount of retirement and retiree health insurance credit being purchased by the member. The member's current age, average salary ~~as calculated under subsection 2 of North Dakota Century Code section 54-52-17~~, and current credited service on record with the North Dakota public employees retirement system in the month in which the member's written request is received must be used in the cost calculation. The amount of retirement and retiree health insurance credit being purchased must be calculated using the benefit formulas in place at the time the written request is received from the member. When calculating the cost, enhancements to the benefit formula must be considered to be in place at the time the law is signed by the governor.

The member's average salary shall be calculated as follows:

1. For members working full time with more than twelve months of service credit, by using the calculation found in subsection 2 of North Dakota Century Code section 54-52-17.
2. For members working full time with less than twelve months of service credit, by using the calculation found in subsection 2 of North Dakota Century Code section 54-52-17, but disregarding any month in which the member was paid less than

a full-month salary. A full-month salary is the compensation the member and the member's employer agreed the member would be paid for working a full month.

3. For members who have not yet received a full-month salary, the member's average salary shall equal the member's full-month salary, as defined in subsection 2.

4. For members working part time, by using the applicable calculations found in subsections 1 and 2, but using a monthly salary equal to the equivalent of the salary the member would have received if the member was working full time.

The retirement board must adopt actuarial assumptions necessary to determine the actuarial factors for the cost calculation. The assumptions must be reviewed concurrently with the assumptions for the retirement program.

Upon receipt of the written request from the member, and all required documentation, a written cost confirmation must be prepared and mailed to the member. The cost stated in the confirmation letter is valid for a period of ninety days from the date of the letter.

History: Effective July 1, 1994; amended effective June 1, 1996; July 1, 2000.

General Authority: NDCC 54-52-02.6, 54-52-04, 54-52-17, 54-52-17.2, 54-52-17.4

Law Implemented: NDCC 54-52-02.6, 54-52-17, 54-52-17.2, 54-52-17.4

CHAPTER 71-02-04

71-02-04-03. Payment date - Retirement benefits. Except for retirement options provided in section 71-02-04-02, a member's retirement benefit shall commence on the first day of the month which follows the member's eligibility for the benefit and which is at least thirty days after the date on which the member filed an application with the office. Notwithstanding any other provision in this article, benefits must begin no later than April first of the calendar year after the calendar year in which the member retires or attains the age of seventy and one-half years, whichever is later. If the member is employed but ineligible for active participation in the retirement plan, the member's benefits must begin no later than April first of the calendar year after the calendar year in which the member attains the age of seventy and one-half years. In the absence of a retirement application, benefits shall be paid based on a single life payment option. Benefits must be sent to the member's last-known address. If the benefit checks are returned with no forwarding information, the benefits will remain in the fund, and will be distributed in a lump sum retroactive to the required beginning date upon location of the member.

History: Amended effective November 1, 1990; July 1, 1994; July 1, 2000.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 54-52-17

CHAPTER 71-02-06

71-02-06-01. Conditions for return.

1. The accumulated contributions of a member who terminates permanent employment:
 - a. Before accumulating ~~five~~ three years of service credit shall be automatically refunded unless the member elects to remain in an inactive status.
 - b. After accumulating ~~five~~ three years of service credit shall be refunded upon application filed with the executive director.
 - c. The termination date for purposes of processing an application for refund or rollover must be the last date for which a member receives salary except for a member who is on an approved leave of absence. For members who are paid salary in any month following actual separation from employment if the salary is received after the normal processing date, the termination date for purposes of processing the application must be the same date as the date that the last paycheck was issued as salary.
2. Retirement contributions must be returned if a membership form SFN 2561 has not been filed with the office. Contributions will be returned until proper membership enrollment forms have been filed.

History: Amended effective November 1, 1990; June 1, 1996; July 1, 1998; July 1, 2000.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-06, 54-52-17

71-02-06-04. Contributions Adjustment for bonuses, profit sharing, and contributions paid in a month other than month earned. Adjustments for the following may-only-be-made-for-individuals-who-are-within-ten-years-of-the-earlier-of-age-fifty-five-or-meeting-the-rule-of-eighty-five must be made for all members:

1. Participating employers shall report bonuses or profit-sharing amounts paid when remitting the contribution associated with the bonus.
2. Bonuses or profit-sharing amounts paid by a participating employer will be prorated equally as actual compensation paid over the term of the intended bonus or profit-sharing period.

3. Upon receiving notice, contributions received in a month other than the month earned will be assigned to the appropriate month.

History: Effective June 1, 1993; amended effective June 1, 1996; July 1, 1998; July 1, 2000.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-05, 54-52-06

CHAPTER 71-02-07

71-02-07-03. Return to service - Disabled member. If the recipient of a disability benefit under North Dakota Century Code chapter 54-52 returns to work, said that member is responsible for reporting employment to the public employees retirement system.

1. If a member is working in a permanent full-time position and is eligible to participate in the public employees retirement system, monthly benefits from the public employees retirement system must be suspended. If the individual is not able to continue employment for ~~at least~~ a consecutive period of time resulting in nine months of service credit as a result of the disability and continues to meet eligibility requirements under the plan, said that member may resume disability status with the public employees retirement system.
2. If a member returns to substantial gainful activity or employment not covered under the public employees retirement system, the disability benefit may continue for up to nine consecutive months. If the individual is not able to continue employment for at least nine months as a result of the disability and continues to meet eligibility requirements under the plan, the member may continue disability status with the public employees retirement system.

History: Effective November 1, 1990; amended effective September 1, 1992; July 1, 1994; July 1, 2000.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 54-52-17

CHAPTER 71-03-03

71-03-03-05. Special enrollment for certain qualifying events.

An eligible employee, retiree, or surviving spouse who elects to take a periodic distribution from the defined contribution retirement plan or a monthly retirement benefit from the North Dakota public employees retirement system, North Dakota highway patrolmen's retirement system, the retirement system established by job service North Dakota, the teachers' fund for retirement, or teachers' insurance and annuity association of America-college retirement equities fund is eligible for coverage with the group health insurance program.

1. The employee, retiree, or surviving spouse must submit application for coverage within thirty-one days from one of the following qualifying events:
 - a. The month in which the eligible employee or retiree turns age sixty-five or becomes eligible for medicare.
 - b. The month in which the eligible employee's or retiree's spouse turns age sixty-five or becomes eligible for medicare.
 - c. The month in which the eligible employee terminates employment.
 - d. The month in which the eligible retiree or surviving spouse receives the first monthly retirement benefit from one of the eligible retirement systems outlined above.
 - e. The month in which an eligible employee or retiree who is covered through a spouse's plan becomes ineligible for the spouse's plan due to divorce, death, loss of employment, reduction in hours or other events which may cause loss of coverage as determined by the board.
 - f. The month in which the eligible employee or retiree is no longer eligible for employer-sponsored insurance, including coverage provided under the Consolidated Omnibus Budget Reconciliation Act.
2. Coverage will become effective on the first day of the month following the month in which the qualifying event occurred. If an application is not submitted within thirty-one days of a qualifying event, the eligible individual must be considered to have waived coverage and may not be enrolled unless the individual meets the criteria of another qualifying event. Upon a showing of good cause, the executive director may waive the thirty-one day application requirement.

3. Other individuals eligible for the health insurance plan include a surviving spouse who is not receiving a qualified monthly retirement benefit from one of the eligible retirement systems outlined above, but who was a covered dependent on the eligible retiree's group health insurance plan at the time of the eligible retiree's death, if there is no lapse in coverage.
4. Individuals not eligible for the group health insurance plan include:
 - a. A former employee who received a refund of the employee's retirement account, including individuals in the defined contribution plan who take a cash withdrawal of the employee's account, roll their account into another qualified plan, or use the moneys in their account to purchase an annuity.
 - b. A nonspouse beneficiary (eligible for Consolidated Omnibus Budget Reconciliation Act).
 - c. A deferred retiree or surviving spouse between the time in which the retiree or surviving spouse's eligibility for the Consolidated Omnibus Budget Reconciliation Act (if eligible) ends and the month in which the eligible retiree or surviving spouse receives the first monthly retirement benefit from one of the eligible retirement systems.
 - d. A formerly deferred retiree who received a refund of the retiree's retirement account.
 - e. A surviving spouse of a nonvested employee eligible for the Consolidated Omnibus Budget Reconciliation Act.
 - f. A surviving spouse of a former employee who received a refund of the employee's retirement account.
 - g. A former participating member of the defined contribution retirement program who would not qualify for one of the retirement dates set forth in subsection 3 of North Dakota Century Code section 54-52-17 if that employee was a member of the defined benefit retirement plan, unless eligible under the Consolidated Omnibus Budget Reconciliation Act, and then only for the required duration of eligibility under the Act.

History: Effective October 1, 1986; amended effective November 1, 1990; July 1, 1994; June 1, 1996; July 1, 1998; July 1, 2000.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-03; Consolidated Omnibus Budget Reconciliation Act (Pub. L. 99-272; 100 Stat. 222; 26 U.S.C. 162 et seq.)

CHAPTER 71-06-01

71-06-01-01. Eligibility for retiree health insurance credit applied to premiums for annuitants and surviving spouses under the North Dakota public employees retirement system, the North Dakota highway patrolmen's retirement system, the retired judges under North Dakota Century Code chapter 27-17, and annuitants of the job service retirement program, and former participating members of the defined contribution retirement plan receiving periodic distributions. All receiving members of the public employees retirement system, highway patrolmen's retirement system, judges retirement system, retired judges under North Dakota Century Code chapter 27-17, and annuitants of the job service retirement program will be eligible for retiree health credit applied to premiums that satisfy the enrollment requirements of section 71-03-03-05, with the exception of those receiving members who are receiving their benefit based on prior service credits rather than the defined benefits program. Vested members deferring benefits will not be eligible until payment of benefits commences. A former participating member of the defined contribution retirement plan is similarly eligible for retiree health credit applied to premiums that satisfy the enrollment requirements of section 71-03-03-05, if the former participating member would qualify for one of the retirement dates set forth in subsection 3 of North Dakota Century Code section 54-52-17 if that former participating member was a member of the defined benefit retirement plan.

History: Effective April 1, 1992; amended effective June 1, 1996; July 1, 2000.

General Authority: NDCC 54-52.1-03.2(b)

Law Implemented: NDCC 54-52.1-03.3

71-06-01-02. **Calculation of retiree health insurance credit.** Retiree health insurance credit will be calculated on actual years and months of service, identical to retirement benefits under North Dakota Century Code chapter 54-52.

1. Retiree health insurance credit will be subject to reduction factors in the event of early retirement.

For annuitants of the public employees retirement system defined benefit plan and North Dakota public employees retirement system judges, and for members of the defined contribution retirement plan, excluding national guard retirees, who take a periodic distribution:

<u>Age at Retirement</u>	<u>Reduction Factor</u>	<u>Age at Retirement</u>	<u>Reduction Factor</u>
64 to 65	3%	59 to 60	33%
63 to 64	9%	58 to 59	39%

62 to 63	15%	57 to 58	45%
61 to 62	21%	56 to 57	51%
60 to 61	27%	55 to 56	57%

For annuitants of the job service retirement program:
This includes those who retired under a discontinued service annuity but does not include those who retired at a normal or optional date.

<u>Age at Retirement</u>	<u>Reduction Factor</u>	<u>Age at Retirement</u>	<u>Reduction Factor</u>	<u>Age at Retirement</u>	<u>Reduction Factor</u>
64 to 65	3%	59 to 60	33%	54 to 55	63%
63 to 64	9%	58 to 59	39%	53 to 54	69%
62 to 63	15%	57 to 58	45%	52 to 53	75%
61 to 62	21%	56 to 57	51%	51 to 52	81%
60 to 61	27%	55 to 56	57%	50 to 51	87%

For annuitants of the highway patrol fund and national guard security police and firefighters and national guard security police and firefighters who transferred to the defined contribution retirement plan:

<u>Age at Retirement</u>	<u>Reduction Factor</u>
54 to 55	3%
53 to 54	9%
52 to 53	15%
51 to 52	21%
50 to 51	27%

2. Disabled annuitants receiving benefits under subdivision e of subsection 3 of North Dakota Century Code section 54-52-17, subdivision d of subsection 3 of North Dakota Century Code section 39-03.1-11, North Dakota Century Code section 52-11-01, or section 71-02-05-05 will be eligible for full retiree health insurance credit benefits. No age reduction factor will be applied.
3. A surviving spouse eligible to receive benefits under subdivisions b and c of subsection 6 of North Dakota Century Code section 54-52-17, subdivisions b and c of subsection 6 of North Dakota Century Code section 39-03.1-11, or North Dakota Century Code section 52-11-01 will receive retiree health insurance credit based on the deceased member's years of service without any age reduction applied.
4. A surviving spouse receiving benefits under the provisions of subdivision a or c of subsection 9 of North Dakota Century Code section 54-52-17; subdivisions a, b, and c of subsection 5 of North Dakota Century Code section 27-17-01; subsection 9 of North Dakota Century Code section 39-03.1-11;

or North Dakota Century Code section 52-11-01 will receive retiree health insurance credit for the duration benefits are paid, based upon the original annuitant's retirement age.

History: Effective April 1, 1992; amended effective June 1, 1996; July 1, 2000.

General Authority: NDCC 54-52.1-03.2(b)

Law Implemented: NDCC 54-52.1-03.3

71-06-01-08. Vesting in retiree health credit for members of the defined contribution retirement plan. Notwithstanding section 71-02-03-01.1, members of the defined contribution retirement plan vest in their retiree health credit in the same manner as members of the retirement program to which they would belong if they had not elected to participate in the defined contribution retirement plan, including the earning of service credit, the reduction for early retirement, and credit granted pursuant to section 71-02-03-01.

History: Effective July 1, 2000.

General Authority: NDCC 54-52.1-03.2(1)(b)

Law Implemented: NDCC 54-52.1-03.3, 54-52.6-02

STAFF COMMENT: Article 71-08 contains all new material and is not underscored so as to improve readability.

ARTICLE 71-08

DEFINED CONTRIBUTION RETIREMENT PLAN

Chapter	
71-08-01	Election and Transfer
71-08-02	Membership in Defined Contribution Retirement Plan
71-08-03	Disability
71-08-04	Qualified Domestic Relations Orders
71-08-05	Review Procedure

CHAPTER 71-08-01 ELECTION AND TRANSFER

Section	
71-08-01-01	Ability to Elect to Transfer Into the Defined Contribution Retirement Plan
71-08-01-02	Vesting in Transferred Accumulated Fund Balance
71-08-01-03	Spousal Signature Requirements
71-08-01-04	Transfer of Members With Qualified Domestic Relations Orders on Their Accounts
71-08-01-05	Transfer Amount of Persons Transferring Into Eligible Employment After December 31, 1999
71-08-01-06	Public Employees Retirement System Retirees Not Eligible to Transfer Upon Return to Work

71-08-01-01. Ability to elect to transfer into the defined contribution retirement plan. Once a member of the public employees retirement system under North Dakota Century Code chapter 54-52 has declined or failed to elect to transfer into the defined contribution retirement plan, that member may not later elect to transfer unless one of the following applies:

1. The member is appointed or elected to a new office that is eligible for the defined contribution retirement plan.
2. The member leaves eligible employment and later reacquires eligible employment.

History: Effective July 1, 2000.
General Authority: NDCC 28-32-02(1)
Law Implemented: NDCC 54-52.6-02

71-08-01-02. Vesting in transferred accumulated fund balance. Vesting in that portion of the accumulated fund balance attributable to the employer's contribution which is transferred from the defined benefit public employees retirement system pursuant to North Dakota Century Code section 54-52.6-03 will follow the same schedule provided in North Dakota Century Code section 54-52.6-10.

History: Effective July 1, 2000.
General Authority: NDCC 28-32-02(1)
Law Implemented: NDCC 54-52.6-03, 54-52.6-10

71-08-01-03. Spousal signature requirements. For purposes of the spousal signature requirements of subsection 4 of North Dakota Century Code section 54-52.6-02 and North Dakota Century Code section 54-52.6-11, extenuating circumstances alleviating the requirement of a spouse's signature are only present if the board determines the spouse is unavailable for the entire election period or the member has a power of attorney over the spouse which would legally allow the member to sign for the spouse.

History: Effective July 1, 2000.
General Authority: NDCC 28-32-02(1)
Law Implemented: NDCC 54-52.6-02(4), 54-52.6-11

71-08-01-04. Transfer of members with qualified domestic relations orders on their accounts. Members of the public employees retirement system under North Dakota Century Code chapter 54-52 who have a valid qualified domestic relations order on their account may only transfer to the defined contribution retirement plan if they obtain a new qualified domestic relations order from the applicable court. The account shall not be transferred unless both the participating member and the member's ex-spouse agree to transfer to the defined contribution retirement plan.

History: Effective July 1, 2000.
General Authority: NDCC 28-32-02(1)
Law Implemented: NDCC 54-52.6-12

71-08-01-05. Transfer amount of persons transferring into eligible employment after December 31, 1999. The amount the board shall transfer for persons beginning or transferring to eligible employment after December 31, 1999, shall equal the actual employer and employee contributions plus interest, as provided in subsection 2 of North Dakota Century Code section 54-52.6-03.

History: Effective July 1, 2000.
General Authority: NDCC 28-32-02(1)
Law Implemented: NDCC 54-52.6-03

71-08-01-06. Public employees retirement system retirees not eligible to transfer upon return to work. A member of the public employees retirement system defined benefit plan who has retired and received a retirement annuity and later returns to work in a position that is eligible for the defined contribution retirement plan is nonetheless ineligible to transfer into the defined contribution retirement plan and must remain a member of the public employees retirement system.

History: Effective July 1, 2000.

General Authority: NDCC 28-32-02(1)

Law Implemented: NDCC 54-52.6-02

CHAPTER 71-08-02
MEMBERSHIP IN DEFINED CONTRIBUTION RETIREMENT PLAN

Section

- 71-08-02-01 Membership of Individuals Who Become Employees of the Judicial Branch, the Board of Higher Education or a State Institution Under the Jurisdiction of the Board, the Highway Patrol, or a Political Subdivision That Participates in the Public Employees Retirement System or Who Become Employed in a Position Subject to Teachers' Fund for Retirement Membership
- 71-08-02-02 Continuation of Membership

71-08-02-01. Membership of individuals who become employees of the judicial branch, the board of higher education or a state institution under the jurisdiction of the board, the highway patrol, or a political subdivision that participates in the public employees retirement system or who become employed in a position subject to teachers' fund for retirement membership. If a member of the defined contribution retirement plan becomes an employee of the judicial branch, the board of higher education, a state institution under the jurisdiction of the board, the highway patrol, or a political subdivision that participates in the public employees retirement system, or becomes employed in a position subject to teachers' fund for retirement membership, the member's status as a member of the defined contribution retirement plan is suspended and the member becomes a new member of the retirement plan for which that member's new position is eligible. The member's account balance remains in the defined contribution retirement plan, but no new contributions may be made to that account. The member's service credit and salary history that were forfeited as a result of the member's transfer to the defined contribution retirement plan remain forfeited, and service credit accumulation in the new retirement plan begins from the first day of employment in the new position. If the member later returns to employment that is eligible for the defined contribution plan, the member's suspension is terminated, the member again becomes a member of the defined contribution plan, and the member's account shall resume accepting contributions. The contributions to the alternate retirement plan shall remain with that plan unless the member was employed by a political subdivision that participates in the public employees retirement system. If the employee was employed by a political subdivision that participates in the public employees retirement system returns to service as a state employee, the employee's accumulated fund balance shall be transferred to the defined contribution retirement plan

according to North Dakota Century Code section 54-52.6-03 and the employee shall resume membership in the defined contribution retirement plan.

History: Effective July 1, 2000.
General Authority: NDCC 28-32-02(1)
Law Implemented: NDCC 54-52.6-01(3)

71-08-02-02. Continuation of membership. Other than as provided in section 71-08-02-01, a former participating member of the defined contribution retirement plan who returns to state employment following a previous termination or retirement continues to be a member of the defined contribution retirement plan even if the member took one of the distributions allowed by North Dakota Century Code section 54-52.6-13.

History: Effective July 1, 2000.
General Authority: NDCC 28-32-02(1)
Law Implemented: NDCC 54-52.6-02

**CHAPTER 71-08-03
DISABILITY**

Section
71-08-03-01 Disability Distribution

71-08-03-01. Disability distribution. The board will allow distribution of the participating member's vested account balance if the board determines the participating member has become totally and permanently disabled using the procedure provided in section 71-02-05-06. If approved, the disabled member has the same distribution options as provided in subdivisions a and c of subsection 3 of North Dakota Century Code section 54-52.6-13. However, if the member chooses the periodic distribution option, the member will only be allowed to receive distributions for as long as the disability continues and the member submits the necessary documentation and undergoes medical testing required by the board, or for as long as the member participates in a rehabilitation program required by the board, or both. The board shall use the redetermination and recertification procedures provided in section 71-02-05-06 to determine whether the member remains disabled. If the board determines that a member no longer meets the eligibility definition, the board shall discontinue the disability retirement benefit.

History: Effective July 1, 2000.
General Authority: NDCC 28-32-02(1)
Law Implemented: NDCC 54-52.6-14

CHAPTER 71-08-04
QUALIFIED DOMESTIC RELATIONS ORDERS

Section	
71-08-04-01	Payment in Accordance With Qualified Domestic Relations Orders
71-08-04-02	Qualified Domestic Relations Orders Procedures

71-08-04-01. Payment in accordance with qualified domestic relations orders. Retirement moneys must be paid in accordance with any qualified domestic relations order issued in compliance with North Dakota Century Code section 54-52.6-12.

History: Effective July 1, 2000.

General Authority: NDCC 28-32-02(1)

Law Implemented: NDCC 54-52.6-12

71-08-04-02. Qualified domestic relations orders procedures.

1. Upon receipt of a proposed domestic relations order, the executive director shall:
 - a. Send an initial notice to each person named therein, including the member and the alternate payee named in the order, with an explanation of the procedures followed by the fund.
 - b. Order the funds to which the alternate payee would be entitled by direction of the order segregated into the available stable value account of the fund, if those funds are ascertainable from the proposed order.
 - c. Review the domestic relations order to determine if it is a qualified order as established by the model language format specified by the board.
2. The domestic relations order shall be considered a qualified order when the executive director notifies the parties the order is approved and a certified copy of the court order has been submitted to the office.
3. If the order becomes qualified, the executive director shall:
 - a. Send notice to all persons named in the order and any representative designated in writing by such person that a determination has been made that the order is a qualified domestic relations order.
 - b. Comply with the terms of the order.

- c. Allow the alternate payee to choose the appropriate investment options for the alternate payee's account.
 - d. Allow the alternate payee to choose the same payout options allowed for the member.
4. If the order is determined not to be a qualified domestic relations order or a determination cannot be made as to whether the order is qualified or not qualified within eighteen months of receipt of such order, the executive director shall send written notification of termination of review to all parties at least forty-five days prior to the end of the eighteen-month review period. At the end of the eighteen-month review period, the proposed order is deemed to be withdrawn and of no legal effect.
- a. If a segregated account has been established for an alternate payee, the executive director shall distribute the amounts in the segregated account in the manner required in the absence of an order.
 - b. If determined after the expiration of the eighteen-month period the order is a qualified domestic relations order, the qualified domestic relations order must be applied prospectively only.

History: Effective July 1, 2000.
General Authority: NDCC 28-32-02(1)
Law Implemented: NDCC 54-52.6-12

**CHAPTER 71-08-05
REVIEW PROCEDURE**

Section
71-08-05-01 Review Procedure

71-08-05-01. Review procedure. The board shall use the same review and formal review procedures as provided in chapter 71-02-09.

History: Effective July 1, 2000.

General Authority: NDCC 28-32-02(1)

Law Implemented: NDCC 54-52.6-13

TITLE 75
Department of Human Services

JUNE 2000

CHAPTER 75-02-02.2

AGENCY SYNOPSIS: New North Dakota Administrative Code Chapter 75-02-02.2 Children's Health Insurance Program.

75-02-02.2-01. Definitions: Creates definitions for "American Indian or Alaska Native", "Applicant", "Asset", "Children's Health Insurance Program", "Department", "Earned Income", "Employer", "Enrollee", "Household Member", "Medicaid", "Poverty Line", "Public Institution", "Supplemental Security Income", "The Plan", and "Title IV-E".

75-02-02.2-02. Application and Determination of Eligibility: Defines applications and how eligibility is determined.

75-02-02.2-03. Duty to Establish Eligibility: Establishes an applicant's duty to provide information sufficient to determine eligibility.

75-02-02.2-04. Decision, Notice, and Appeal: Provides for decisionmaking deadlines on applications and notice procedures.

75-02-02.2-05. Notice of Potential Medicaid Eligibility - Choice of Program: Requires notice to applicants who may potentially be eligible for Medicaid.

75-02-02.2-06. Recertification of Eligibility: Provides the method to be used to recertify the eligibility of plan enrollees.

75-02-02.2-07. Duty to Report Changes in Household: Requires plan enrollees to report changes in household circumstances.

75-02-02.2-08. Termination of Coverage by Enrollee: Provides methods for termination of plan coverage.

75-02-02.2-09. Residence and Citizenship Requirements: Provides residency and citizenship requirements for eligibility.

75-02-02.2-10. Eligibility Criteria: Provides the basic criteria to be used in determining plan eligibility.

75-02-02.2-11. Asset Considerations: Establishes that there are no asset or resource limits to be used in determining plan eligibility.

75-02-02.2-12. Income Considerations: Provides the method for how income will be calculated.

75-02-02.2-13. Determining Household Income: Provides the method for evaluating and determining household income.

75-02-02.2-14. Eligibility Period: Provides the period of coverage once eligibility is determined.

75-02-02.2-15. Covered Services: Defines the types of coverage afforded by the program.

STAFF COMMENT: Chapter 75-02-02.2 contains all new material and is not underscored so as to improve readability.

**CHAPTER 75-02-02.2
CHILDREN'S HEALTH INSURANCE PROGRAM**

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75-02-02.2-01. Definitions. For purposes of this chapter:

1. "American Indian or Alaska Native" means a member of a federally recognized Indian tribe, band, or group or a descendant in the first or second degree, of any such member; an Eskimo or Aleut or other Alaska native enrolled by the secretary of the interior pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.]; a person who is considered by the secretary of the interior to be an Indian for any purpose; or a person who is determined to be an Indian under regulations promulgated by the secretary.
2. "Applicant" means an individual seeking benefits under the healthy steps program on behalf of a child.
3. "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.
4. "Children's health insurance program" means the North Dakota children's health insurance program, also known as the healthy steps program, which is a program implemented pursuant to North Dakota Century Code chapter 50-29 and 42 U.S.C. 1397aa et seq. to furnish health assistance to low-income children funded through title XXI of the Social Security Act [42 U.S.C. 1397aa et seq.].

5. "Department" means the North Dakota department of human services.
6. "Earned income" means income currently received as wages, salaries, commissions, or profits from activities in which an individual or household is engaged through either employment or self-employment. There must be an appreciable amount of personal involvement and effort, on the part of the individual or household, for income to be considered "earned".
7. "Employer" means an individual or entity who employs the services of an applicant or a member of the applicant's household and who pays the individual wages, salaries, or benefits.
8. "Enrollee" means a child receiving coverage under the healthy steps program.
9. "Household member" means any individual who shares the child's home a substantial amount of time. Children who are twenty-one years of age or older are not counted as household members. An individual who is temporarily absent from the household by reason of employment, school, training, or medical treatment, or who is expected to return to the household within thirty days of the date of the healthy steps program application, shall be considered a household member.
10. "Medicaid" means a program implemented pursuant to North Dakota Century Code chapter 50-24.1 and 42 U.S.C. 1396 et seq. to furnish medical assistance, as defined in 42 U.S.C. 1396d(a), to individuals determined eligible for medically necessary covered medical and remedial services.
11. "Poverty line" means the official income poverty line as defined by the United States office of management and budget and revised annually in accordance with 42 U.S.C. 9902(2).
12. "Public institution" means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.
13. "Supplemental security income" or "SSI" means a program administered under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].
14. "The plan" means the North Dakota children's health insurance program.

15. "Title IV-E" means title IV-E of the Social Security Act [42 U.S.C. 1381 et seq.].

History: Effective June 1, 2000.

General Authority: NDCC 50-29

Law Implemented: NDCC 50-29-01; 42 USC 1397aa et seq.

75-02-02.2-02. Application and determination of eligibility.

1. All individuals wishing to make application on behalf of a child for plan coverage must have the opportunity to do so without delay. An application is a request for plan coverage. Information concerning eligibility requirements, available services, and the rights and responsibilities of applicants and enrollees must be furnished to all who request it.
2. An application must be in writing, on a prescribed application form, and signed by the applicant or appropriate individual on behalf of the child applying for plan coverage.
3. The date of the application is the date the application, signed by the applicant, is received by the department.
4. The department shall process applications for plan coverage and make determinations of eligibility.

History: Effective June 1, 2000.

General Authority: NDCC 50-29

Law Implemented: NDCC 50-29-02; 42 USC 1397aa et seq.

75-02-02.2-03. Duty to establish eligibility.

1. It is the responsibility of the individual applying for plan coverage on behalf of a child to provide information sufficient to establish eligibility of each child for whom coverage is requested including each child's social security number, age, residence, citizenship, and verification of financial eligibility.
2. If sufficient information is not provided to establish eligibility, the applicant will be given sixty calendar days from the date the department requests additional information in which to provide the requested information. If the information requested is not received within the sixty-day time period, the application shall be denied for failure to provide sufficient information.

History: Effective June 1, 2000.

General Authority: NDCC 50-29

Law Implemented: NDCC 50-29-03; 42 USC 1397aa et seq.

75-02-02.2-04. Decision, notice, and appeal.

1. The department shall promptly make a decision as to eligibility on all applications.
2. The department shall send a written notice to an applicant or enrollee when the department denies, suspends, or terminates eligibility. The notice must include the effective date of the action taken, the reason for the action taken, and the appeal rights, if any, of the applicant or enrollee.
3. Errors made by public officials and delays caused by the actions of public officials do not create eligibility or additional benefits for coverage for a child or enrollee who is adversely affected.
4. A notice informing an applicant or an enrollee of the right to appeal a decision made by the department must include a statement informing the applicant or enrollee that a written appeal must be filed with the appeals supervisor of the department within thirty days after the date of the written notice of decision. The notice must inform the applicant or enrollee that an appeal request must be mailed or delivered to:

Appeals Supervisor
Department of Human Services
600 East Boulevard Avenue
Judicial Wing, Dept. 325
Bismarck, ND 58505

Upon receipt of a timely filed appeal, the department shall conduct an administrative hearing in the manner prescribed in chapter 75-01-03 and render a decision within a reasonable time. Because plan benefits are not an entitlement pursuant to 42 U.S.C. section 1397bb(b)(4) and North Dakota Century Code section 50-29-05, the hearing provided for in this subsection must be one in accordance with the requirements of 42 C.F.R. section 457.985 and shall not be one required under due process provisions of the fourteenth amendment to the United States Constitution as applied in *Goldberg v. Kelly*, 397 U.S. 254(1970) or its progeny.

5. Enrollees may file grievances, complaints, and appeals regarding a determination made by the private insurance carrier that is under contract with the department to provide the insurance coverage for the plan that results in a reduction or denial of benefits. The enrollee must file grievances, complaints, or appeals with the private insurance carrier in the manner provided for by the private insurance carrier subject to North Dakota law regarding grievance and appeal procedures required for health insurance carriers in effect at the time the action appealed from was taken. If the

enrollee is dissatisfied with the final decision of the insurance carrier after exhausting all available remedies provided by the insurance carrier, the enrollee may appeal the decision to the department in the manner provided in subsection 4.

History: Effective June 1, 2000.

General Authority: NDCC 50-29

Law Implemented: NDCC 50-29-02; 42 USC 1397aa et seq.

75-02-02.2-05. Notice of potential medicaid eligibility - Choice of program.

1. The department shall review each application to determine whether the child applying may also be eligible for medicaid.
2. If a child appears to be eligible for medicaid, the department shall provide notice to the applicant informing the applicant that the applicant should complete a medicaid application and submit it to the county social service agency located in the child's county of residence. The department shall send a copy of the notice to the county social service agency of the county in which the child resides.
3. If a child appears to be eligible for medicaid with a monthly recipient liability, the child will be provided plan coverage and notified that the child may apply for medicaid at the appropriate county social service agency at any time.

History: Effective June 1, 2000.

General Authority: NDCC 50-29

Law Implemented: NDCC 50-29-02; 42 USC 1397aa et seq.

75-02-02.2-06. Recertification of eligibility.

1. The department shall redetermine the eligibility of all enrollees at least annually and shall recertify those eligible.
2. An enrollee, or anyone acting on an enrollee's behalf, has the same responsibility to furnish information to the department during a recertification of eligibility for coverage as an applicant has during the initial application and eligibility determination. All enrollees shall cooperate fully with annual recertifications and provide sufficient information to the department to recertify eligibility for coverage.
3. Plan coverage terminates on the last day of the month of the end of the annual recertification period if an enrollee fails to provide sufficient information to recertify eligibility.

4. The department shall notify enrollees of termination of coverage within forty-five days of receipt of the information which led to the termination or denial of recertification of a determination that the enrollee is no longer eligible for coverage or that recertification of eligibility cannot be determined. The notice must include the reason for termination of coverage, the effective date of termination of coverage, and the enrollee's appeal rights as described in section 75-02-02.2-04.

History: Effective June 1, 2000.

General Authority: NDCC 50-29

Law Implemented: NDCC 50-29; 42 USC 1397aa et seq.

75-02-02.2-07. Duty to report changes in household.

1. An enrollee or household member shall immediately report to the department:
 - a. A child leaving the household;
 - b. A household gaining access to other health insurance coverage for the child;
 - c. A child leaving the state of North Dakota; or
 - d. A child being born into the household.
2. An enrollee or household member must inform the department of family circumstances by returning the report provided by the department or by calling the department and providing a verbal response, between the first and fifteenth days of the fourth and eighth months of the eligibility period. If the enrollee or household member fails to timely provide such information, plan coverage terminates on the last day of the month in which the information was due.

History: Effective June 1, 2000.

General Authority: NDCC 50-29

Law Implemented: NDCC 50-29; 42 USC 1397aa et seq.

75-02-02.2-08. Termination of coverage by enrollee.

1. An enrollee, or appropriate individual on behalf of the enrollee, may terminate coverage under the plan by giving the department written notice.
2. Oral notice of termination of coverage given by an enrollee, or appropriate individual on behalf of the enrollee, is effective if recorded by the department in its case file and reflected on the termination notice.

3. Termination of coverage becomes effective at eleven fifty-nine p.m. on the last day of the month in which the notice of termination was received by the department.

History: Effective June 1, 2000.

General Authority: NDCC 50-29

Law Implemented: NDCC 50-29; 42 USC 1397aa et seq.

75-02-02.2-09. Residence and citizenship requirements.

1. The following provisions apply to applicants and enrollees regarding residency requirements:
 - a. A child must be a resident of the state of North Dakota in order to be eligible for plan coverage. A child's residence is deemed to be that of the child's parent or legal guardian.
 - b. A resident of the state of North Dakota is an individual living in the state voluntarily and not for a temporary purpose. Temporary absences from the state, including temporary absences for purposes of employment, schooling, vacation, or medical treatment, with subsequent returns to the state, or intent to return when the purpose of the absence has been accomplished, do not interrupt continuity of residence. Residence is retained until abandoned or established in another state.
2. Except as otherwise provided, a child must be a citizen of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands, or a national of American Samoa or Swain's Island in order to be eligible.
3. An American Indian born in Canada, if of at least one-half American Indian blood, may be eligible. This does not include the spouse or child of such an Indian, or a noncitizen American Indian born in Canada, whose membership in an Indian tribe or family is created by adoption, unless the individual is of at least one-half Indian blood.
4. An alien who has lawfully entered the United States for permanent residence before August 22, 1996, and who meets all other eligibility criteria may be eligible.
5. For five years from the date of entry into the United States, an alien who is a lawful, permanent resident and has attained forty qualifying quarters of social security coverage as defined by the Social Security Act [42 U.S.C. 1381 et seq.] and who meets all other eligibility criteria may be eligible.

6. A qualified alien who entered the United States after August 22, 1996, and who meets all other eligibility criteria may be eligible for plan coverage if:
 - a. An honorably discharged veteran or alien on active duty in the United States' armed forces or the spouse or unmarried dependent child of such an alien;
 - b. Subject to subsection 4, a refugee and asylee for seven years from the date of entry into the United States; or
 - c. Subject to subsection 4, an alien whose deportation was withheld under section 243(h) of the Immigration and Naturalization Act (INA) for seven years from the date the withholding was granted.
7. After seven years from the date of entry into the United States, the continued eligibility of refugees, asylees, and those aliens whose deportation was withheld is contingent upon the enrollee or enrollee's parent having attained forty qualifying quarters of social security coverage as defined by the Social Security Act [42 U.S.C. section 1381 et seq.].

History: Effective June 1, 2000.

General Authority: NDCC 50-29

Law Implemented: NDCC 50-29; 42 USC 1397aa et seq.

75-02-02.2-10. Eligibility criteria.

1. Children ages birth through eighteen years of age are eligible for plan coverage provided all other eligibility criteria are met. Coverage for enrollees who are eighteen years of age will continue through the last day of the month in which the enrollee turns nineteen years of age.
2. A child who has current creditable health insurance coverage or has coverage which is available through a parent's or legal guardian's employer at no cost, as defined in section 2701(c) of the Public Health Service Act [42 U.S.C. 300gg(c)] is not eligible for plan coverage.
3. A child is not eligible for plan coverage if a family member voluntarily terminated either employer-sponsored or individual health insurance coverage of the child within six months of the date of application unless:
 - a. The health insurance coverage was terminated due to the involuntary loss of employment;
 - b. The health insurance coverage was terminated through no fault of the family member who had secured the coverage; or

- c. The health insurance coverage was terminated by a household member who is actively engaged in farming in a county which is declared a federal disaster area.
4. A child residing in a public institution is not eligible for plan coverage.
5. A child who is a member of a family that is eligible for health benefits coverage under a state health benefits plan on the basis of a family member's employment with a public agency in the state of North Dakota is not eligible for plan coverage.
6. A child who meets current medicaid eligibility criteria is not eligible for plan coverage unless the child would otherwise be eligible for the medically needy medicaid program with a recipient liability. Such child may be enrolled in either the healthy steps program or the medically needy medicaid program.
7. A child who resides in an institution for mental disease at the time the child applies for plan coverage is not eligible for plan coverage. This exclusion does not apply to enrollees who enter an institution for mental disease while receiving plan coverage.
8. If the department estimates that available funds are insufficient to allow plan coverage for additional applicants, the department may take any action appropriate to avoid commitment of funds in excess of available funds including denying applications and establishing waiting lists not forbidden by title XXI of the Social Security Act [42 U.S.C. section 1397aa et seq.] or regulations adopted thereunder. If federal children's health insurance program funding decreases, the department may decrease the income eligibility limit to accommodate the decrease in federal funding.

History: Effective June 1, 2000.

General Authority: NDCC 50-29

Law Implemented: NDCC 50-29; 42 USC 1397aa et seq.

75-02-02.2-11. Asset considerations. Assets may not be considered in determining eligibility for plan coverage.

History: Effective June 1, 2000.

General Authority: NDCC 50-29

Law Implemented: NDCC 50-29; 42 USC 1397aa et seq.

75-02-02.2-12. Income considerations.

1. Only income that is actually available may be considered. Income is actually available when it is at the disposal of a

child or household member or when the child or household member has a legal interest in a liquidated sum and has the legal ability to make the sum available.

2. It is presumed that all parental income is actually available to a child under nineteen years of age. This presumption may be rebutted by a showing that the child is:
 - a. Living independently without receiving support or income from a parent; or
 - b. Living with a parent who is separated from the child's other parent, with or without court order, if the parents did not separate for the purpose of securing plan coverage and the parent with whom the child is not living has refused to furnish information about that parent's income sufficient to determine eligibility.
3. In order for a child to be eligible for plan coverage, the adjusted gross income of the child and the child's parents must be equal to or below one hundred forty percent of the federal poverty line based on the size of the household. Pursuant to North Dakota Century Code section 50-29-05, if federal children's health insurance program funding decreases, the department may decrease the income eligibility limit to accommodate the decrease in federal funding.
4. All household members are counted in determining the size of the household except children over the age of twenty-one years. The size of the household is increased by one for each unborn child of a household member.
5. Except as specifically excluded, all income of the child applying for coverage and the child's parents must be considered in determining eligibility. The income of other household members shall not be considered in determining eligibility.
 - a. All earned income of the child and the child's parents must be considered in determining eligibility, including wages, salaries, commissions, tips, bonuses, self-employment income, and income received under a contract.
 - b. All gross unearned income of the child and the child's parents must be considered when calculating adjusted gross income, including child support, spousal support, social security benefits, pensions, unemployment compensation, workers' compensation, interest, dividends, and other similar income.
6. The following types of income must be disregarded in determining eligibility for plan coverage:

- a. Income that is required to be excluded pursuant to federal law, including supplemental security income benefits provided by the social security administration.
- b. Irregular small cash gifts or contributions;
- c. In-kind earned income;
- d. Educational loans, scholarships, fellowships, grants, awards, and work-study received by a student;
- e. Income earned by a child who is a full-time student or part-time student who is not employed more than one hundred hours per month, including volunteers in service to America (VISTA) and Job Training Partnership Act (JTPA) income;
- f. Money payments made by the department, including foster care or subsidized adoption, optional supplementation payments, vocational rehabilitation training funds, family subsidy program, and low income home energy assistance program (LIHEAP);
- g. Loans from any source that are subject to a written agreement requiring repayment by a household member;
- h. Quality child care for meals;
- i. County general assistance payments;
- j. Income tax refunds, earned income tax credits, or homestead tax credits;
- k. Earned or unearned lump sum payments, including inheritance moneys;
- l. Earned or unearned Job Training Partnership Act payments;
- m. Housing allowance received from United States department of housing and urban development or rent supplements or utility payments provided through the housing assistance program;
- n. Refugee sponsorship income; or
- o. Americorps income.

History: Effective June 1, 2000.

General Authority: NDCC 50-29

Law Implemented: NDCC 50-29-02; 42 USC 1397aa et seq.

75-02-02.2-13. Determining household income.

1. Income other than self-employment income must be calculated as follows:

a. Gross household income must be determined prospectively for each twelve-month certification period at the time of application and at each annual recertification to determine continuation of eligibility.

b. Gross income of all household members that is not excluded is counted as household income.

c. An average monthly adjusted gross income must be calculated for the twelve-month eligibility period based on reported monthly income adjusted for any known changes in expected future income at the time of application.

d. Income that is received more often than monthly must be prorated over the certification period to determine average monthly income.

(1) Income that is received weekly must be averaged and multiplied by 4.3 to arrive at a monthly amount.

(2) Income that is received every other week must be averaged and multiplied by 2.15 to arrive at a monthly amount.

e. After all countable non-self-employment gross income is determined, the following deductions must be allowed to determine adjusted gross income:

(1) For household members with earned income: actual mandatory payroll deductions, including federal, state, social security taxes, mandatory retirement and mandatory union dues, or ninety dollars per month, whichever is greater;

(2) Reasonable child care expenses, not otherwise reimbursed by third parties if necessary to engage in employment or training; and

(3) Court-ordered child and spousal support payments if actually paid by a parent on behalf of an individual who is not a member of the household.

2. Self-employment income must be calculated as follows:

a. The average net income after expenses of self-employment must be calculated based on the average of the previous three years of adjusted gross income, which means adjusted

gross income as computed for an individual for federal income tax purposes under the Internal Revenue Code.

- b. If the self-employed individual does not have three years of self-employment history, the actual number of years of self-employment must be used to calculate the average yearly income.
 - c. If the self-employed individual has not been self-employed long enough to have filed any self-employment federal income tax return in the last year, the best information available must be used to estimate revenue and business expenses to calculate adjusted gross self-employment income.
 - d. The adjusted gross self-employment income must be divided by twelve to determine the monthly income for the upcoming recertification period or the number of months the data represents.
3. If the household has self-employed income and other earned or unearned income, the two must be added together to arrive at total adjusted gross income. The monthly income from self-employment must be calculated first. If the average self-employment income is zero or less, no amount may be subtracted from other earned or unearned family income.

History: Effective June 1, 2000.

General Authority: NDCC 50-29

Law Implemented: NDCC 50-29-02; 42 USC 1397aa et seq.

75-02-02.2-14. Eligibility period. The coverage effective date is the first day of the month following the determination of eligibility. The coverage period ends at the earliest of:

1. The last day of the twelfth month after enrollment, or if the enrollee is recertified, the last day of the twelfth month after recertification;
2. The end of the month the enrollee turned nineteen years of age;
3. The end of the month in which the child has obtained other health insurance coverage; or
4. The end of the month in which the child leaves the household unless waived by the department.

History: Effective June 1, 2000.

General Authority: NDCC 50-29

Law Implemented: NDCC 50-29-04; 42 USC 1397aa et seq.

75-02-02.2-15. Covered services. Within any limitations that may be established by rule, regulation, or statute and within the limits of legislative appropriations and subject to copayments that are the responsibility of the enrollee, eligible enrollees may obtain the medical and remedial care and services that are described in the approved state plan for the healthy steps program in effect at the time the service is rendered.

History: Effective June 1, 2000.

General Authority: NDCC 50-29

Law Implemented: NDCC 50-29-04; 42 USC 1397aa et seq.

TITLE 92
Workers Compensation Bureau

JUNE 2000

CHAPTER 92-02-01

92-02-01-01. References to other standards. All references in this article to specifications of American standards, American standards association or United States of America standards, American society of mechanical engineers, National Electrical Safety Code, national fire protection association refer specifically to rules, regulations, and standards, promulgated, adopted, and published by, and available at, the office of American standards association, incorporated, or United States of America standards institute, 10 east fortieth street, New York 16, New York, which are also on file in the office of the safety department of the workers compensation bureau, Bismarek, North Dakota. Upon request the specific requirements for the safe maintenance and operation for any particular machine, device, tool, or operation as set forth in such safety codes published by the United States American standards institute, will be furnished by the safety department of the North Dakota workers compensation bureau. Title 29 of the Code of Federal Regulations, part 1910, occupational safety and health standards for general industry, with amendments as of February 3, 1997, and, part 1926, occupational safety and health standards for the construction industry, with amendments as of February 3, 1997, both promulgated by the occupational safety and health administration of the United States department of labor are the standards of safety and conduct for the employers and employees of the state of North Dakota.

History: Amended effective August 1, 1987; June 1, 2000.

General Authority: NDCC 65-03-01

Law Implemented: NDCC 65-03-01

92-02-01-02. Mandatory and advisory rules. Mandatory rules of this article are characterized by the words shall or must; if a rule is

of an advisory nature, it is indicated by the word should or is stated as a recommendation. If, however, conditions permit the application of the rules, it shall be followed. Any deviation from safety rules as set forth in this article shall be on the side of safety. Attention is called to the fact that this article provides only minimum safety standards and rules. Additional standards and rules may be prescribed by the bureau whenever it is deemed necessary to provide reasonably safe equipment and places of employment.

In the absence of any specific safety rule or regulation in this article, the regulations and requirements of the American standards association or United States of America standards shall apply.

All employers and employees shall abide by the rules prescribed by this article or other safety rules adopted by the bureau and shall comply with any safety recommendations made in accordance with such rules and which have been issued to them by authorized representatives of the North Dakota workers compensation bureau. Repealed effective June 1, 2000.

History: Amended effective August 1, 1987.

General Authority: NDEC-65-03-01

Law Implemented: NDEC-65-03-01

92-02-01-03. General rules.

1. No person, firm, or corporation shall use, permit, or require to be used within North Dakota, any machine, tool, or other device which does not comply with the safety requirements of the North Dakota industrial safety code. In the absence of any specific requirement in this article, the generally accepted standards for such machine, device, or tool shall be applied.

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

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

The requirements of this section apply to all pressure vessels within the scope of the American society of mechanical engineers code, section VIII, division 1 and 2, 1986 edition with these exceptions:

{1}--Pressure-vessels-under-federal-control.

{2}--Pressure--vessels--that-do-not-exceed-four-cubic-feet
[30-United-States-gallons]-in-volume-and-two--hundred
fifty-pounds-per-square-inch-gage-(psig)-in-pressure.

{3}--Pressure--vessels-that-do-not-exceed-one-and-one-half
cubic-feet-[11.22-United-States--gallons]--in--volume
and--six--hundred--pounds--per--square--inch--gage-in
pressure.

{4}--Unfired--pressure--vessels-installed-or-ordered-prior
to-the--effective--date--of--this--rule--are--exempt.
However,-such-exempt-pressure-vessels-must-conform-to
the-North-Dakota-industrial-safety-code-requirements.

Unfired--pressure--vessels-referenced-by-this-section-must
be-protected--with--the--American--society--of--mechanical
engineers---(ASME)--stamped--pressure--relief--devices--as
defined--in--section--VIII--of--the--American--society--of
mechanical-engineers-code.

Existing--pressure--relief--devices--installed--on--unfired
pressure--vessels--referenced--by--this--section--will--be
considered-acceptable-if-the-pressure-relief-device-is-set
for-the-correct-pressure;-if-the-usage-is-correct;-and--if
the-device-is-in-a-satisfactory-operating-condition.

b.--Application-of-standards---Repairs:

{1}--These-rules-apply-only-to-new-construction;-except-as
noted-below:

{a}--Reinstalled-pressure-vessels-must-meet-the-rules
for--new--construction.---Exception:---National
board--registration--is--required--only--for--those
vessels--ordered----and----constructed----after
November-1,-1987.

{b}--Other--inservice-safety-rules-and-regulations-of
the-bureau's-safety-department-apply-to-existing
pressure-vessels:

{c}--Repairs--to--unfired--pressure--vessels--and--to
safety--and--safety--relief--valves--for--those
vessels:

[1]--Repairs--to-safety-valves-and-safety-relief
valves-must-be-such-that-valve-function--is
not--impaired--and--the-repaired-value-will
perform-to-the-standards-for-which--it--was
originally--constructed.---It-is-recommended
that-these-repairs-be-made--by--a--firm--in

possession--of--a--valid--"VR"--certificate--of
authorization--from--the--national--board--of
boiler--and--pressure--vessel--inspectors:

{2}--Repairs--to--unfired--pressure--vessels--must--be
such--that--vessels--repaired--will--be--returned
to--a--safe--and--satisfactory--operating
condition;--provided--there--is--no--deviation
from--the--original--design;--It--is
recommended--that--these--repairs--be--made--by--a
firm--in--possession--of--a--valid--"R"
certificate--of--authorization--from--the
national--board--of--boiler--and--pressure
vessel--inspectors:

{3}--The--national--board--inspection--code
(ANSI/NB-23;--1985--ed.)--and--the--American
petroleum--institution--inspection--code
(ANSI/API-510;--1985--ed.)--shall--cover--repair
and--alteration--procedures;--ANSI/API-510
may--be--used--to--cover--the--maintenance
inspection;--repair;--alteration;--and
rerating--procedure--for--pressure--vessels
used--by--the--petroleum--and--chemical--process
industries;--It--is--intended--that--ANSI/NB-23
cover--installations--other--than--those
covered--by--ANSI/API-510:

e.--Allowance--for--state--specials;--If;--due--to--valid--impediment
to--compliance--with--the--American--society--of--mechanical
engineers--code--in--its--entirety;--an--unfired--pressure--vessel
cannot--bear--the--American--society--of--mechanical--engineers
and--national--board--stamping;--details--in--the--English
language;--and--specifications--and--calculations;--approved--by
a--registered--professional--engineer--experienced--in--pressure
vessel--design;--must--be--submitted--to--the--chief--inspector--by
the--owner--or--user;--Approval--as--"State--Special"--must--be
obtained--from--the--bureau--before--construction--is--started:

3.--All--new--buildings--of--more--than--two--stories--in--height--shall
have--window--cleaning--anchors--installed--unless--provision--is
made--for--changing--or--cleaning--windows--from--the--inside:

4.--Two--separate--means--of--exit--shall--be--provided--from--the--work
floor;--as--remote--from--each--other--as--practicable:

5.--Employers--responsibility:

a.--The--employer--shall--furnish--and--maintain--a--place--of
employment--which--shall--be--safe--for--the--employees--and--shall
furnish--and--use--safety--devices--and--safeguards;--and--shall
adopt--and--use--methods--and--processes--adequate--to--render
such--places--of--employment--reasonably--safe;--and--shall--do

every other thing necessary to protect the life and safety of the employees.

b. Superintendents, foremen, and key persons shall be carefully chosen and qualified by experience to supervise the safe performance of the activities under their direction, and shall share responsibility for the safety of employees under their jurisdiction.

Superintendents, foremen, and key persons shall insist on employees observing and abiding by every rule, regulation, and order as is necessary to the safe conduct of the work, and shall resort to disciplinary measures if necessary to compel observance.

The use of intoxicating liquors or any other such stimulant which may impair abilities and alertness on the job is strictly prohibited. Anyone under the influence of liquor or any other such stimulant shall not be allowed on the job while in that condition.

c. The employer shall make every effort to see that each person has been trained to safely perform the duties to which the person is assigned and has been thoroughly instructed in the person's duties and responsibilities under this article.

6. Employees responsibility:

a. Every employee must carry out assigned duties in a safe and proper manner and take any other measures reasonably necessary to protect the life and safety of all employees.

b. The employee shall make every effort to keep self and coworkers, and all machines or equipment free from accidents to the best of the employee's ability.

c. Every employee shall abide by the safety rules as prescribed by the workers compensation bureau or its authorized representatives.

d. Every employee shall comply with this article. Whenever a doubt exists as to the meaning, the employee shall obtain a clear understanding before starting the work.

e. Employees shall wear clothing which is appropriate to the duties performed and conditions encountered.

f. Employees shall wear, use, and properly care for personal protective safety equipment.

g. Every employee must maintain proper physical condition to safely perform the assigned work.

h.--Employees--shall--not--report--to--the--job--while--under--the--
influence--of--intoxicating--liquors--or--any--other--such
stimulant--which--may--impair--abilities--and--alertness--on--the
job--and--shall--not--use--intoxicating--liquors--or--any--other
such--stimulant--while--on--the--job: Repealed effective
June 1, 2000.

History: Amended-effective-August-1,-1987;-November-1,-1987:

General Authority: NDCC-65-03-01

Law Implemented: NDCC-65-03-01

92-02-01-03.1. Definitions. For purposes of North Dakota Century Code chapter 65-14, the following definitions apply:

1.--"Health--professional"--means--a--duly--licensed--medical--doctor,
doctor--of--osteopathy,-and--registered--nurse:

2.--"Material--safety--data"--means--that--information--required--to--be
kept--as--detailed--in--the--North--Dakota--employee--information
program--including--material--identification,-ingredients--and
hazards,-physical--data,-fire--and--explosion--data,-reactivity
data,-health--hazard--information,-spill/leak--and--disposal
procedures,-special--protection--information,-and--special
precautions--and--comments:

3.--"Variance"--means--an--agreement--to--engage--in--an--act--or--method
which--deviates--from--the--North--Dakota--employee--information
program,-but--provides--at--least--the--same--degree--of--safety--and
health--as--would--be--provided--had--the--requirement--been--met.
This--should--not--be--construed--to--mean--an--exemption--from--the
requirements--of--sections--92-02-01-03.1--through--92-02-01-03.7.
Repealed effective June 1, 2000.

History: Effective-March-26,-1986:

General Authority: NDCC-65-02-08

Law Implemented: NDCC-65-14-01

92-02-01-03.2. The North Dakota act and federal hazard regulations. North Dakota Century Code chapter 65-14 requires employers to implement an employee information program. Variances will be granted pursuant to subsection 6 of North Dakota Century Code section 65-14-02 where the bureau determines that the employer who requests the variance has complied with such federal regulation. Nothing herein may be construed to foreclose the bureau from inspecting, and investigating the employee information programs of those to whom variances have been granted. Repealed effective June 1, 2000.

History: Effective-March-26,-1986:

General Authority: NDCC-65-02-08

Law Implemented: NDCC-65-14-01,-65-14-02

92-02-01-03.3. **Written program.** An-employee-information-program is-required-as-provided-for-in-the-"North--Dakota--Employee--Information Program"-publication,-including-the-following-areas:

- 1.--Hazardous-chemical-inventory;
- 2.--Identification-of-chemicals-used;
- 3.--Material-safety-data-sheets;
- 4.--Labeling-controls;
- 5.--Spill--or--emergency-response-teams-and-kits,-as-may-be-deemed necessary-by-the-bureau;
- 6.--Monitoring;
- 7.--Supervisory-training;-and
8. Employee-training.

By--order--of-the-commission,-this-program-may-be-required-to-be-reduced to-a-written-form: Repealed effective June 1, 2000.

History: Effective-March-24,-1986.

General Authority: NDCC-65-02-08

Law Implemented: NDCC-65-14-01

92-02-01-03.4. **Documentation of employee training.** A-training program-shall-be-implemented--whereby--each--employee--is--trained--to properly--and-safely-handle-hazardous-substances;--Such-training-efforts shall-be-documented-by-use-of-a-form;-maintained-by--the--employer;-and must--be--signed--by--the--individual--receiving-the-training: Repealed effective June 1, 2000.

History: Effective-March-24,-1986.

General Authority: NDCC-65-02-08

Law Implemented: NDCC-65-14-01

92-02-01-03.5. Trade secrets.

1.--The--chemical-manufacturer;-importer;-or-employer-may-withhold the-specific-chemical-identity;-including--the--chemical--name and--other--specific--identification--of-a-hazardous-chemical; from-the-material-safety-data-sheet;-provided-that:

a.--The--chemical--manufacturer;-importer;-or-employer--can demonstrate-the-facts-which-underlie-the-legal--conclusion that-the-chemical-identity-is-a-trade-secret;

b.--Information--contained--in--the--material--safety--data--sheet concerning--the--properties--and--effects--of--the--hazardous chemical--is--disclosed;

e.--The--material--safety--data--sheet--indicates--that--the--specific chemical--identity--is--being--withheld--as--a--trade--secret;--and

d.--The--specific--chemical--identity--is--made--available--to--health professionals;--in--accordance--with--the--applicable provisions--of--this--section;

2.--Where--a--treating--physician--or--nurse--determines--that--a--medical emergency--exists--and--the--specific--chemical--identity--of--a hazardous--chemical--is--necessary--for--emergency--or--first--aid treatment;--the--chemical--manufacturer;--importer;--or--employer shall--immediately--disclose--the--specific--chemical--identity--of--a trade--secret--chemical--to--that--treating--physician--or--nurse; regardless--of--the--existence--of--a--written--statement--of--need--or a--confidentiality--agreement;--The--chemical--manufacturer; importer;--or--employer--may--require--a--written--statement--of--need and--confidentiality--agreement--as--soon--as--circumstances--permit.

3.--In--nonemergency--situations;--chemical--manufacturers;--importers; or--employers--must--disclose--the--withheld--specific--chemical identity--to--health--professionals--providing--medical--or--other occupational--health--services--to--exposed--employees--if--certain conditions--are--met;--The--request--for--information--must--be--in writing--and--must--describe--with--reasonable--details;--the--medical or--occupational--health--needs--for--the--information;--The--health professional--must--also--specify--why--current--information--is insufficient;--The--request--for--information--must--explain;--in detail;--why--disclosure--of--the--specific--chemical--identity--is essential;--and--include--the--procedures--to--be--used--to--protect the--confidentiality--of--the--information;--It--must--include--an agreement--not--to--use--this--information--for--any--purpose--other than--the--health--need--stated;--or--to--release--it--under--any circumstances;--except--to--the--North--Dakota--workers--compensation bureau--and--the--North--Dakota--state--department--of--health--and consolidated--laboratories.

4.--The--confidentiality--agreement--authorized--by--this--section:

a.--May--restrict--the--use--of--the--information--to--the--health purpose--indicated--in--the--written--statement--of--need;

b.--May--provide--for--appropriate--legal--remedies--in--the--event--of a--breach--of--the--agreement;--including--stipulation--of--a reasonable--preestimate--of--likely--damages;--and

e.--May--not--include--requirements--for--the--posting--of--a--penalty bond;

5. In nonemergency situations, where the chemical manufacturer, importer, or employer denies a written request for disclosure of a specific chemical identity, the denial must:
- a. Be provided to the health professional within thirty days of the request;
 - b. Be in writing;
 - c. Include evidence to support the claim that the specific chemical identity is a trade secret;
 - d. State the specific reasons why the request is being denied; and
 - e. Explain in detail how alternative information may satisfy the specific medical or occupational health need without revealing the specific chemical identity.
6. The health professional whose request for information is denied may refer the request and written denial of the request to the North Dakota workers compensation bureau for consideration.
7. If the North Dakota workers compensation bureau determines that the specific chemical identity requested is not a bona fide trade secret, or that it is a trade secret but the requesting health professional has a legitimate medical or occupational health need for the information, has executed a written confidentiality agreement, and has shown adequate means to protect the confidentiality of the information, the chemical manufacturer, importer, or employer will be subject to citation by the North Dakota workers compensation bureau.
8. If a chemical manufacturer, importer, or employer demonstrates to the North Dakota workers compensation bureau that the execution of a confidentiality agreement would not provide sufficient protection against the potential harm from the unauthorized disclosure of a trade secret specific chemical identity, the commissioners may issue such orders or impose such additional limitations or conditions upon the disclosure of the requested chemical information as may be appropriate to assure that the occupational health services are provided without an undue risk of harm to the chemical manufacturer, importer, or employer. Repealed effective June 1, 2000.

History: Effective March 26, 1986; amended effective August 1, 1987.
 General Authority: NDEC-65-02-08
 Law Implemented: NDEC-65-14-02(4)

92-02-01-03.6. Labeling.

- 1.--The--chemical--manufacturer,--importer,--or--employer--shall--ensure--that--each--container--of--hazardous--chemicals,--storage--or--transfer--container,--dispenser,--and--pipe,--be--clearly--and--appropriately--marked--with--appropriate--hazard--warnings,--which--may--be--any--type--of--message,--words,--pictures,--or--symbols--which--convey--the--hazards--of--the--chemicals--in--the--container.
- 2.--The--employer--is--not--required--to--label--portable--containers--into--which--hazardous--chemicals--are--transferred--from--labeled--containers,--and--which--are--for--the--immediate--use--of--the--employee--who--performs--the--transfer.
- 3.--The--employer--shall--ensure--that--labels--or--other--forms--of--warning--are--legible,--in--English,--and--prominently--displayed--on--the--container,--or--readily--available--in--the--work--area--throughout--each--work--shift.--Employers--having--employees--who--speak--other--languages--may--add--the--information--in--their--language--to--the--material--presented,--as--long--as--the--information--is--presented--in--English--as--well. Repealed effective June 1, 2000.

History: Effective-March-24,-1986:
 General Authority: NDEC-65-02-08
 Law Implemented: NDEC-65-14-01

92-02-01-03.7. Inspections and investigations. The-bureau-shall--conduct--inspections--and--investigations--for--the--purpose--of--enforcing--the--requirements--of--North--Dakota--Century--Code--chapter--65--14.--If--found--to--be--in--violation--of--such--requirements,--penalties--may--be--levied--pursuant--to--North--Dakota--Century--Code--section--65--03--02,--injunctive--relief--obtained--pursuant--to--subdivision--e--of--subsection--1--of--North--Dakota--Century--Code--section--65--04--27.1--or--stop--orders--issued--pursuant--to--subsection--2--of--North--Dakota--Century--Code--section--65--14--02--and--North--Dakota--Century--Code--chapter--28--32. Repealed effective June 1, 2000.

History: Effective-March-24,-1986:
 General Authority: NDEC-65-02-08
 Law Implemented: NDEC--65-14-01,--65-14-02(1),--65-14-02(2),--65-03-02,--65-04-27.1(1)(e)

92-02-01-04. Housekeeping.

- 1.--Safety--begins--with--good--housekeeping--which--shall--be--part--of--the--daily--routine.--All--passageways,--stairways,--and--gangways--used--by--employees--or--open--to--public--use--shall--be--kept--clear--of--materials,--supplies,--and--obstructions--of--every--kind.
- 2.--Loose--or--light--material--shall--not--be--left--lying--about--on--floors--or--roofs--that--are--not--closed--in,--unless--safely--secured.

3. --Loose--bolts,--nuts,--or--rivets--shall--be--collected--daily--and placed--in--kegs--or--other--suitable--receptacles.
4. --Tools--shall--not--be--strewn--about--where--they--may--cause--tripping or--other--hazard. --Tools--used--overhead--shall,--at--the--end--of each--work--shift,--be--collected--and--stored--in--the--tool--shed--or other--place--provided--for--their--storage--when--not--in--use.
5. --Protruding--nails--in--boards,--planks--or--timbers,--which--may--be--a hazard--shall--be--removed,--hammered--in,--or--bent--over--flush--with the--wood.
6. --All--floor--surfaces--shall--be--maintained--in--a--nonslippery condition--and--shall--be--free--of--unnecessary--holes--or projections--that--might--cause--injuries. --Any--necessary--openings shall--be--properly--guarded--and--protected. Repealed effective June 1, 2000.

General Authority: NDCC-65-03-01
 Law Implemented: NDCC-65-03-01

92-02-01-05. Sanitation, water, food, first aid supplies and services.

1. --The--rules--of--the--North--Dakota--state--department--of--health--and consolidated--laboratories--and--the--North--Dakota--laws--pertaining to--sanitation,--water,--and--food--shall--be--observed--at--all--times.
2. --Adequate--toilet--facilities,--maintained--in--clean,--sanitary condition,--shall--be--provided--at--or--near--all--places--of employment--to--conform--with--prevailing--codes,--standards,--or state--laws.
3. --Facilities--and--methods--used--in--construction,--industrial,--or any--other--occupation--shall--be--adequate--to--avoid--exposures which--could--result--in--occupational--diseases.

Ailment-(hazard)-----Type-of-work

- a. --Silicosis-----Sandblasting,--grinding, sand--and--gravel--operations.
- b. --Carbon monoxide-----Any--internal--combustion poisoning-----engine--or--apparatus,--burning, or--heating--operations.
- c. --Metal poisoning-----Painting,--plumbing,--glazing; --handling--lead,--cadmium, zinc,--or--copper.
- d. --Dermatitis-----Handling--cement,--lime, acids,--paints,--solvents,

and other materials
or substances;

e. -- Tar burns and ----- Handling hot asphalt,
poisoning ----- pitch, or tar.

4. -- Adequate supply of potable and safe drinking water, within
reasonable access to all workers, shall be provided, with
sanitary provisions for drinking. A common drinking cup shall
not be used.

5. -- First aid supplies and services:

a. -- First aid supplies shall be provided by every employer
free of expense to employees and promptly available for
use in case of injury. The facilities needed will depend
upon location of employment, type of hazards, and number
of employees.

This is not to supplant the physician, but to render
prompt first aid to the injured employee and to treat
minor injuries properly.

b. -- Every employer shall maintain a first aid kit composed of
medications, bandages, inhalants, adhesives, sterile pads,
swabs, compresses, and antiseptics on the premises at all
times, unless there is a permanent first aid station, or
the services of a physician is available in the immediate
vicinity of the work. The supplies shall be kept in a
metal or other sanitary container with a closed cover and
in an accessible location.

c. -- Employees shall be cautioned against removing a helpless
or unconscious person from the scene of an accident
whenever there is any likelihood of bone fractures or
serious complications until a qualified first aid person
or physician arrives. If the victim is lying in a safe
place it is better not to move the victim than to injure
the victim further by unskilled handling. Proper
transportation shall be made available in case of
emergency.

d. -- Where six or more persons are employed at least one person
should be trained in the latest methods of first aid and
such person designated to administer first aid until a
physician can be obtained. Repealed effective June 1,
2000.

History: Amended effective August 1, 1987.

General Authority: NDEC-65-03-01

Law Implemented: NDEC-65-03-01

92-02-01-06. Ventilation and lighting.

- 1.--Ventilation--in--all--enclosed--workplaces--shall--be--such--as--to minimize--the--hazard--from--dust,--gases,--paint--vapors,--and--other impurities.---Where--natural--ventilation--will--not--accomplish this,--mechanically--driven--fans--shall--be--installed--of--ample capacity--together--with--such--ducts--and--dust--collectors--as--may be--necessary--to--properly--safeguard--the--worker--in--this--respect at--all--times.---Provision--must--be--made--for--fresh--air--inlet--to replace--air--drawn--out--by--exhaust--fan.
- 2.--Garages--and--similar--workplaces--shall--be--thoroughly--ventilated in--such--manner--as--to--prevent--the--accumulation--of--carbon monoxide--gas.
- 3.--Interior--spray--painting--must--be--done--in--an--enclosed fire--resistant--area,--properly--ventilated,--with--explosion--proof lighting--and--wiring,--and--with--no--possible--source--of--ignition. Suitable--masks--shall--be--worn--by--the--operators--while--spray painting.---No--motors,--outlets,--or--switches--shall--be--located within--spray--area.
- 4.--Salamanders--for--heating--and--drying--purposes--shall--not--be permitted--in--enclosed--places--where--persons--are--at--work--unless provision--is--made--for--proper--ventilation--and--fire--protection.
- 5.--Any--toxic--or--poisonous--vaporizing--liquid--as--referred--to--in North--Dakota--Century--Code--section--18--08--10--shall--not--be--used as--a--fire--extinguishment--fluid.---Following--is--a--list--of--such liquids--not--to--be--used:
 - a.--Carbon--tetrachloride.
 - b.--Chlorobromomethane.
 - c.--Azeotropic--chloromethane.
 - d.--Bromochlorodifluoromethane.
 - e.--Dibromodifluoromethane.
 - f.--1,2-Dibromo-2-chloro-1,1,2-tribluoroethane.
 - g.--1,2-Dibromo-2,2-difluoroethane.
 - h.--Methyl-bromide.
 - i.--Ethylene-dibromide.
 - j.--1,2-Dibromotetrafluoroethane.
 - k.--Hydrogen-bromide.

l:--Methylene-bromide-

m:--Bromodifluoromethane-

n:--Bromotrifluoromethane-

o:--Dichlorodifluoromethane-

6:--Any--toxic--or--poisonous--vaporizing--liquid--shall--not--be--used--as--a--cleaning--agent--or--for--any--other--purpose;--unless--suitable--means--are--provided--to--prevent--overexposure--to--the--fumes-

7:--Illumination--shall--be--designed--and--provided--to--supply--adequate--general--and--local--lighting--in--buildings;--rooms;--and--work--areas--during--the--time--of--use: Repealed effective June 1, 2000.

General Authority: NDEC-65-03-01

Law Implemented: NDEC-65-03-01

92-02-01-07. Personal protective safety equipment.

1:--During--the--term--of--employment;--all--necessary--personal--protective--safety--equipment--such--as--safety--hats;--eye--protection;--respirators;--or--other--protective--safety--equipment--except--footwear--shall--be--provided--for;--It--is--understood--the--employee--may--be--charged--at--cost--for--such--equipment--if--the--employee--fails--to--return--it--when--employment--ceases;--Such--equipment--shall--be--properly--cleaned--and--disinfected--before--being--reissued--to--other--employees-

2:--Special--protective--safety--equipment--suited--to--conditions--shall--be--provided--for--and--used--by--employees--exposed--to--harmful--rays--from--welding;--cutting;--or--burning--operations;--Employees--who--are--exposed--to--dusts;--metal--fumes--and--smoke;--vapors--or--solvents;--acid--gases--and--mists;--alkali--mists--or--asphyxiating--atmospheres--in--amounts--at--or--above--generally--accepted--limits--shall--be--provided--with--proper--protective--devices--or--measures-

3:--Whenever--the--hazards--of--the--work--so--warrant;--all--persons--employed--in--industrial--work;--on--construction--jobs;--or--any--other--work--where--proper--protective--clothing--is--needed--to--help--prevent--injury;--shall--wear--suitable--shirts;--jackets;--or--other--clothing;--proper--type--of--gloves--(when--needed);--and--adequate--workshoes--with--good--soles;--Where--there--is--danger--of--crushing--toes;--a--hard--toe--safety--shoe--should--be--worn-

4:--Goggles;--eye--shield;--or--safety--glasses--shall--be--worn--by--employees--when--performing--any--operation--exposing--them--to--eye--injuries;--Where--the--employee--wears--nonsafety--glasses;--the--overall--type--of--goggles--shall--be--worn-

5. Safety headgear (hardhats) shall be worn by all employees engaged in any work where there is a hazard of head injury. (Design and type of protection to be determined by the nature of the work.) Repealed effective June 1, 2000.

General Authority: NDCC-65-03-01

Law Implemented: NDCC-65-03-01

92-02-01-08. Handling and storing materials.

1. Workers should be instructed in the correct way to lift:
 - a. Get a good footing, close to the object.
 - b. Bend knees and grasp object firmly.
 - c. Keep back as straight as possible.
 - d. Lift gradually by straightening the legs --- if too heavy or bulky, get help.
2. Suitable equipment shall be used whenever possible for handling and lifting heavy loads.
3. Materials or supplies should be segregated as to kind, size, and length and placed in an orderly manner in storage areas to allow clear passageways for workers.
4. All material in bags, containers, or bundles, and other material stored in tiers shall be stacked, blocked, interlocked, and limited in height so that it will be stable and otherwise safe against sliding or collapse.
5. Material stored inside buildings under construction shall not be placed within six feet [1.83 meters] of any hoistway or floor openings, nor on any floor above the ground, within ten feet [3.05 meters] of the outside of any building unless the exterior walls extend above the top of the storage pile, in which case the minimum distance shall be six feet [1.83 meters].
6. When any material is stored in public thoroughfares, it shall be located so as to present the least possible hazard to, and interference with, traffic and the public.
7. All lumber shall be piled on timber sills to prevent direct contact between stored lumber and the ground.
8. Bags of cement and lime shall not be piled more than ten bags high except when stored in bins or enclosures built for such purposes.

- 9.---Brick--shall--never--be--piled--on--uneven--or--soft--ground--but--shall--always--be--stacked--on--planks;--except--where--the--surface--is--of--asphalt--or--concrete.
- 10.---Brick--shall--never--be--stacked--for--storage--purposes--on--scaffolds--or--runways;---This--shall--not--prohibit--normal--supplies--on--bricklayers'-scaffolds--during--actual--bricklaying--operations.
- 11.---Except--when--stacked--in--sheds;--brick--piles--shall--never--be--more--than--seven--feet--{2.13-meters}-high.
- 12.---Blocks--shall--always--be--stacked--in--tiers--on--solid;--level--surfaces.
- 13.---Stacked--piles--shall--be--limited--to--a--height--of--six--feet--{1.83 meters}-whenever--possible.
- 14.---Reinforcing--steel--rods--shall--be--stored--in--separate--piles--according--to--length--and--size.
- 15.---Men--handling--reinforcing--steel--shall--be--required--to--wear--heavy--gloves.
- 16.---Corrugated--and--flat--iron--shall--be--stacked--in--flat--piles;--with--the--piles--not--more--than--four--feet--{1.22-meters}-high.
- 17.---Pipe--of--all--kinds--shall--be--stacked--and--blocked--in--such--a--way--as--to--prevent--the--stack--from--spreading.
- 18.---In--withdrawing--sand;--gravel;--and--crushed--stone--from--frozen--stockpiles;--no--overhang--shall--be--permitted--to--exist--at--any--time.
- 19.---In--the--ereeting--or--the--dismantling--of--buildings;--bridges;--or--other--structures--where--material--is--being--handled--above--workers;--provision--shall--be--made--for--solid--planking;--decking;--or--nets--to--ensure--safety--for--workers--beneath;---Planking--or--nets--of--adequate--dimension--shall--also--be--provided--at--a--distance--of--not--more--than--two--floors--or--a--maximum--of--twenty--five--feet--{7.62-meters}-below--all--points--on--bridges;--buildings;--or--other--structures--while--workers--are--at--such--locations. Repealed effective June 1, 2000.

General Authority: NDCC-65-03-01
Law Implemented: NDCC-65-03-01

92-02-01-09. Flammable liquids, explosive gases, dusts, vapors, explosives, fire, welding, and cutting.

- 1.---The--storage;--handling;--and--use--of--flammable--liquids--or--explosive--gases--shall--be--in--accordance--with--the--nationally--accepted--rules--and--regulations--of--the--National--Fire--Code;---All

existing fire hazards must be corrected as required by this article.

2.--Flammable liquids shall be in three classes:

Class I--Gasoline, acetone, benzine, ethyl ether, drip gas, etc.

Class II--Varnish, shellac, ethyl acetate, ethyl alcohol, etc.

Class III--Stoddard solvents, kerosene, amyl alcohol, turpentine, fuel oil, etc.

3.--Class I flammable liquids shall not be used as cleaning agents nor be permitted to stand in open containers.

4.--Workers shall use care when working in places where gas is likely to accumulate or where the atmosphere is unsafe. When in doubt, a gas detector or other accepted test methods shall be used.

5.--Workers whose duties require them to enter manholes or other confined areas shall make sure that such manholes or confined areas are in a safe condition to be entered and are free from gases. American standards association or United States of American standards or underwriters' laboratories approved equipment for this purpose shall be made available by employers and used by workers.

6.--When hazardous conditions are found to exist, manholes or confined areas shall be properly ventilated or other necessary precautions taken to ensure safety.

7.--Open lights shall not be permitted in areas or enclosures where flammable vapors or explosive dusts are encountered. Only approved and suitable protected lights shall be used.

8.--Smoking or use of open flame equipment or other ignition sources are prohibited in any area containing combustible or explosive gases, dusts, or vapors.

9.--Any tank or container which previously contained explosives, combustibles, poisonous, or other dangerous substances shall not be soldered, welded, or otherwise repaired or entered unless it has been thoroughly cleaned in accordance with "purging principles and practices" of the American gas association, American petroleum institute, or the interstate commerce commission.

10.--The transportation, storage, handling, and use of explosives shall be directed and supervised by a person of proven ability in blasting operations. These operations shall be in accordance with federal, state, and local laws and

regulations, which should be consulted before any action is taken.

11. The storage and handling of liquefied petroleum gas shall conform to the following minimum standards:

a. Containers with water capacity of one hundred twenty-five to five hundred gallons {473.2 liters to 1892.7 liters} shall not be stored closer than ten feet {3.05 meters} to the nearest important building or line of adjoining property that may be built upon.

b. Containers with water capacity of five hundred one to two thousand gallons {1896.49 liters to 7571 liters} shall not be located closer than twenty-five feet {7.62 meters} to the nearest important building or line of adjoining property that may be built upon.

c. Containers with water capacity of two thousand one to thirty thousand gallons {7573 liters to 113,550 liters} shall not be located closer than fifty feet {15.24 meters} to the nearest important building or line of adjoining property that may be built upon.

d. Containers having the capacities specified below shall have the minimum distances between individual containers as prescribed:

125 to 2,000 gallons {473.2 to 7570 liters}:
3 feet {91.44 centimeters}

2,001 to 30,000 gallons {7573 to 113,550 liters}:
5 feet {1.52 meters}

e. To minimize tampering or trespassing, the area which includes container appurtenances, pumping equipment, loading and unloading facilities and cylinder filling facilities shall be enclosed with at least six-foot {1.83 meter} high industrial-type fence unless otherwise adequately protected. There shall be at least two means of emergency access.

f. Each tank truck and trailer shall carry chock blocks which shall be used to prevent rolling of the vehicle whenever it is parked, including when loading and unloading.

g. At least the upper two-thirds of cargo tanks shall be painted with a light reflecting paint for the finish coat except for lettering.

h. Every tank vehicle used for the transportation of liquefied petroleum gas shall be marked on each side and rear, thereof, on a sharply contrasting background, with

FLAMMABLE-COMPRESSED-GAS-OR-FLAMMABLE-GAS-in-block-letters at-least-three-inches-[76.2-millimeters]-high,-and-in block-letters-at-least-two-inches-[50.8-millimeters]-high, LIQUEFIED-PETROLEUM-GAS-OR-BUTANE-OR-PROPANE-as appropriate.

- i. Liquefied-petroleum-containers,-of-greater-than two-and-one-half-pound-[1.13-kilogram]-capacity,-shall-not be-stored-inside-a-building-which-may-be-frequented-by-the public.
12. All-welding-or-cutting-apparatus-and-equipment-shall-be inspected-frequently.-Defective-apparatus-and-equipment-shall be-removed-from-service-until-repaired-and-restored-to-safe operating-condition.
13. The-frame-or-noncurrent-carrying-metal-parts-of-electrically driven-welding-machines-shall-be-grounded-in-accordance-with methods-prescribed-in-the-National-Electrical-Code-for-fixed or-portable-electrical-equipment.
14. Where-are-welding-and-cutting-operations-are-done-in-the vicinity-of-other-workers,-fireproof-screens-shall-be-provided to-shield-them-from-welding-rays-and-flashes.
15. Oxygen-or-compressed-flammable-gas-cylinders-shall-be-handled with-care-and-protected-against-excessive-heat.-Valve protection-caps-shall-be-in-place-and-cylinders-stored-or secured-to-prevent-toppling.
16. Cylinders-containing-oxygen-shall-not-be-stored-with combustible-materials-or-cylinders-containing-combustible gases.-Smoking-shall-not-be-allowed-where-cylinders-are stored.
17. Welding-cylinders-shall-be-securely-fastened-in-an-upright position-and-valve-wrench-or-wheel-left-in-place-while cylinder-is-in-use.
18. An-approved-type-fire-extinguisher-shall-be-maintained wherever-flammable-liquids-are-used-or-dispensed.
19. Each-vehicle-used-in-transportation-or-delivery-of-flammable liquids-shall-be-provided-with-at-least-one-portable-fire extinguisher-having-at-least-a-12-B,C-rating.
20. Every-tank-vehicle-used-for-the-transportation-of-any flammable-liquid,-regardless-of-quantity-being-transported,-or whether-loaded-or-empty,-shall-be-conspicuously-and-legibly marked-on-each-side-and-the-rear-thereof,-in-letters-at-least three-inches-[76.2-millimeters]-high-on-a-background-of sharply-contrasting-color.-The-word-FLAMMABLE-or-the-common name-of-the-liquid-transported-may-be-used.

- 21.--Drawoff-valves-of-faucets-at-the-rear-of-tank-vehicle-shall-be adequately-protected-against-collision-by-bumpers--or--similar means:
- 22.--NO--SMOKING--signs--shall-be-conspicuously-posted-where-hazard from-flammable-liquids-vapors-is-normally-present.--Such-signs shall--also--be--posted--in--view-of-customers-being-served-at service-stations:
- 23.--Grass--and-weeds-shall-be-kept-short-and-all-readily-ignitable material-removed-to-a-distance-of-ten-feet-[3.05-meters]--from storage--tanks.--This-area-may-not-be-used-for-storage-of-any items-other-than-that-which-is-within-storage-tanks:
- 24.--Truck--loading-racks-shall-be-equipped-with-a-bonding-cable-or wire--which--shall--have--one--end--permanently--electrically fastened--to-the-fill-stem.--The-free-end-shall-be-fitted-with a-clamp-and-shall-be-affixed-to-some-part-of--the--tank--truck before--filling--operation--is-begun-and-shall-remain-in-place until-the-domes-have-been-closed-securely. Repealed effective June 1, 2000.

General Authority: NDEC-65-03-01
Law Implemented: NDEC-65-03-01

92-02-01-10. Electrical.

- 1.--All--electrical--wiring,-apparatus,-and-equipment-in-temporary or--permanent--use--shall--be--of--a--type--approved--by--the underwriters'-laboratories,--inc.,--or--factory--mutual laboratories-for-the-specific-application:
- 2.--For--reference,-in-this-article,-voltages-of-three-hundred-and below-shall-be-termed-as-low-voltage-and-above--three--hundred volts-as-high-voltage:
- 3.--All-plugs-used-on-extension-cords-shall-be-of-the-nonbreakable type-with-pins-so-arranged-as-always-to-be-dead-when--exposed:
- 4.--Extension--lights-shall-be-made-up-with-a-nonbreakable-type-of socket,-and-with-no-exposed-metal-parts.--The-light-bulb-shall be--protected--against-breakage-by-guard-which,-unless-made-of nonconducting-material,-shall-be--effectively--insulated--from the--current--carrying--parts.--Lamps--used--where--explosive vapors,-dusts,-or-other-flammables,-or-where-moisture--hazards exist-shall-be-of-a-type-suitable-to-the-conditions:
- 5.--Insulating--mats-or-equivalent-insulating-floor-covering-shall be-provided-at-all-electrical-control-boards-unless--same--are of--"dead-front"--type,-or-otherwise-so-arranged-that-contact with-live-current-carrying-parts--is--practically--impossible:

Such--floor--covering--shall--be--of--such--size--and--shall--possess
such--insulating--value--that--under--all--conditions--reasonably--to
be--expected;--it--will--furnish--sufficient--protection--to--any
person--operating--or--servicing--the--apparatus--of--such--control
station.---(This--rule--shall--not--apply--to--undergrounded--systems
except--on--high--voltage.)

- 6.--Open--main--switches--must--be--locked--and--tagged--before--working--on
power--circuits;---Before--closing--a--switch;--it--must--be
determined--that--other--workers--are--clear--of--circuits.
- 7.--Dangerous--areas--must--be--roped--off--and--danger--signs--erected.
- 8.--Bridging---of---fuses--or--other--overload--types--of--current
interruptors--is--prohibited.
- 9.--Every--circuit--must--be--considered--energized--until--proven
otherwise.
- 10.--Only--proper--instruments--are--to--be--used--for--testing--electrical
circuits.
- 11.--Only--qualified--persons--shall--be--permitted--to--perform--any--type
of--electrical--work.
- 12.--The--frames--of--all--stationary--electrically--driven--equipment
shall--be--properly--grounded.
- 13.--Metal--ladders--shall--not--be--used--around--electrical--circuits--of
any--type.--Ladders--constructed--of--nonconductive--materials--must
be--used: Repealed effective June 1, 2000.

General Authority: NDEC-65-03-01
Law Implemented: NDEC-65-03-01

92-02-01-11. Tools.

- 1.--All--hand--tools--shall--be--maintained--in--good--repair--and--used
only--for--the--purpose--for--which--designed;---Tools--having
mushroomed--heads;--defective--handles;--worn--parts;--or--other
defects--that--will--impair--their--strength--or--render--them--unsafe
for--use;--shall--be--removed--from--service;--until--necessary
repairs--or--replacements--have--been--made.
- 2.--Suitable--storage--space--shall--be--provided--and--so--designed--as--to
permit--safe--and--convenient--arrangement--of--tools--when--not--in
use;---Tools--shall--not--be--left--on--any--overhead--work--space--or
structure--unless--suitable--containers--are--used--to--prevent--them
from--falling.
- 3.--The--practice--of--throwing--tools--from--one--location--to--another;
from--one--employee--to--another;--or--dropping--them--to--lower

levels;--shall-not-be-permitted;--When-necessary-to-pass-tools
or-materials-under-these-conditions;--suitable--containers--or
ropes-shall-be-used:

- 4.--Sharp-edged--or-pointed-tools-shall-not-be-carried-in-worker's
pockets;--All-other-tools-which-may-project--out--of--worker's
pockets-shall-be-carried-in-safe-containers:
- 5.--All--powered--tools-which-might-cause-injury-through-continued
operation;--shall-be-equipped-with-the-so-called-dead-man--type
of--control--(or-equivalent)--whereby-the-power-is-automatically
cut-off-in-case-the-operator's-hold-loosens:
- 6.--Portable--electric-power-tools-shall-be-equipped-with-a-ground
wire-or-a--three--wire--cord--to--maintain--at--all--times--an
effective-ground-on-the-noncurrent-carrying-parts-of-the-tool:

New--electric--supply--systems--installed--after-July-1,-1960;
shall-provide-for-such-grounding;--and--all--electric--powered
tools--used--thereon-shall-be-so-equipped;--(Exception:--Tools
powered-by-portable--generating--equipment--while--working--on
electrical-structures-carrying-energized-conductors:)
- 7.--Such--tools--as--are-protected-by-an-approved-system-of-double
insulation-or-its-equivalent-need-not-be-grounded;--Where-such
an--approved-system-is-employed;--equipment-shall-be-distinctly
marked:
- 8.--Pneumatic--tools-shall-be-used-only-by-employees-familiar-with
and--properly--instructed--in--their--use;--Tools--shall--be
inspected--at--regular--intervals--and--kept-in-safe-operating
condition:
- 9.--Pressure--shall-be-shut-off-and-exhausted-from-the-line-before
disconnecting-from-any-tool--or--connection;--Safety--lashing
shall-be-used-at-all-hose-connections:
- 10.--Pneumatic--nail-drivers-shall-be-equipped-with-a-safety-device
to-prevent-inadvertent-release-when-not--in--contact--with--an
object:
- 11.--The--use--of--compressed-air-for-blowing-dirt-from-hands;-face;
or-clothing-is-prohibited:
- 12.--Explosive--actuated--(powder-actuated)-tools-shall-be-handled;
operated;--or-serviced-only-by--qualified--personnel--who--have
been--trained--by--authorized--instructors--and-certified-by-a
permit-issued-to-them-by-the-safety-department-of-the--workers
compensation-bureau:

"Authorized-instructor"--as-designated-in-writing-by-the-bureau
means-a-person--who--has--been--trained--to--handle;--operate;

service;--repair;--and-give-instructions-on-explosive-actuated tools:

A--permit--to-operate-explosive-actuated-tools-shall-be-issued by-the-bureau-upon-satisfactory-completion-of-a--written--test as--outlined--by--the--safety--department-on-safe-handling-and operation-of-explosive-actuated-tools:

Operators--of--explosive--actuated--tools--for--connecting--or joining-electrical-conductors--will--be--issued--a--permit--to operate--such--tools--only-upon-furnishing-written-proof-to-the workers-compensation--bureau--that--they--have--been--properly instructed-and-trained-by-a-qualified-instructor:

a.--Every--explosive-actuated-tool-must-be-registered-with-the safety-department--of--the--workers--compensation--bureau; giving:

{1}--Trade-name:

{2}--Manufacturer:

{3}--Model-and-size:

{4}--Serial-number:

{5}--Ownership:

{6}--Date-of-registration:

b.--Explosive--actuated-tools-must-conform-to-the-requirements of-the-latest-edition-of--the--United--States--of--America Standard-A10.3;-Safety-Requirements-for-Explosive-Actuated Tools:

c.--In--areas--where--stud-drivers-are-being-extensively-used; signs--and--barriades---identifying---the---hazard---are recommended: Repealed effective June 1, 2000.

History: Amended-effective-August-1,-1987:

General Authority: NDEC-65-03-01

Law Implemented: NDEC-65-03-01

92-02-01-12. Power saws and woodworking machines or machinery.

1.--The--work--area-near-power-saws-and-other-woodworking-machines must-be-kept-clean--and--free--of--serap--materials--or--other possible-sources-of-poor-footing:

Safe--means--shall--be--provided--for--the-removal-of-sawdust; chips;-and-shavings-on-all-woodworking-machinery:

Stationary--woodworking--machinery--shall--be--equipped--with--an--exhaust--or--conveyor--system--so--located--as--to--remove--the--maximum--amount--of--dust--and--refuse--that--could--constitute--a--hazard--unless--natural--ventilation--provides--the--required--protection.

When--proper--ventilation--is--not--possible,--approved--protective--respiratory--and--visual--equipment--must--be--used.

A--mechanical--or--electrical--power--control--shall--be--provided--on--each--machine,--in--a--protected--position,--to--prevent--accidental--startings--and--to--enable--the--operator--to--cut--off--the--power--without--leaving--his--position--at--the--point--of--operation.

2.--Only--qualified--and--authorized--personnel--shall--be--permitted--to--operate--power--saws--or--other--power--woodworking--machines.

Operators--shall--never--wear--gloves,--rings,--or--loose--or--torn--clothing--which--might--accidentally--become--caught--in--the--saw--blade--or--other--machinery.

Operators--shall--wear--goggles--or--face--shield--when--needed.

3.--Saws--or--other--woodworking--machinery--shall--not--be--left--running--unattended.

The--use--of--cracked,--bent,--dull,--or--otherwise--defective--parts--(saw--blades,--cutters,--and--knives)--is--prohibited.

A--push--stick,--block,--or--other--safe--means--shall--be--used--in--all--close--operations--on--saws,--jointers,--sanders,--and--other--machines--having--highspeed--cutting--edges.

4.--Power--woodsaws--with--carriage--feed--shall--be--provided--with--a--substantial--hood--or--guard--attached,--so--the--top--of--the--saw--is--completely--covered--when--the--carriage--is--drawn--forward. Similar--guards--shall--be--attached--below--the--saw--arbor--not--more--than--two--inches--[50.8--millimeters]--from--the--teeth--and--extending--not--less--than--three--inches--[76.2--millimeters]--toward--the--operator.

5.--Power--woodsaws--with--tilting--tables--shall--be--provided--with--a--substantial--hood--or--guard--over--the--back--of--the--saw,--and--with--guards--fastened--to--the--table,--so--that--when--it--is--tilted--toward--the--operator--the--front--of--the--saw--is--completely--covered;--when--the--table--is--tilted--away--from--the--operator--this--guard--will--telescope--into--the--hood--at--the--back--of--the--saw.

6.--A--circular--ripsaw--shall--be--guarded--by--a--hood--which--will--cover--the--saw--at--all--times--to--at--least--the--depth--of--the--teeth. The--hood--shall--adjust--itself--automatically--to--the--thickness--of,--and--should--remain--in--contact--with,--the--material--being--cut. The--hood--shall--also--be--so--constructed--as--to--protect--the--operator--from--flying--splinters--or--broken--saw--teeth. Each--saw

shall be equipped with a spreader or splitter. It shall also be equipped with an antikickback device which will prevent material being thrown back on the operator.

Guards for circular crosscut saws shall be covered by the same specifications as for circular ripsaws except that no splitter is required.

7. All swing cutoff or radial saws and similar machines which are drawn across a table shall be equipped with limit stops to prevent the cutting edge of the tool from extending beyond the edge of the table or the table edge shall be extended beyond the limit of saw blade.

8. Bandsaws shall have the upper and lower wheels and all sections of the blade enclosed or guarded except that portion between the sliding guide and the table.

9. Electric powered portable circular saws shall be equipped with a trigger switch which shuts off the power when pressure is released.

Saws shall be equipped with guards that automatically and completely enclose the cutting edge when not actually sawing. The guard must be checked frequently to make sure that it operates freely.

At the beginning and end of saw stroke, when the teeth are exposed, the operator must use extra care to keep his body out of the line of cut.

10. Chain saw operators must be thoroughly instructed in the use of this tool.

Extreme caution must be exercised in order to prevent injury, as the cutting mechanism is unguarded.

11. Jointers shall have a cylindrical cutting head and shall be provided either with an apron guard or with a guarded automatic feed and a permanent hood which covers the cutting parts.

12. Shaper heads must be perfectly balanced and in good condition. Solid cutters are recommended to eliminate danger from broken or thrown knives.

13. Power feed planers shall have the cutter heads completely enclosed in solid metal guards.

Operators and other workers must stay out of the line of board travel as the danger of kickbacks cannot be entirely overcome by mechanical means. Repealed effective June 1, 2000.

General Authority: NDEC-65-03-01
Law Implemented: NDEC-65-03-01

92-02-01-13. Power machinery and equipment.

- 1.--Stationary--machinery--and--equipment--shall--be--placed--on--a--firm--foundation--and--properly--secured--in--place--before--being--operated.
- 2.--The--wiring--and--installation--of--electrically--driven--machinery--shall--be--in--accordance--with--the--generally--accepted--electrical--standards.--(See--National--Electrical--Code.)
- 3.--Provisions--shall--be--made--to--prevent--injury--at--any--point--of--danger--on--all--machinery--or--equipment.
- 4.--Points--requiring--lubrication--during--operation--shall--have--fittings--so--located--or--guarded--as--to--be--accessible--without--hazardous--exposure--to--personnel--performing--these--operations.
- 5.--All--belts,--gears,--shafts,--pulleys,--sprockets,--spindles,--drums,--flywheels,--chains,--or--reciprocating,--rotating,--or--moving--parts--of--equipment--shall--be--guarded--if--such--parts--are--exposed--to--contact--by--persons--or--otherwise--create--a--hazard.
- 6.--Mechanical--or--electrical--power--controls--shall--be--provided--on--each--machine,--in--a--protected--position,--to--prevent--accidental--startings--and--to--enable--the--operator--to--cut--off--the--power--without--leaving--his--position--at--point--of--operation.
- 7.--Machinery--shall--be--shut--down--or--positive--means--taken--to--prevent--its--operation--while--repairs,--adjustments,--or--manual--lubrications--are--being--made.
- 8.--Only--qualified--and--authorized--personnel--who--have--been--thoroughly--instructed--shall--be--permitted--to--operate--power--machinery--or--equipment.
- 9.--Power--presses--shall--be--equipped--and--operated--with--a--point--of--operation--guard--or--a--point--of--operation--device--for--every--press--operation--performed,--except--where--the--point--of--operation--is--limited--to--an--opening--of--one--fourth--inch--{6.35--millimeter}--or--less.

Every--such--guard--shall--be--reliable--in--construction,--application,--and--adjustment.--The--guard--shall--be--attached--to--the--press--or--to--the--die.--The--guard--itself--shall--not--offer--any--accident--hazard.--It--shall--be--designed--and--constructed--as--to--facilitate--inspections--and--minimize--the--possibility--of--removing--or--misusing--essential--parts.

10. --Power hammers shall have an effective hand protection device, or other suitable device so that the operators hand need not be placed under the hammer ram at any time.
11. --Motor powered or foot powered shears shall be equipped with a barrier guard to protect against bodily contact with the knife.
12. --Grinding wheels shall be equipped with substantial guards or housing preferably on both sides of the wheel, and strong enough to resist a bursting wheel. Top and bottom guards shall be set as close to the wheel as is practicable and extend forward over the top of the grinder to a point not less than thirty degrees beyond a vertical line drawn through the center of the wheel.
13. --Work rests should be set not more than one eighth inch [3.17 millimeters] from the wheel. They shall never be set below an extended radius line of fifteen degrees with a horizontal line drawn through the center of the wheel.
14. --The speed of the wheel shall never exceed the speed recommended by the manufacturer.
15. --Wheels should never be forced on an arbor, nor installed by inexperienced workers.
16. --All grinders, crushers, hammers, buffers, polishers, or other equipment generating dust or flying particles and regardless of speed or size, shall be guarded and ventilated to protect the worker's eyes and lungs in the most practical manner, considering the nature of the machine and the work performed.
17. --Glass dust shields may be installed over the tops of grinding wheels provided safety glass is used and securely arranged in such manner as to be readily removable for cleaning the glass.
Repealed effective June 1, 2000.

General Authority: NDEC-65-03-01
Law Implemented: NDEC-65-03-01

92-02-01-14. Trucks, cranes, and heavy equipment.

1. --Only qualified and competent operators shall be permitted to operate trucks, cranes, or heavy equipment:

Learners, under the direct supervision of an experienced operator, may operate equipment, but not where safety to other workers is involved.

2. --All trucks shall be equipped with a rearview mirror (two rear mirrors, one on each side of the cab, are recommended where

rear--window-view-is-restricted),-directional-turn-indicators,
parking--and--footbrake,-muffler,---headlights,---taillights,
windshield--wipers,-and-horn-and-kept-in-serviceable-condition
as-required-by-law.--All-semitrailers,-pipe-trailers,-and-pole
trailers-shall-be-equipped-with-brakes-and-proper-lighting.

- 3.--Trucks-and-other-vehicles-used-in-carrying-passengers-shall-be
provided-with-seats-and-with-such-railings-or-guards--as--are
necessary--to-protect-workers-from-falling-or-being-thrown-off
the-vehicle-when-in-motion.
- 4.--Workers--shall--be-prohibited-from-riding-on-running-boards-or
fenders-and-shall-never-leave-or-board-a-vehicle-in-motion.
- 5.--Dump--trucks-shall-not-be-used-for-transporting-workers-unless
the-tripping-device-is-securely-locked--to--prevent--the--body
from--being-accidentally-tilted,-and-the-workers-seated-in-the
bottom-of-the-box-with-feet-inside.
- 6.--When--rear--vision-is-obstructed,-backing-operations-by-trucks
in-the-vicinity-of-workers-shall-not-be-permitted--unless--the
driver--is--guided-by--a-competent-person-in-full-view-of-the
driver-during-such-operation.
- 7.--Automatic--backup-signal-devices-may-be-used,-only-if-and-when
the--device--affords--complete--warning-protection---to---all
concerned.
- 8.--Drivers--of-trucks,-earth-haulers,-and-similar-equipment-shall
leave-the-cab-or-driver's-position--while--such--equipment--is
being--loaded,-if-exposed-to-danger-from-suspended-or-overhead
loading-equipment-or-methods.
- 9.--No--one--except-the-operator-is-permitted-to-ride-on-equipment
unless-safe-accommodation-is-provided-for-the-passenger.
- 10.--All-motor-vehicles-and-mechanized-equipment-shall-be-shut-down
with-ignition-off-prior-to-and-during-refueling-operation.--No
smoking-shall-be-permitted-during-refueling.
- 11.--Vehicles--or--other--equipment--in--unsafe-operating-condition
shall-be-removed-from-service-until--such--repairs--have--been
made-to-render-safe-operation-possible.
- 12.--Safe--driving--practices--must--be--observed--at--all-times-by
operators-of-motor-trucks-or-other-equipment--propelled--by--a
self-contained-power-unit.
- 13.--Only--such--cranes--as--are--equipped--with-power-lowered-boom
hoists-and--loadlines--shall--be--used--to--support--suspended
scaffolds,-man-eages,-or--other--devices--for--hoisting--or
supporting-workers.

- 14.--Drums--on--load--hoisting--equipment--shall--be--equipped--with suitable--dogs,--pawls,--or--other--positive--locking--devices.
- 15.--Safety--hooks--shall--be--used--for--hoisting--operations--wherever possible,--where--frequent--hooking--and--unhooking--is--not necessary,--open--type--hooks--may--be--used,--provided--wire--mousings are--used--to--prevent--loads--from--being--unintentionally--unhooked.
- 16.--Boom--stops--shall--be--provided--on--all--hoist--booms--to--prevent them--from--overtopping.
- 17.--No--machine--shall--be--loaded--over--rated--capacity.
- 18.--No--part--of--any--power--shovel,--digger,--crane,--or--similar equipment--shall--be--operated--at--less--than--ten--feet--{3.05 meters}--of--possible--contact--with--an--energized--powerline,--A rig--must--be--effectively--grounded--when--working--in--the--vicinity of--the--powerline--unless--the--line--is--deenergized--during--the operation.
- 19.--An--operator--of--hoisting--equipment--shall--not--leave--the operator's--position--at--the--controls--until--the--load--has--been safely--landed--or--returned--to--ground--level.
- 20.--A--standard--signal--system--shall--be--used--on--all--hoisting equipment.
- 21.--Only--one--qualified--signal--person--shall--direct--the--operator--for loads--or--moving--of--the--equipment,--but--a--stop--signal--should--be obeyed--regardless--of--who--gives--it.
- 22.--Tag--lines--shall--be--used--for--controlling--loads--or--long materials--whenever--necessary--to--ensure--safety--to--workers.
- 23.--Workers--shall--be--prohibited--from--riding--the--load,--hook,--ball, or--bucket--except--in--an--emergency--and--then--only--under--the immediate--supervision--of--the--superintendent--or--foreman.
- 24.--Hanging--or--swinging--leads--of--piledrivers--shall--have--fixed ladders,--Employees--shall--be--prohibited--from--remaining--on leads--or--ladders--while--pile--is--being--driven.
- 25.--Hoisting--of--steel--shall--be--done--by--use--of--a--closed--shackle--or other--positive--means--of--attachment--that--will--prevent accidental--disengagement.
- 26.--A--safety--lashing--shall--be--provided--for--all--those--connections to--piledriver--hammers,--pile--ejectors,--or--jet--pipes.
- 27.--All--equipment--shall--be--inspected--daily--when--in--use,--as--to drums,--sheaves,--cables,--and--pressure--hoses,--Defective equipment--or--parts--shall--be--repaired--or--replaced.

- 28.--Wire-rope-or-cable-shall-be-inspected-regularly-by-a-competent person-and-removed-from-hoisting-or-load-carrying-service-when kinked,-when-marked-corrosion-appears,-or-when-four-percent-of the-total-number-of-wires-composing-the-rope-are-found--to--be broken-in-one-strand.--(The-distance-in-which-one-strand-makes one-complete-turn-around-the-rope:)
- 29.--Booms--must--be--lowered--for--lubrication-of-point-sheaves-or other-servicing-unless-provided-with-a-catwalk-and-rail.
- 30.--Power-driven--conveyors--shall--be--guarded--with--enclosures, railings,-or-sideboards-if-there-is-a-danger-of-workers--being caught-on-moving-parts-or-injured-by-falling-material.
- 31.--All--conveyor--systems--shall--be--equipped-with-such-emergency stopping-or-signal-devices-that-will-provide-safe--control--at all-times.
- 32.--All--openings--to--hoppers,-chutes,-bins,-or-hazardous-areas shall-be-protected-to-prevent-persons-from-stepping-or-falling into-them.
- 33.--Safe---accessways---shall--be--provided--to--permit--essential inspection,-lubrication,-repair,-or-maintenance-operations.
- 34.--Tunnels,-pits,-and-similar-enclosures-shall-be-provided-with adequate--drainage,-lighting,-ventilation,-and---emergency controls--including--escapeways--wherever--it-is-necessary-for persons-to-enter-such-area-to-perform-work.
- 35.--All--machinery--and--equipment--shall-be-shut-down-or-positive means--taken--to--prevent---its---operation---while---repairs, adjustments,-or-manual-lubrications-are-being-made.
- 36.--Any--guard--or-safety-device-removed-or-made-ineffective-shall be--replaced--or--restored---to---safe--operating---condition immediately--after--completion--of--work--which--required--its removal.
- 37.--All--repairs--on--machinery--or--equipment--shall-be-made-at-a location-which-will-provide-a-safe-place-for-repair.--Safe-and suitable--hoisting--equipment--shall--be--provided-for-shop-or field-maintenance.
- 38.--Heavy---machinery,-equipment,-or--parts--thereof--which--are suspended-or-held-apart-by-use-of-slings,-hoists,-or--jacks, shall--be--substantially-blocked-or-cribbed-before-persons-are permitted-to-work-underneath-or-between-them.--Bulldozer--and scraper-blades-shall-be-lowered-to-rest-when-not-in-use.
- 39.--Dump--bodies-of-dump-trucks-shall-be-blocked-or-cribbed-before inspecting,-servicing,-or-repairing-while-hoisted.

40.--When--repairing--or--inflating--tires;--safe--procedures;--methods;--and--equipment--must--be--used--to--prevent--injury.

41.--All--machinery--or--equipment--used--in--raising--loads--shall--have--automatic--limiting--devices--or--have--load--capacity--clearly--posted--and--equipment--adequately--stabilized--before--the--equipment--is--operated: Repealed effective June 1, 2000.

General Authority: NDCC-65-03-01

Law Implemented: NDCC-65-03-01

92-02-01-15. Hoists, elevators, and manlifts.

1.--Hoists--or--elevators--used--for--persons--or--materials--should--be--operated--only--by--competent--and--reliable--persons.

2.--All--hoists--or--mechanical--lifts--shall--be--of--adequate--size--for--the--job--and--used--only--according--to--manufacturers'--specifications.

3.--When--it--is--necessary--for--workers--to--enter--the--cage--or--platform--of--any--material--hoist--or--elevator--other--than--at--the--bottom--landing;--some--locking--device--must--be--provided--to--prevent--the--cage--or--platform--from--being--lowered--while--the--worker--is--entering--or--leaving--the--cage.

4.--The--worker's--elevator--car--shall--be--enclosed--on--all--sides--except--at--the--entrance;--which--shall--be--provided--with--a--door--or--gate;--to--be--kept--closed--while--the--car--is--in--motion;--where--practicable;--the--car--door--or--gate--shall--be--equipped--with--an--electric--contact--to--prevent--movement--of--the--car--except--when--the--door--or--gate--is--closed.

5.--All--material--hoist--shaftways--erected--inside--buildings--should--be--enclosed--tightly--for--their--entire--height;--when--this--is--not--practicable;--the--sides--of--the--shaftways--not--used--for--entrances--shall--be--enclosed--on--each--floor--to--a--height--of--at--least--eight--feet--[2.44--meters]--with--wire--netting--formed--of--not--less--than--No.--16--United--States--gauge--wire;--one--and--one--half--inch--[3.81--centimeter]--mesh;--or--enclosed--with--wooden--slats--of--equal--protective--strength--with--a--toeboard--placed--around--all--sides--except--at--the--entrance.

6.--Every--hoisting--apparatus--used--in--the--construction--of--any--building;--every--hoistway;--hatchway;--elevator--well;--and--wheel--hole--in--any--factory;--mill;--workshop;--storehouse;--wareroom;--or--store--shall--be--securely--protected--on--each--floor--by--substantial--barrier--forty-two--inches--[106.68--centimeters]--high;--which--shall--be--kept--closed--except--when--necessarily--opened--for--use. Every--elevator--car--used--for--either--freight--or--passengers--shall--be--provided--with--some--suitable--mechanical--device--by--which--it

can--be--securely-held;-in-the-event-of-failure-of-the-rope-or
hoisting-machinery:

- 7.--The-platform-of-every-hoist-shall-be-enclosed-on-the-sides-not
used-for-loading-or-unloading;-with-boards--or--a--heavy--wire
screen--enclosure--formed--of--No.16-United-States-gauge-wire;
one-and-one-half-inch-[3.81-centimeter]-mesh:
 - 8.--All-entrances-to-the-shaftway-shall-be-guarded-by-self-closing
gates-or-by-hinged-or-pivoted-bars--or--by--other--effective
means:
 - 9.--Operators--of--passenger--elevators--shall--be--not--less-than
sixteen-years-of-age.--They-shall-be-free-of-any--physical--or
mental--defect--that--will--prevent--the--performance-of-their
duties-in-a-careful-and-competent-manner:
 - 10.--Ten-hours-training-under-the-direction-of-a-competent-operator
shall-be-required-before-a--new--(inexperienced)--operator--is
placed-in-charge-of-a-passenger-elevator:
 - 11.--Reading;-smoking;-or--similar-actions-by-the-operators-shall
not-be-permitted-when-elevator-is-in-motion-or-passengers--are
being-loaded-or-unloaded:
 - 12.--Operators--must--not--leave--the-car-in-the-ordinary-course-of
operation-nor-leave-the-mechanism-unprotected.--When-necessary
to--leave-for-any-reason-the-power-must-be-disconnected-or-the
operating-mechanism-locked-and-the-hoistway-doors-locked:
 - 13.--Operators'-rules-shall-not-apply-to-automatic-or-self-operated
elevators:
 - 14.--The--number--of--passengers--shall--be-limited-to-the-contract
capacity-of-the-car-and-crowding-will-not-be-permitted:
 - 15.--Hand-operated-manlifts--shall-be-equipped-with-a-handbrake-or
footbrake-that-will-remain-locked-in-the-"on"--position--until
released;-capable--of--stopping--and-holding-the-car-with-its
rated-load-at-any-point-in-its-limit-of-travel:
- In--addition;-a-cable-safety-brake-or-similar-device-shall-be
provided-capable-of-stopping-and-sustaining-the--car--and--its
rated--load;-as--a--result--of--breaking-or-slackening-of-the
suspension-members:
- A--separate--locking--device;-independent-of-the-manual-brake;
shall-be-provided-that-will-hold-the-car-and-its-rated-load-at
each--landing.--This-device-may-be-either-manual-or-automatic:
- Suspension--shall--be--by--a--steel-cable-not-less-than-three-
eighths-inch-[9.53-millimeters]-in-diameter:

- 16.--Guide--rails--shall--be--of--steel--or--straight-grained,-seasoned wood-free-from-knots,-shakes,-dry-rot,-or-other-imperfections. Guide--rails--shall--be--securely-fastened-with-through-bolts-or clips-of-such-strength,-design,-and--spacing--that--the--guide rails--and--their--fastenings--shall--not--deflect--more--than--one-fourth--inch--{6.35--millimeters}--under--normal--operation, particularly-where-in-contact-with-the-guide-shoe-when-the-car is--at--the--landing.---Guide--rails---shall---withstand---the application--of--the-safety-brake-when-stopping-a-fully-loaded car-or-the-counter-weight.---The-guide-rails--shall--be--bottomed on--suitable-supports-and-extended-at-the-top-to-prevent-guide shoes-running-off-in-case-over-travel-is-exceeded.
- 17.--The--counterweight--shall--be--fully-enclosed-for-the-full-length of-its-travel,-except-for-an-inspection-at-the-lower-limit-of travel.---The-inspection-opening--shall--be--large-enough-only-to inspect-the-fastenings-and-be--covered--with--a--screen--or--a removable-cover.
- 18.--The-operating-rope-may-pass-through-the-car-platform-but-shall not-pass-through-the-car-crosshead-or--any--equipment--mounted thereupon.
- 19.--Bumper--springs--shall--be--provided-either-on-the-top-of-the-car or-on-the-bottom-of--the--sheave--supports--and--shall--be--of sufficient--strength--to--absorb-the-impact-of-the-car-and-its load.
- 20.--Access-openings-to-a-manlift-shaft-near-any-passageway-or-work area--shall--be--effectively-guarded--by--a--maze--(staggered railing)---or---with--self-closing-gates--or--other--suitable barricades.---Unused-sides-of-the-shaftway--shall--be--adequately enclosed.
- 21.--Shaftway-illumination--shall--be--adequate-to-enable-the-operator to-have-full-view-of-all-obstructions-and-hazards-which--might possibly-cause-injury.
- 22.--A--fixed--ladder--shall--be--provided-in-the-shaftway-which-is accessible-from-the-manlift-at-any-point-within-its-travel-and which-will-provide-a-means-of-emergency-exit.
- 23.--Not--more--than--one-person-at-a-time--shall--be--permitted-to-ride the-manlift.---Rated-load-must-never-be-exceeded.
- 24.--Power--drive--hoisting--mechanism--shall--not--be--attached-to-or made-part-of-any-hand--powered--manlift: Repealed effective June 1, 2000.

General Authority: NDEC-65-03-01
Law Implemented: NDEC-65-03-01

92-02-01-16. Demolition.

- 1.--Any--device--or--equipment--such--as--scaffolds,-ladders,-derricks, hoists,-etc,-;--used--in--connection--with--demolition--work--shall--be operated---in---accordance---with---the--rules--governing--the construction,-installation,-inspection,-maintenance,-and operation--of--such--device--or--equipment--as--specified--in--other parts--of--this--article.
- 2.--Where---federal--and--local--codes,-rules,-regulations,-and ordinances--governing--any--and--all--phases--of--demolition--work--are more--stringent--than--this--article,-such--rules--shall--prevail.
- 3.--No--structure,-or--part--of--a--structure,-or--any--floor--or temporary--support,-or--scaffold,-sidewalk--shed,-or--bridge,-or any--device--or--equipment--shall--be--loaded--in--excess--of--the--safe carrying--capacity--which--shall--never--be--considered--more--than one--third--of--its--ultimate--structural--strength.
- 4.--Walkways--and--passageways--shall--be--provided--for--use--of--workers, who--shall--be--instructed--to--use--them,-and--all--such--walkways--and passageways--shall--be--kept--adequately--lighted--and--free--from debris--and--other--materials.
- 5.--Protruding--nails--in--any--kind--of--lumber--shall--be--withdrawn, hammered--in,-or--bent--over--as--soon--as--such--lumber--is--removed from--the--structure--being--demolished,-unless--safe--methods--are used--for--handling--such--material,-or--unless--all--nail--bearing lumber--is--placed--in--piles--for--future--cleaning--or--burning.
- 6.--Workers--shall--be--required--to--wear--such--protective--clothing, head--and--eye--protection,-respirators,-or--any--other--protective safety--device--as--conditions--may--warrant.
- 7.--If--a--structure--to--be--demolished--has--been--partially--wrecked--by fire,-flood,-explosion,-or--other--causes,-the--walls--shall--be shored--or--braced--in--accordance--with--the--requirements--of--the authorities--having--jurisdiction,-or--in--the--absence--of--such requirements,-in--accordance--with--accepted--engineering practice,-before--any--demolition--work--is--started.
- 8.--The--power--on--all--electric--service--lines--shall--be--shut--off--and all--such--lines--cut--or--disconnected--at--or--outside--the--property line--before--demolition--work--is--started.--Prior--to--the--cutting of--such--lines,-the--contractor--or--property--owner--shall--notify and--obtain--the--approval--or--cooperation--of--the--electric--service company.
- 9.--All--gas,-water,-steam,-and--other--service--lines--shall--be--shut off--and--capped--or--otherwise--controlled--at--or--outside--the building--line--or--curb--before--demolition--work--is--started.--In such--case,-the--service--company--involved--shall--be--notified--in

advance--and--its--approval--or--cooperation--obtained--by--the
contractor--or--property--owner.

- 10.--If--it--is--necessary--to--maintain--any--power,--water,--or--other
lines--during--demolition,--such--lines--shall--be--temporarily
relocated---or---protected---with---substantial---covering--to
satisfaction--of--the--utility--company--and--in--accordance--with--the
applicable--codes--and--legal--requirements.
- 11.--All--floor--openings--and--shafts--not--used--for--material--chutes
shall--be--floored--over--or--enclosed--with--guardrails---and
 toeboards.
- 12.--Before---demolition--work--is--started,--sidewalks--or--public
thoroughfares--adjacent--to--the--worksites--shall--either--be--closed
or--protected.---Thoroughfares--which--are--open--to--the--public
shall--be--kept--clear--and--unobstructed--at--all--times. Repealed
effective June 1, 2000.

General Authority: NDEC-65-03-01

Law Implemented: NDEC-65-03-01

92-02-01-17. Excavation, trench, and shaft work.

- 1.--Any--device--or--equipment--used--in--connection--with--excavation,
trench,--or--shaft--work--shall--be--constructed,---installed,
inspected,--maintained,--and--operated--by--the--owner--or--user--as
specified--in--applicable--parts--of--this--article.
- 2.--Where--applicable,--federal,--state,--or--local--codes,--rules,
regulations,--and--ordinances--governing--any--and--all--phases--of
excavation,--trench,--or--shaft--work--shall--be--observed--at--all
times.
- 3.--"Excavation"--means--a--cavity,--pit,--or--hollow--below--the--surface
of--the--ground,--so--formed--by--the--cutting--or--the--digging--out--of
earth--or--similar--materials.
- 4.--Trees,--boulders,--and--other--surface--encumbrances--located--so--as
to--create--a--hazard--at--any--time--during--operations--shall--be
removed--before--excavating--is--started.
- 5.--If--the--stability--of--adjoining--buildings,--walls,--or--other
structures--are--endangered--by--excavating--there--shall--be
shoring,--bracing,--or--underpinning--provided--as--necessary--to
ensure--their--safety.---The--shoring,--bracing,--or--underpinning
shall--be--frequently--inspected--by--a--competent--person--and--the
protection--effectively--maintained.
- 6.--If--it--is--necessary--to--place--or--operate--power--shovels,
derricks,--trucks,--material,--or--other--heavy--objects--on--a--level
above--and--near--an--excavation,--the--side--of--the--excavation--shall

be sheet-piled, shored, and braced as necessary to resist the extra pressure due to the superimposed loads.

7. The sides of every excavation four feet {1.22 meters} or more in depth shall be supported by substantially braced sheet piling or shoring unless the sides of the excavation are sloped to the angle of repose of the material being excavated.
8. Undercutting of earth banks shall not be permitted unless they are adequately shored.
9. Excavated material shall not be placed on the ground surface nearer than eighteen inches {45.72 centimeters} measured from the edge of the excavation.
10. Fixed in place ladders, stairways, or other means to give access to excavated levels shall be in accordance with other applicable parts of this article.
11. "Trench" means a narrow excavation made below the surface of the ground; in general the depth will be greater than the width.
12. All trenches four feet {1.22 meters} or more in depth shall at all times be supplied with at least one ladder for each one hundred feet {30.48 meters} of trench or fraction thereof. The ladder shall extend from the bottom of the trench to at least three feet {91.44 centimeters} above the surface of the ground.
13. The sides of all trenches which are four feet {1.22 meters} or more in depth, and where the sides of the trench are not sloped to the angle of repose of the material being excavated, shall be securely held by timber bracing or other effective means. The bracing shall be carried along with the excavation and must in no case be omitted unless the trench is cut in solid rock or hard shale.
14. A trench cage, shield, or box may be used in lieu of required bracing if the cage, shield, or box is designed and built to withstand the same pressures and to give the same protection to the workers.
15. When the sloping of trenches to the angle of repose does not extend to the bottom of the trench, the timbering shall be as required to support the vertical part of the trench. The sheeting shall extend not less than twelve inches {30.48 centimeters} above the bottom of the slope and, if necessary, toeboards shall be placed behind the timbering to prevent material from sliding into the trench. The surface of the slope shall be cleaned of boulders, stumps, or hard masses of earth to eliminate the danger of their sliding into the trench.

- 16.--Excavated--material--and--superimposed--loads--shall--not--be--placed--nearer--than--eighteen--inches--[45.72-centimeters]--from--the--sides--of--the--trench;--unless--bracing--has--been--installed--and--designed--to--withstand--the--load.
- 17.--When--trenches--are--undercut;--they--shall--be--shored--to--safely--support--the--overhanging--material.
- 18.--If--a--trench--is--cut--alongside--an--existing--structure--and--the--footings--of--the--structure--are--nearer--to--the--trench--than--the--plane--of--repose--for--the--soil;--they--shall--be--underpinned--or--the--sidewall--of--the--trench--rigidly--supported.
- 19.--When--the--depth--of--the--trench--requires--two--lengths--of--sheet--piling;--one--above--the--other;--the--lower--length--shall--be--set--inside--the--bottom--stringers--or--wales--of--the--upper--length--and--driven--down--and--braced--as--the--excavation--continues.
- 20.--Minimum--requirements--for--trench--timbering--are--as--set--out--in--the--chart--attached--as--an--appendix--to--this--chapter.
- 21.--"Shaft"--means--a--hole--sunk--into--the--ground--at--an--angle--of--forty-five--degrees--or--less--with--the--vertical.
- 22.--Adequate--ventilation--must--be--provided--as--conditions--require;--before--permitting--workers--to--enter--the--shaft.
- 23.--Suitable--guardrail--and--toeboard--protection--must--be--provided--around--shaft--opening--unless--shaft--is--covered--and--kept--closed.
- 24.--Workers--entering--bell-bottom-pier--holes--shall--be--protected--by--the--installation--of--a--removable--type--steel--easing--of--sufficient--strength--to--resist--shifting--of--the--surrounding--earth.--Such--temporary--protection--shall--be--provided--the--full--depth--of--that--part--of--each--pier--hole--which--is--above--the--bell.--A--lifeline--suitable--for--instant--rescue--and--securely--fastened--to--a--shoulder--harness--shall--be--provided--each--person--entering--the--shafts.--This--lifeline--shall--be--separated--from--any--line--used--to--remove--materials--excavated--from--the--bell--footing.
Repealed effective June 1, 2000.

General Authority: NDEC-65-03-01
Law Implemented: NDEC-65-03-01

92-02-01-18. Barricades and guardrails.

- 1.--Ample--side--barricades--and--overhead--protection--shall--be--provided--when--there--is--danger--of--injury--from--falling--material.
- 2.--All--openings--or--excavations--that--create--a--safety--hazard--shall--be--covered--or--guarded--with--approved--guardrails.

3. Necessary inspection holes on floors shall be covered with grating or equipped with hinged covers and kept closed when not in use.
4. When it is not possible to remove obstructions from walkways or other passageways, suitable barricades or guardrails must be provided.
5. Approved guardrails or board fences shall be provided for all public walkways or thoroughfares bordering on or running through jobsites.
6. Obstructions on a sidewalk or a street shall be protected by an approved type barricade, which shall be indicated by flags during the day and by suitable lights at night.
7. Unnecessary removal of any protective barricade or guardrail is prohibited.
8. Where temporary removal of any protective barricade or guardrail is necessary, other safety control measures must be provided.
9. When suitable barricades, guardrails, and warning signs are not possible, direct supervision must be provided to keep personnel or unauthorized persons out of danger areas. Repealed effective June 1, 2000.

General Authority: NBCC-65-03-01
 Law Implemented: NBCC-65-03-01

92-02-01-19. Open-sided floors, platforms, runways, and catwalks.

1. Wherever required by this article, a standard railing shall have a vertical height of not less than thirty-six inches [91.44 centimeters] nor more than forty-two inches [106.68 centimeters] from the floor or platform to the upper surface of the top rail. The intermediate railing shall be midway between the floor or platform and the underside of the top rail.
2. Wherever required by this article, a standard toeboard shall be at least four inches [10.16 centimeters] in vertical height from the floor, platform, ramp, or runway to the top edge of the board.
3. Every open-sided floor, if five feet [1.52 meters] or more above the adjacent floor or ground level, shall be guarded by a standard railing on all open sides, except where there is entrance to a ramp, stairway, or fixed ladder. The railing shall be provided with a toeboard wherever, beneath the open sides.

- a.--Persons-can-pass:
 - b.--There-is-moving-machinery:
 - c.--There-is-equipment-with-which-falling-materials-could create-a-hazard:
- 4.--Wherever-materials-have-to-be-regularly-passed-over-the-edge of-the-floor,-the-intermediate-rail-may-be-omitted-and-a section-of-the-railing-made-removable,-or-a-section-omitted entirely-if,-in-the-opinion-of-the-proper-administrative authority,-regular-operating-conditions-make-a-railing-wholly impracticable:
 - 5.--Every-platform-more-than-five-feet-[1.52-meters]-in-length-and a-width-of-more-than-two-feet-[60.92-centimeters]-if-five-feet [1.52-meters]-or-more-above-floor-or-ground-level-shall-be guarded-by-a-standard-railing.-The-railing-shall-be-provided with-a-toeboard-wherever,-beneath-the-open-sides,-persons-can pass-or-machinery-and-equipment-are-exposed-to-the-hazard-of falling-material:
 - 6.--Every-runway-or-catwalk-more-than-five-feet-[1.52-meters]-in length-and-less-than-two-feet-[60.92-centimeters]-in-width-if five-feet-[1.52-meters]-or-more-above-floor-or-ground-level shall-be-guarded-by-a-standard-railing.-Wherever-tools, machine-parts-or-materials-are-likely-to-be-used-on-the runway,-a-toeboard-shall-also-be-provided-on-each-exposed side:
 - 7.--Runways-used-exclusively-for-special-purposes-(such-as-oiling, shafting,-or-filling-tank-cars)-may-have-railing-on-one-side omitted-where-operating-conditions-necessitate-such-omission, and-providing-the-falling-hazard-is-minimized-by-using-a runway-width-of-not-less-than-eighteen-inches-[45.72 centimeters]:
 - 8.--Every-inclined-runway-or-catwalk,-shall-be-provided-with cleats-not-more-than-sixteen-inches-[40.64-centimeters]-apart or-have-other-means-provided-to-prevent-slipping: Repealed effective June 1, 2000.

General Authority: NDEE-65-03-01
 Law Implemented: NDEE-65-03-01

92-02-01-20. Stairways.

- 1.--Stairways-and-landings-shall-be-kept-clear-of-merchandise, equipment,-or-other-trip-hazards:
- 2.--Stairways,-landings,-and-approaches-shall-be-kept-well-lit during-all-times-when-use-of-stairways-may-be-expected.-The

lighting shall be so arranged as to be free from shadows and of such intensity that the stairs and passageways will be clearly and distinctly visible.

3. Slippery treads, landings, or stair approaches shall be corrected by means suited to conditions.
4. Broken or split treads or treads that are uneven from wear shall be promptly replaced or repaired to put them in safe condition.
5. Treads shall be firmly secured and sufficiently strong and stiff to be firm under foot for all reasonable conditions of use.
6. Stairways shall be substantially constructed so as to safely support the loads placed thereon, with treads and risers of uniform width and height in any one flight.
7. Every flight of stairs having four or more risers shall be equipped with a stair railing or handrail.
8. Stairways not more than forty-four inches {111.76 centimeters} wide and enclosed on both sides, shall have at least one handrail located on the descending side.
9. Stairways not more than forty-four inches {111.76 centimeters} wide and having one open side, shall have a stair railing along the open side. If both sides are open, a railing shall be provided for each side.
10. Stairways more than forty-four inches {111.76 centimeters} wide shall have a handrail along each enclosed side with a stair railing along each open side.
11. Stairways eighty-eight inches {2.24 meters} or more in width shall be provided with a center rail.
12. In all buildings, permanent stairways shall be installed as soon as working conditions will permit.
13. All structures two or more floors (twenty feet {6.10 meters} or over) in height shall be provided with stairways and standard guardrails during the construction period. Where permanent stairways are not constructed or installed concurrently with the construction of each floor, a temporary stairway shall be provided.
14. On permanent stairways designed and installed with steel treads and landings to receive cement or other filling material, temporary wooden treads shall be laid in the full width of the tread and landing, to the height of the nosing, until permanent filling material is in place.

15. Stairways shall be protected with temporary railings or enclosures as soon as constructed and until permanent railings or enclosures are installed. Repealed effective June 1, 2000.

General Authority: NDEE-65-03-01
Law Implemented: NDEE-65-03-01

92-02-01-21. Ladders.

1. Fixed or stationary ladders, portable ladders, extension ladders, sectional ladders, step ladders, or trestle ladders shall be structurally sound and used in accordance with generally accepted standards.
2. Except where either permanent or temporary stairways or suitable ramps or runways as required by this article are provided, ladders shall be provided to give access to all floors or to scaffolds or platforms where work is being performed more than five feet {1.52 meters} above ground or to a permanent or temporary floor. This requirement may be waived, where other acceptable means of access has been provided.
3. Ladders as required by this article shall be left in place until the permanent or temporary stairways are provided and ready for use.
4. Ladders which are to remain as part of the permanent structure after completion of building operations shall conform to any local, municipal, or state codes which may be applicable.
5. Wood ladders shall be solidly constructed of seasoned, straight-grained wood, free from shakes, cross-grain, checks, decay, or other defects. Protective coating must be transparent.
6. Wood ladders must be inspected frequently for damage or deterioration. Close visual inspection is preferred rather than load testing.
7. Metal ladders shall be of sufficient cross-section to prevent extreme deflection and rungs shall be corrugated, coated with skid-resistant material or otherwise treated to minimize slipping.
8. Metal ladders must be frequently inspected and checked for wear, corrosion, and structural failure.
9. Metal ladders shall not be used around electrical circuits of any type. Ladders constructed of nonconductive materials must be used.

- 10.--Ladders-of-any-type-shall-be-carefully-inspected-for-damage-if-dropped-or-if-otherwise-mishandled-when-used.
- 11.--Ladders-with-broken-or-missing-rungs-or-steps,-broken-or-split-side-rails,-or-other-faulty-or-defective-construction-shall-not-be-used.--Such-ladders-shall-be-withdrawn-from-service-and-be-repaired-or-destroyed.
- 12.--Workers-must-face-the-ladder-and-use-both-hands-when-ascending-or-descending-ladders.
- 13.--Supplies-or-equipment-shall-not-be-carried-by-workers-on-the-ladders.--A-rope,-block-and-pulley,-or-other-safe-methods-shall-be-used-for-such-transfer.
- 14.--When-ladders-are-common-passageway,-one-shall-be-provided-for-ascending-and-one-for-descending,-to-permit-traffic-in-both-directions-at-the-same-time.
- 15.--Side-rails-on-ladders-(fixed-or-portable)-shall-extend-at-least-three-feet-[91.44-centimeters]-above-the-landing-or-floor-served,-unless-other-convenient-and-secure-handholds-are-provided-at-such-places.--If-extended-side-rails-are-used,-the-rungs-may-be-omitted-above-the-landing.
- 16.--Portable-ladders-shall-be-inclined-so-that-the-horizontal-distance-from-the-foot-of-the-ladder-to-a-plumbline-dropped-from-the-upper-point-of-support-is-approximately-one-fourth-of-the-ladder-length-from-the-base-to-the-upper-point-of-support.
- 17.--Supports-for-the-ladder,-both-at-the-top-and-at-the-bottom-shall-be-of-such-a-nature-that-lateral-displacement-cannot-occur.--Cleats,-shoes,-metal-points,-lashings,-or-other-suitable-devices-shall-be-used-as-required-to-prevent-slipping.
- 18.--Portable-single-ladders-or-individual-sections-of-ladders-shall-not-exceed-thirty-feet-[9.14-meters]-in-length.--No-extension-ladder-exceeding-sixty-feet-[18.29-meters]-in-length-when-extended-shall-be-used.
- 19.--Portable-step-ladders-over-twenty-feet-[6.10-meters]-in-length-shall-not-be-used.--Step-ladders-shall-be-so-constructed-that-when-in-the-open-position-all-treads-shall-be-level.--A-locking-device-or-spreader-to-hold-the-front-and-back-sections-securely-in-open-position-shall-be-an-integral-part-of-each-step-ladder.
- 20.--Fixed-ladders-shall-be-firmly-secured-in-place-by-top,-bottom,-and-intermediate-fastenings-as-required.
- 21.--The-pitch-of-a-fixed-ladder-shall-not-be-such-that-a-person's-position-is-below-the-ladder-when-climbing.--Ladders-shall-be

vertical--or--positively--inclined.---Negative--incline-is-not permitted.

- 22.--The--distance--from--front--of--rungs--to--nearest--permanent--object--on--the--climbing--side--of--the--ladder--shall--not--be--less--than--thirty--inches--[76.2-centimeters];--and--the--distance--from--back--of--rungs--to--the--building--or--structure--shall--be--not--less--than--six--and--one--half--inches--[16.51-centimeters].
- 23.--Where--a--person--must--step--a--distance--greater--than--twelve--inches--[30.48-centimeters]---from--the--ladder--to--nearest--edge--of--structure--or--equipment;--a--landing--platform--shall--be--provided.
- 24.--All--fixed--ladder--landings--shall--be--equipped--with--standard--guardrails;--so--arranged--as--to--give--safest--possible--access--to--the--ladder.---Such--landing--platform--shall--be--not--less--than--twenty--four--inches--[60.96-centimeters]--in--width--and--thirty--six--inches--[91.44-centimeters]--in--length.
- 25.--Where--fixed--ladders--are--used--to--ascend--to--heights--exceeding--twenty--feet--[6.10-meters];--landing--or--rest--platforms--shall--be--provided--for--each--twenty--feet--[6.10-meters]--or--fraction--thereof.---Fixed--ladders--provided--with--safety--edges--or--ladder--safety--devices--may--be--exempt--from--this--requirement.
- 26.--An--exterior--fire--escape--of--the--stair--or--basket--ladder--type--shall--be--provided--from--upper--floors--of--grain--handling--or--storage--structures;--or--any--other--structure--having--work--floors--at--upper--levels.---This--shall--apply--to--structures--constructed--or--rebuilt--after--July--1;--1960.
- 27.--A--eage--or--basket--guard--shall--be--provided--on--all--fixed--external--ladders--more--than--twenty--feet--[6.10-meters]--in--length--where--such--ladders--are--employed--in--regular--and--frequent--service.
- 28.--Safety--edges--shall--not--extend--less--than--twenty--seven--inches--[68.58-centimeters]--nor--more--than--twenty--eight--inches--[71.12-centimeters]--from--the--centerline--of--the--rungs--of--the--ladder.---The--eage--shall--not--be--less--than--twenty--seven--inches--[68.58-centimeters]--in--width.
- 29.--Ladder--safety--devices;--such--as--those--which--incorporate--life--belts;--friction--brakes;--and--sliding--attachments;--may--be--used--on--tower;--water--tank;--and--chimney--ladders--over--twenty--feet--[6.10-meters]--in--unbroken--length--in--lieu--of--eage--protection.
Repealed effective June 1, 2000.

General Authority: NDEE-65-03-01
Law Implemented: NDEE-65-03-01

92-02-01-22. Scaffolds - Definitions.

- 1.--"Boatswain's chair"--means--a--seat--to--support--a--worker--in sitting--position,--supported--by--rope--slings--attached--to--a suspension-rope.
- 2.--"Brace"--means--a--tie--that--holds--one--point--in--a--fixed--position with--respect--to--another--point,--Bracing--is--a--system--of--braces or--ties--that--prevent--distortion--of--a--structure.
- 3.--"Bricklayers' scaffold"--means--a--scaffold,--the--platform--of which--is--composed--of--planks--supported--on--built-up--squares secured--to--each--other--by--diagonal--bracing.
- 4.--"Carpenters' bracket scaffold"--means--a--scaffold,--the--platform of--which--is--composed--of--planks--and--supported--on--triangular braced--brackets--secured--to--the--side--of--the--building.
- 5.--"Guardrail"--means--a--horizontal--rail,--secured--to--uprights--and erected--along--the--exposed--edges--of--scaffolds,--floor--openings, wall--openings,--runways,--etc.,--to--prevent--persons--from--falling.
- 6.--"Horse scaffold"--means--a--scaffold,--the--platform--of--which--is supported--by--horses.
- 7.--"Independent pole scaffold"--means--a--scaffold--supported--from the--base--by--a--double--row--of--uprights,--independent--of--support from--the--walls--and--constructed--of--uprights,--ledgers, horizontal--platform--bearers,--and--diagonal--bracing,--An independent--pole--scaffold--may--also--be--referred--to--as--a--built-up--scaffold.
- 8.--"Ledger--and--stringer"--means--a--scaffold--member,--which--extends horizontally--from--post--to--post,--at--right--angles--to--the putlogs,--supports--the--putlogs,--forms--a--tie--between--the--posts, and--becomes--a--part--of--the--scaffold--bracing,--Ledgers--which--do not--support--putlogs--are--also--called--stringers.
- 9.--"Outrigger scaffold"--means--a--scaffold,--the--platform--of--which is--supported--by--outriggers--or--thrustouts--projecting--from--the wall--of--the--building,--the--inner--end--of--which--is--secured--inside the--building.
- 10.--"Putlog--or--bearer"--means--a--scaffold--member,--upon--which--the platform--rests,--In--a--single--pole--scaffold--the--outer--end--of the--putlog--rests--on--a--ledger--and--the--inner--end--rests--in--the wall,--In--an--independent--pole--scaffold--each--end--of--the--putlog rests--on--a--ledger,--In--an--independent--pole--scaffold--a--putlog is--known--as--a--bearer.
- 11.--"Scaffold"--means--any--temporarily--located--elevated--platform used--for--supporting--workers--or--materials--in--the--course--of--any and--all--types--of--construction--work--including--maintenance--and demolition.

- 12.--"Single-pole-scaffold"--means-a-platform-resting-on-poles-or-crossbeams;-the-outer-ends-of-which-are-supported-on-ledgers-secured-to-a-single-row-of-posts-or-uprights-and-the-inner-ends-on-a-wall-or-holes-in-a-wall.
- 13.--"Square"--means--a--framed--structure-built-up-of-vertical-and-horizontal-members-and-braces-which-when-used-in-pairs-and-set-up-and-braced-longitudinally;-provides-a-support-for-a-working-platform.
- 14.--"Suspended-scaffold"--means--a-scaffold-supported-from-above;-the-platform-of-which-is-supported-at-more-than-two-points--by-steel-wire-cables-suspended-from-overhead-outriggers-which-are-anchored-to-the-steel-or-concrete-frame-of-the-building;--It-is--equipped--with--a-hoisting-drum-or-machine-so-the-platform-can-be-raised-or-lowered.
- 15.--"Swinging-scaffold"--means-a-scaffold;-the-platform-of-which-is-supported-by-stirrups-or-hangers-at-not-more-than--two--points-suspended--from--overhead--supports--in--a-manner-to-permit-of-raising-or-lowering-to-suit-required-position.
- 16.--"Toeboard"--means-a-barrier-placed-along-the-edge-of-a-scaffold-platform;-runway;-etc;--secured--thereto--to-guard--against-falling-of-material. Repealed effective June 1, 2000.

General Authority: NDCG-65-03-01
 Law Implemented: NDCG-65-03-01

92-02-01-23. General requirements for all scaffolds.

- 1.--Scaffolds;-platforms;-or-temporary-floors-shall-be-provided-for-all-work-except-that-which-can-be--done--safely--from--the-ground;-from-solid-construction;-or-such-short-period-work-as-can-be-done-safely-from-ladders.
- 2.--Scaffolds;-platforms;-or-temporary-floors-shall-be-provided-with-ladders;-stairways;-or-other-safe-means-of-access-to-such-work.
- 3.--No-scaffold-shall-be-used-for-storage-of-material-except-that-being-currently-used-and-at-no-time--shall--any--scaffold--be-overloaded.
- 4.--Any-scaffold--damaged--or--weakened--from--any-cause-shall-be-immediately-repaired-and-workers-shall-not-be-allowed--to--use-it-until-repairs-have-been-completed.
- 5.--Persons--shall-not-be-permitted-to-work-on-a-scaffold-during-a-storm-or-high-wind.

- 6.--Scaffolds,--platforms,--runways,--floors,--etc.,--shall-be-kept free-of-ice,--snow,--grease,--mud,--or--any--other--material--or equipment--which-would-render-them-unsafe-or-hazardous,--Where slippery-surfaces-cannot-be-avoided,--abrasive-material-of-some nature-shall-be-used-to-assure-safe-footing.
- 7.--Barrels,--boxes,--loose-tile-blocks,--loose-piles-of-bricks,--or other-unstable-objects-shall-not-be-used-for--the--support--of planking-intended-as-scaffolds-or-working-platforms.
- 8.--Scaffolds--shall--be--designed,--constructed,--and-inspected-by competent--persons--who--are--familiar--with--such--work--and requirements-for-safety.
- 9.--All--scaffolds,--platforms,--ramps,--trestles,--false-work,--and similar-temporary-load-bearing-structures-shall--be--designed, constructed,--and--maintained-with-a-safety-factor-of-not-less than-four-in-accordance-with-the-requirements-of-this-article.
- 10.--All--lumber--used--in--the--construction-of-scaffolds-shall-be sound-straight-grained,--free-from-cross-grain,--shakes,--and large--loose--or--dead--knots,--or--other-defects-impairing-its strength-or-durability.
- 11.--Nails--used--in--the--construction--of-scaffolds,--staging,--and supports-shall-be-of--ample--size--and--length,--and--used--in sufficient--quantities--at--each--connection--to--develop--the designed-strength-of-the-scaffold.
- 12.--Metal-scaffolds-shall-be-designed-and-constructed-of-materials adequate--in--size--to--maintain--a--safety--factor--of--four, depending-on-height-of-scaffold-and-load-carried-thereon.
- 13.--Power--scaffolding--machines,--towers,--and--similar-equipment shall-be-of-the-type-or-equal--to--the--requirements--of--the generally--accepted--standards--for--such-equipment,--All-such equipment-shall-be-erected-and-used--in--accordance--with--the manufacturers--specifications-and-the-load-limits-shall-not-be exceeded.
- 14.--All--component--parts--except--rope--or--cable--of--swinging platforms,--scaffold-machines,--scaffolds,--or--similar--devices used-for-supporting-human-loads-shall-have-a-minimum-factor-of safety-of-four,--Rope-or-cable-and-attachments-supporting-such devices-shall-have-a-minimum-safety-factor-of-eight.
- 15.--The--width--of--all--scaffolds,--ramps,--runways,--and-platforms shall-be-determined-by-the-use-to--which--they--will--be--put, They--shall--be--of--sufficient-width-to-eliminate-a-congested condition-of-workers-or-materials--and--equipment--and--shall provide--unobstructed--passageway--for-supplying-materials-and movement-of-workers-consistent-with-the-work-being--performed.

In no case shall the width be less than eighteen inches {45.72 centimeters};

16. Scaffolds shall be at least two inches {50.8 millimeters} in thickness by ten inches {25.4 centimeters} wide, (or corresponding dimensions for finished lumber), be straight-grained, free of large or loose knots, and be in good sound condition. All scaffold platforms shall be at least two planks wide.
17. Scaffolds or staging more than ten feet {3.05 meters} above ground or floor, swung or suspended from an overhead support or erected with stationary supports (except scaffolding wholly within the interior of a building and covering the entire floor space of any room therein and not having any side exposed to a hoistway, elevator shaft, or stairwell) shall have a standard guardrail properly attached, bolted, braced, and otherwise secured, and extending along the entire length of the outside and the ends thereof, with only such openings as may be necessary for delivery of materials. Such scaffolding or staging shall be so fastened as to prevent it from swaying from the building or structure.
18. In lieu of guardrail protection on scaffolds or other elevated work areas, safety belts and lifelines shall be used, except where their use may create a greater hazard.
19. Safety nets shall be provided when recommended by the safety authority having jurisdiction, if safety belts and lifelines, guarded platforms and scaffolds, or temporary floors are not feasible.
20. Scaffolds or working platforms shall be securely fastened to the building or structure, or if independent of the building shall be braced or guyed to prevent sway as conditions may warrant.
21. When persons are working on a scaffold with other persons engaged above, the scaffold shall have an overhead covering of planking as a protection to the workers thereon.
22. When it is necessary for workers to work or pass under a scaffold upon which other persons are working, there shall be a screen or other protection to catch material that may fall from above.
23. Side screens shall be provided on scaffolds erected in places adjacent to passageways or thoroughfares to guard against falling material. Repealed effective June 1, 2000.

General Authority: NDEC-65-03-01
Law Implemented: NDEC-65-03-01

92-02-01-24. General requirements for pole scaffolds.

- 1.-- Pole scaffold uprights shall be set plumb and blocked, braced, or otherwise made secure to prevent movement.
- 2.-- Where poles are spliced, the squared end of the upper section shall rest squarely upon the squared end of the lower section; and the two ends shall be rigidly fastened together with not less than two wooden splice plates not less than four feet [1.22 meters] long and having the same width as the pole. The plates shall be securely nailed in place on adjoining sides of the poles.
- 3.-- In heavy-duty scaffolds the combined cross-section area of the splice plates shall be not less than the cross-sectional area of the pole.
- 4.-- The splice plates shall be so placed as to overlap the abutting ends of the pole equally, and shall be so located as not to interfere with the nailing of ledgers.
- 5.-- In light-duty scaffolds not more than twenty-four feet [7.31 meters] in height, poles may be spliced by overlapping the ends not less than four feet [1.22 meters] and securely nailing them together. A substantial cleat shall be nailed to the lower section to form a support of rest for the upper section.
- 6.-- Ledgers shall be long enough to extend over two pole spaces and shall overlap the poles at each end by at least four inches [10.16 centimeters].
- 7.-- Ledgers shall always be spliced at poles, never in between.
- 8.-- Platform planking shall be not less than two inches [5.08 centimeters] in thickness, (or corresponding dimensions for finished lumber).
- 9.-- Planks shall be laid with their edges close together so that the platform will be tight with no spaces through which tools or fragments of materials can fall. Each plank shall be of sufficient length to extend over three bearers and all ends shall be lapped over bearers.
- 10.-- Where platform planks overlap, a single putlog is sufficient; the ends of both the upper and lower planks overlapping the putlog by at least six inches [15.24 centimeters].
- 11.-- Platform planking shall project over the last putlog at the end of the scaffold by not less than six inches [15.24

centimeters}--but--in--no--case--more--than--twelve--inches--{30.48 centimeters}:

12.--When--a--scaffold--turns--a--corner,--the--platform--planks--shall--be laid--to--prevent--tipping;--The--planks--that--meet--the--corner putlog--at--an--angle--shall--be--laid--first,--extending--over--the diagonally--placed--putlog--far--enough--to--have--a--good--safe bearing,--but--not--far--enough--to--involve--any--danger--from tipping,--then--the--planking--running--in--the--opposite--direction at--right--angles--shall--be--laid--so--as--to--extend--over--the--rest--on the--first--layer--of--planking:

13.--If--the--space--between--the--scaffold--and--building--wall--is--more than--eighteen--inches--{45.72--centimeters},--a--guardrail--shall--be erected--on--the--wall--side. Repealed effective June 1, 2000.

General Authority: NDEE-65-03-01
Law Implemented: NDEE-65-03-01

92-02-01-25. Single pole or bricklayers' pole scaffolds.

1.--Single--pole--scaffolds--shall--be--classified--as--either--light--duty scaffolds,--or--heavy--duty--scaffolds:

2.--A--light--duty--scaffold--is--a--scaffold--designed--and--constructed to--carry--a--working--load--of--twenty--five--pounds--per--square--foot {12.22--grams--per--square--centimeter},--such--as--intended--for--the use--of--carpenters,--painters,--or--others--of--similar--trades,--and which--supports--no--load--other--than--the--workers--and--a--minimum amount--of--lightweight--material:

3.--A--heavy--duty--scaffold--is--a--scaffold--designed--and--constructed to--carry--a--working--load--of--seventy--five--pounds--per--square--foot {36.65--grams--per--square--centimeter},--such--as--intended--for--the use--of--stone--masons--or--others--of--similar--trades,--and--which supports--in--addition--to--the--workers--a--supply--of--building material:

4.--For--light--duty--scaffolds--not--more--than--twenty--four--feet--{7.31 meters}--in--height--the--following--minimum--nominal--size--material is--recommended:

Poles--or--uprights	---2-by-4-inches
Ledgers---supporting--putlogs	---2-by-6-inches
Stringers,--not--supporting--putlogs	---1-by-6-inches
Putlogs	---4-by-4-inches
	or
	---2-by-6-inches
	on--edge
Braces	---1-by-4-inches

Spacing--of--poles---measured--along--the platform,--not--to--exceed -7-feet-6-inches

Spacing of poles---distance from building,
 not to exceed-5-feet-0-inches

Spacing of ledgers---vertically-7-feet-0-inches

Planking--2-by-10-inches
 Toeboards---1-by-6-inches
 Guardrails---2-by-4-inches

5.--For--scaffolds--more--than--twenty-four--feet--{7.31-meters}--in height--and--not--more--than--forty--feet--{12.19-meters}--in height, the--poles--shall--be--three--by--four--inches--{7.6--by--10.16 centimeters}--in cross-section,--and--for--scaffolds--more--than forty--feet--{12.19--meters}--in--height,--four--by--four--inches {10.16--by--10.16--centimeters}--in cross-section--or--heavier--as required.---Other--members--shall--conform--with--the--requirements of--subsection-4.

6.--For--heavy-duty-scaffolds--not--more--than--twenty-four--feet--{7.31 meters}--in height--the--following--minimum--nominal--size--material is--recommended:

Poles--or--uprights ----3-by-4-inches
 2-by-6-inches

Ledgers---supporting--putlogs ----2-by-8-inches
 Stringers---not--supporting--putlogs ----1-by-6-inches
 Putlogs ----4-by-4-inches
 or ----2-by-8-inches
 on-edge

Braees ----1-by-6-inches

Spacing of poles---distance
 between poles,--not--to--exceed ---7-feet-0-inches

Spacing of poles---distance--from
 building--not--to--exceed ---5-feet-0-inches

Spacing of ledgers---vertically ---4-feet-6-inches

Planking ---2-by-10-inches
 Toeboards ----1-by-6-inches
 Guardrails ----2-by-4-inches

7.--For--scaffolds--more--than--twenty-four--feet--{7.31-meters}--in height--and--not--more--than--forty--feet--{12.19-meters}--in height, the--poles--shall--be--of--four--by--four--inches--{10.16--by--10.16 centimeters}--in cross-section,--and--for--scaffolds--more--than forty--feet--{12.19--meters}--in--height,--the--poles--shall--be--of four--by--six--inches--{10.16--by--15.24--centimeters}--in cross section--or--heavier--as--required.---Other--members--shall--conform with--the--requirements--of--subsection-6.

8.--Where--single-pole-scaffolds-are-used-for-very-light-work,-the width-of-the-platform-(distance-of-poles-from-building)-may-be reduced--to-a-width-consistent-with-the-nature-of-the-work-and the-safety-of-the-workers-thereon,-but-in-no--instance--shall the--scaffold--be--less--than--two--planks-in-width. Repealed effective June 1, 2000.

General Authority: NDEC-65-03-01
Law Implemented: NDEC-65-03-01

92-02-01-26. Independent pole or buildup scaffolds.

- 1.--The--poles,--ledgers,--stringers,--putlogs,--bearers,--platform planking,-and-other-members-of-light-duty,--independent--pole scaffolds--of--any--height--and--heavy--duty,--independent-pole scaffolds-up-to-twenty-four-feet-[7.31-meters]--shall--be--the same-as-for-single-pole-scaffolds.
- 2.--The--inner--row--of-poles-shall-be-set-as-near-the-wall-of-the building-as-practicable-and-allow-workers--sufficient--working space.
- 3.--The-outer-row-of-poles-shall-be-set-not-less-than-six-feet-six inches-[1.98-meters]--from-the-inner-row-for-scaffolds--up--to twenty-four--feet--[7.31--meters]--in-height-and-not-less-than seven-feet-six-inches-[2.29-meters]-for-scaffolds-over-twenty-four-feet-[7.31-meters]-in-height.
- 4.--The--distance-between-poles-longitudinally-(or-parallel-to-the wall)-shall-be-the-same-as-for-single-pole-scaffolds.
- 5.--As-the-independent-pole-scaffold-receives-comparatively-little support-from-the-building,-it-is-important-to--strengthen--and stiffen-it-thoroughly-by-systematic-and-careful-bracing.
- 6.--All-buildup-wood-scaffolds-shall-be-constructed-to-support-the working-load-with-a-factor-of-safety-of-four-regardless-of-any other--specifications-given-as-minimum-requirements. Repealed effective June 1, 2000.

General Authority: NDEC-65-03-01
Law Implemented: NDEC-65-03-01

92-02-01-27. Tubular pole scaffolds - Definitions - Design.

- 1.--The--bearers--in--a--tubular--pole--scaffold-are-the-crosswise members-carrying-the-platform-planking.
- 2.--In--a--heavy-type--tubular-pole-scaffold-all-posts-and-runners are-to--be--of--two-inch--[50.8-millimeter]--outside--diameter tubing,----and----the----bearers----of----two-and-one-half-inch

{63.5-millimeter}--outside--diameter--tubing--with--the--posts spaced--six--feet--[1.83-meters]--by--six--feet--six--inches--[1.98 meters];--All--bracing--is--to--be--of--two--inch--[50.8-millimeter] outside-diameter-tubing;

3.--In--a--light-type-tubular-pole-scaffold--all--posts--and--runners and--bearers--are--to--be--of--two--inch--[50.8-millimeter]--outside diameter--tubing;--with--the--posts--spaced--six--feet--[1.83-meters] apart--by--ten--feet--[3.05--meters]--along--the--length--of--the scaffold;--All--bracing--is--to--be--of--two--inch--[50.8-millimeter] outside-diameter-tubing;

4.--In--a--medium-type-tubular-pole-scaffold--all--posts--and--runners are--to--be--of--two--inch--[50.8-millimeter]--outside--diameter tubing--and--the--bearers--of--two--and--one--half--inch [63.5-millimeter]--outside--diameter--tubing--with--the--posts spaced--six--feet--[1.83--meters]--apart--by--eight--feet--[2.44 meters]--along--the--length--of--the--scaffold;--All--bracing--is--to be--of--two--inch--[50.8-millimeter]--outside-diameter-tubing;

5.--The--posts--in--a--tubular--pole--scaffold--are--the--vertical supporting-members;

6.--The--runners--in--a--tubular--pole--scaffold--are--the--lengthwise horizontal-members;

7.--All--tubular-pole-scaffolds--shall--be--designed--to--have--a--factor of--safety--of--not--less--than--four--and--this--or--a--larger--factor--of safety--shall--be--observed--in--the--use--of--every--scaffold;

8.--Tubular--steel--or--other--metal--scaffolds--must--be--erected--and used--in--accordance--with--the--manufacturers--specifications--and recommendations;--Uprights--shall--be--plumb;--and--firm--footing must--be--provided--for--each--upright;--Connectors--must--be properly--seated--and--locked;--using--the--correct--devices--for assembly; Repealed effective June 1, 2000.

General Authority: NDEC-65-03-01

Law Implemented: NDEC-65-03-01

92-02-01-28. Suspended scaffolds.

1.--The--use--of--a--suspended--scaffold--is--recommended--for--all buildings--more--than--five--stories--high;--built--with--a--frame which--will--provide--overhead--support;--The--parts--of--the building--or--structure--to--which--a--suspended--scaffold--is attached--shall--be--examined--to--determine--if--the--parts--are--of sufficient--strength--to--support--properly--the--load--that--will--be imposed--on--the--scaffold;

- 2.--A--suspended--scaffold--shall--be--capable--of--sustaining--a--working--load--of--forty--pounds--per--square--foot--[19.53--grams--per--square--centimeter]--with--a--factor--of--safety--of--four.
- 3.--Suspended--scaffolds--shall--never--be--used--for--the--storage--of--stone--or--heavy--materials.
- 4.--All--suspended--scaffolds--shall--be--provided--with--a--hoisting--machine--of--either--the--platform--or--overhead--type.
- 5.--All--machines--shall--be--of--a--design--approved--by--the--underwriters'-laboratories.
- 6.--Only--competent,--experienced--persons--shall--be--allowed--to--operate--the--machines.
- 7.--All--parts--of--a--suspended--scaffold--shall--be--inspected--daily.
- 8.--Every--person--going--out--on--a--thrustout--shall--be--provided--with--and--shall--wear--a--lifelift,--to--which--shall--be--attached--a--lifeline--securely--fastened--to--the--building.
- 9.--When--persons--are--working--above--a--suspended--scaffold,--an--adequate--overhead--protection--shall--be--provided--on--the--scaffold,--consisting--of--planking--heavy--enough--to--serve--as--protection--for--the--persons--on--the--scaffold.---This--overhead--protection--shall--be--placed--at--a--height--of--not--more--than--nine--feet--[2.74--meters]--above--the--working--platform--and--maintained--at--all--times--while--persons--are--at--work. Repealed effective June 1, 2000.

General Authority: NDEC-65-03-01

Law Implemented: NDEC-65-03-01

92-02-01-29. Swinging scaffolds - General requirements.

- 1.--A--swinging--scaffold--consists--of--a--light--platform--supported--at--the--ends--by--hangers--and--ropes--that--are--attached--to--hooks,--supported--from--the--eaves--of--a--building,--the--main--cornice,--parapet--wall,--or--other--substantial--elevated--point,--and--the--hooks--tied--back--to--an--anchorage--on--the--building--when--conditions--require.
- 2.--The--swinging--scaffold--platform--shall--be--one--of--the--three--following--types:
 - a.--The--ladder--type,--consisting--of--boards--upon--a--horizontal--ladder,--the--sides--of--which--are--parallel.
 - b.--The--plank--type,--consisting--of--planks--supported--on--the--stirrups--or--hangers.

- e. The beam type, consisting of longitudinal side stringers, with crossbeams set on edge and spaced not more than four feet [1.22 meters] apart, on which the longitudinal platform planks are laid.
3. The platform of a swinging scaffold shall be not less than twenty inches [50.8 centimeters] nor more than twenty-four inches [60.96 centimeters] clear width.
 4. Each end of the platform shall be supported by a wrought-iron stirrup or hanger, which in turn is supported by the suspension ropes.
 5. The hangers shall be of standard design formed with a flat bottom to support the platform, with a loop to support the guardrail, an eye to support an intermediate guard rope, and a loop or eye at the top for securing the supporting hook on the block.
 6. The stirrups or hangers shall be made of wrought-iron or mild steel having a cross-sectional area equal to three eighths by one and one quarter inch [9.525 millimeters by 31.750 millimeters], or, if round, not less than three quarters inch [19.050 millimeters] in diameter.
 7. The hangers shall be so designed as to support guardrails, intermediate rails, and toeboards on both sides of the platforms when the nature of the work requires such protection. Repealed effective June 1, 2000.

General Authority: NDEC-65-03-01

Law Implemented: NDEC-65-03-01

92-02-01-30. General requirements for swinging scaffolds.

1. Every swinging scaffold shall be equipped the entire length of the platform on the side away from the building with a guardrail, an intermediate rail, or safety cable and a toeboard.
2. All ropes and cables shall be carefully examined before each operation and every thirty days thereafter when in use. The ropes supporting a swinging scaffold shall be of first-grade manila rope, not less than three quarter inch [19.050 millimeters] in diameter, properly rigged into a set of standard six inch [15.24 centimeter] blocks, consisting of at least one double and one single block. In lieu of such ropes, steel cable of not less than five sixteenths inch [7.940 millimeters] may be used. (These are minimum requirements.)
3. The supporting hooks or roof irons shall be of mild steel or wrought-iron, forged with care, not less than seven eighths

inch-[22.23-millimeters]-in-diameter,-if-round,-and-secured-to-a-safe-anchorage-at-all-times.

- 4.--Hooks-shall-be-examined-for-flaws-before-being-used.
- 5.--Swinging-scaffolds-shall-not-be-used-for-the-storage-of material.
- 6.--Two-or-more-swinging-scaffolds-shall-not,-at-any-time,-be combined-into-one-by-bridging-the-distance-between-them-with planks-or-any-other-form-of-connection.
- 7.--The-platforms-of-swinging-scaffolds-shall-be-lashed-or-secured while-in-use-to-hold-them-in-position-and-prevent-their swaying-from-the-building,-and-shall-be-equipped-with-rollers or-fenders-which-will-bear-against-the-side-of-the-building, to-hold-the-platform-at-a-proper-distance-from-the-wall.
- 8.--When-workers-are-leaving-a-swinging-scaffold,-it-shall-be securely-lashed-to-the-building-or-lowered-to-the-ground,-and shall-be-cleared-of-all-tools,-buckets,-or-other-movable objects.
- 9.--Not-more-than-two-persons-shall-be-permitted-to-work-on-a swinging-scaffold-at-one-time.
- 10.--Every-swinging-scaffold-shall-be-tested-before-using-by raising-the-platform-one-foot-[30.48-centimeters]-from-the ground-and-loading-it-with-at-least-four-times-the-maximum weight-that-will-be-imposed-upon-it-when-aft.
- 11.--Lifelines-securely-fastened-from-above-shall-be-provided-for each-person-working-on-a-swinging-scaffold.-The-lines-shall hang-free-of-the-scaffold,-and-shall-be-of-sufficient-length to-permit-a-safe-landing. Repealed effective June 1, 2000.

General Authority: NDCC-65-03-01

Law Implemented: NDCC-65-03-01

92-02-01-31. Masons' swinging scaffold.

- 1.--Swinging-scaffolds-intended-for-masons'-use-in-setting-stone or-cleaning-down-walls-shall-be-similar-in-design-to-other swinging-scaffolds,-but-shall-have-a-platform-at-least-thirty inches-[76.2-centimeters]-wide-and-suspended-from-overhead steel-beam-outriggers-with-steel-wire-cables-and-operated-by-a scaffold-machine.
- 2.--The-scaffold-shall-not-be-used-for-the-storage-of-stone-or other-heavy-materials.

- 3.--The--platform--shall--be--not--more--than--twenty--feet--{6.10-meters} in--length--constructed--of--a--four--inch--{10.16-centimeter} channel--located--at--each--end--of--the--platform;--laid--flat--with the--flanges--down--and--slotted--to--receive--the--machine--hangers.
- 4.--There--shall--be--a--five--sixteenth--inch--{7.940-millimeter}--tie rod--located--seven--feet--{2.13-meters}--from--each--end--of--the platform;--passing--through--the--side--stringers--and--drawn--up tight--with--washers;--nuts;--and--locknuts.
- 5.--The--uprights--shall--be--located--at--each--end--of--the--platform--and two--between;--equally--spaced.
- 6.--The--space--between--the--guardrail--and--platform--shall--be--filled with--a--wire--netting--screen--formed--of--No.--16--United--States gauge--wire--with--one--and--one--half--inch--{3.81-centimeters}--mesh securely--fastened--in--place.
- 7.--When--two--or--more--such--scaffolds--are--in--use--on--a--building;--they shall--not--be--bridged--across;--one--to--the--other;--or--tied--or lashed--together.
- 8.--Lifelines--{one--for--each--worker--engaged--on--the--scaffold}--shall be--provided--as--previously--mentioned: Repealed effective June 1, 2000.

General Authority: NDEC-65-03-01

Law Implemented: NDEC-65-03-01

92-02-01-32. Outrigger scaffold.

- 1.--Outrigger--scaffolds--shall--be--constructed--of--heavy--timber thrustouts--or--outriggers--not--less--than--three--by--ten--inches {7.62--by--25.4--centimeters};--set--on--edge;--projecting--through the--wall--or--window--opening--not--more--than--six--feet--{1.83 meters}--from--the--face--of--the--building;--with--the--inner--end extending--into--the--building;--supported;--braced;--anchored;--and securely--fastened--in--place.--Outriggers--of--steel--also--may--be used.
- 2.--Outrigger--scaffolds--shall--be--erected--only--by--mechanics--skilled in--their--construction;--and--shall--be--thoroughly--inspected before--being--used.
- 3.--Thrustouts--shall--not--be--built--into--a--wall--and--left--with--no other--support.
- 4.--The--projecting--ends--of--thrustouts--shall--be--supported--by external--braces--or--struts--when--extra--support--is--required;--but these--shall--not--be--depended--upon--as--the--main--support: Repealed effective June 1, 2000.

General Authority: NDEG-65-03-01

Law Implemented: NDEG-65-03-01

92-02-01-33. Boatswain chair.

- 1.--Whenever a boatswain chair is used, it shall be constructed and erected with the greatest possible care.
- 2.--The seat shall be not less than two feet {60.96 centimeters} long by one foot {30.48 centimeters} wide and one inch {2.54 centimeters} thick.
- 3.--Cleats shall be nailed to the underside of each end of the chair and shall project at least nine inches {22.86 centimeters} in front of the sling.
- 4.--The chair shall be supported by means of a sling attached to the suspension rope.
- 5.--The suspension rope shall either be securely fastened to fixed object overhead or passed through an overhead block securely fastened, with the free end securely fastened to a fixed and easily accessible object and the chair raised or lowered if necessary with the aid of helpers.
- 6.--When the suspension rope is attached to a pole by means of a hitch, the worker shall be provided with stirrups upon which the worker can rest the worker's weight while the worker is shifting the hitch by which the chair is made fast, and the stirrups shall be supported independently of the chair itself.
- 7.--Every worker using a boatswain chair should be provided with a safety belt secured to the supporting tackle in such a way that the worker will be safe in case the worker falls from the chair.
- 8.--When a boatswain chair is used by a worker using a blow torch, or an open flame, fiber rope slings shall not be used. The slings shall be at least three eighths inch {9.525 millimeter} wire rope. Repealed effective June 1, 2000.

General Authority: NDEG-65-03-01

Law Implemented: NDEG-65-03-01

92-02-01-34. Carpenters' bracket scaffolds.

- 1.--Carpenters' bracket scaffolds shall be constructed of triangular framed portable brackets and platforms of planks.
- 2.--The brackets shall be built up of good, straight-grained, dressed material, each member not less than two by three

inches--{50.8--millimeters--by-76.2-millimeters},-and-mortised together-and-bolted.

- 3.--The--supporting--bolt--shall--be--not--less--than--five--eighths--inch {15.875-millimeter}-in-diameter-welded-to-a-flat-iron-member, not--less--than--two--feet--{60.96-centimeters}-long,-drilled, spiked,-and-set--in--flush--with--the--top--surface--of--the horizontal--member,-of-sufficient-length-to-extend-well-inside the-studs-(when-secured-to-a-frame-building)-and-provided-with washer-and-lever-handled-nut.
- 4.--The--brackets--shall--be--of--sufficient--strength--to--carry--a--load of-four-hundred--pounds--{181.44--kilograms}-located--at--the extreme-outer-end-of-the-bracket.
- 5.--Brackets--which--have--become--weakened--or--damaged--by--use--shall not-be-used. Repealed effective June 1, 2000.

General Authority: NDEC-65-03-01

Law Implemented: NDEC-65-03-01

92-02-01-35. Bricklayers' square scaffold.

- 1.--This-type-of-scaffold-shall-be-composed-of-framed-wood-squares or-jacks-supporting-a-plank-platform.
- 2.--The--squares--shall--be--not--larger--than--five--feet--{1.52-meters} on-each-side,-and-the-width-of-the--base--not--less--than--the height.
- 3.--When--the--squares--are--set--up--they--shall--be--braced--laterally--by one-by-six-inch--{2.54-by-15.24-centimeter}-bracing-on-both-the front--and--rear--sides--of--the--scaffold,-the-bracing-extending from-the-bottom-of-one-square-to-the-top-of-the-next--adjacent square.
- 4.--The--squares--shall--be--set--up--not--more--than--five--feet--{1.52 meters}-apart-on-heavy-duty-scaffolds,-nor--more--than--eight feet--{2.44-meters}-apart-on-light-duty-scaffolds.
- 5.--When--this--type--of--scaffold--is--used,-it-should-not-be-built-up more-thanthree-tiers-of-squares-high,-and-the-tiers-should--be braced--together--both--front--and--rear,-as-necessary,-to-give stability-and-rigidity.
- 6.--The-squares-shall-be-placed-directly-one-above-the-other.
- 7.--The--scaffold--shall--be--set--up--on--a--level--and--unyielding foundation.

8. The distance between squares when used as horses should not exceed twelve feet {3.66 meters}: Repealed effective June 1, 2000.

General Authority: NDEC-65-03-01

Law Implemented: NDEC-65-03-01

92-02-01-36. Horse scaffold.

1. All horses used for building scaffold purposes shall be rigid and of solid, strong construction.

2. Horses shall be made of sound, straight-grained material, and braced so as to be rigid and to resist deformation from side thrusts.

3. Horses or parts of horses which have become unstable, or weakened in any way, shall not be used until repaired or made strong and rigid.

4. The nailing of extension pieces on the legs of horses to increase the height shall be prohibited.

5. All horse scaffolds shall be set on substantial and level foundations, with the legs standing on section of stout plank and not on the earth.

6. Each and every platform plank shall be supported on three horses, one at each end and one in the middle.

7. Planks shall be laid so there is no danger of tipping, and horses placed near enough together so there is no spreading or springing in the planks.

8. Horses shall not be spaced more than five feet {1.52 meters} apart for heavy-duty scaffolds, nor more than seven feet and six inches {2.29 meters} for a light-duty scaffold.

9. Horse scaffolds shall not be erected more than three tiers of horses or more than twelve feet {3.66 meters} high.

10. In erecting successive tiers of horses, each horse shall be placed directly over the horse in the tier below: Repealed effective June 1, 2000.

General Authority: NDEC-65-03-01

Law Implemented: NDEC-65-03-01

CHAPTER 92-02-02

**ELECTRIC SUPPLY LINES - COMMUNICATION LINES - AERIAL
BASKET EQUIPMENT - TREE TRIMMING**

[Repealed effective June 1, 2000]

CHAPTER 92-02-03

ROTARY DRILLING

[Repealed effective June 1, 2000]

CHAPTER 92-05-01

92-05-01-06. Maintenance of program approval - Eligibility for additional three percent. If an employer maintains program approval, the employer will receive the five percent premium discount for the premium year in which the program was properly implemented and maintained. To maintain program approval, an employer must comply with its approved workers' compensation risk management program. 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.

An employer who is receiving the five percent premium discount under this article may receive an additional three percent discount for implementing a substance abuse program. The program must provide for a written substance abuse policy, supervisory training on the substance abuse program, employee education about the substance abuse program, and an employee assistance program to help direct employees with a substance abuse problem to the appropriate facilities or agencies which may be able to assist the employee with overcoming the problem. The employer must also have a policy in effect for the early reporting of injuries.

History: Effective January 1, 1994; amended effective April 1, 1997; January 1, 2000.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-03-04, 65-04-19.1, 65-04-19.3

92-05-01-21. Small employer safety program discount.

1. An employer whose gross premium for the most recently reported payroll period is less than ten thousand dollars may be eligible for a discount on the following year's actual premium of eight percent for implementing a safety program. The safety program must:

a. Include a safety policy statement for that employer's business. The safety policy statement must be signed by company management and must identify the company's commitment to provide a safe workplace. The policy statement must also identify the expected responsibilities of all employees in adhering to safe work practices. The employer shall require employees to review the company safety policy statement at least annually.

b. Identify a claims management protocol that includes an aggressive policy on employees reporting injuries immediately. The injury reporting requirements for employees may not provide a reporting period that exceeds the time period for reporting injuries found in North Dakota Century Code section 65-05-01.2. The requirements for the employer to report an injury are found in North

Dakota Century Code section 65-05-01.4. The claims management protocol also should promote communication between the employer, an injured employee, and that employee's treating provider which will facilitate the development of transitional work options for an injured employee as appropriate.

- c. Require attendance, at least annually, at seminars on workplace safety or workers' compensation claims management. Seminars may be bureau-sponsored but are not required to be.
 - d. Establish a means of distributing workers' compensation and safety education information to employees.
2. An employer shall apply for the discount within the first quarter of the reporting period to which the discount would apply. The bureau may waive this application deadline under circumstances the bureau determines to be appropriate. Continued participation in the program and payment of the discount are contingent upon an employer submitting the appropriate verification that the employer is compliant with the safety program. The employer shall submit this verification at the same time the employer submits its annual payroll report. The employer shall be prepared to provide documentation to the bureau that the components of the program have been met. Eligibility for this discount in one year does not guarantee eligibility for the discount in subsequent years.
 3. The maximum allowed discount under this section is eight hundred dollars. The discount may not be applied to bring the amount of premium due on an account below the minimum annual premium under section 92-01-02-20.

History: Effective January 1, 2000.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-03-04, 65-04-19.3

TITLE 99
Gaming Commission

JULY 2000

CHAPTER 99-01.3-01

99-01.3-01-01. Ineligible organizations. An organization or a closely ~~connected~~ related organization is ineligible for a license or local permit if either ~~organization's--actual--primary--purpose--is--to--conduct--games--;~~ either organization has failed to resolve an imbalance involving its gaming or trust account according to section 99-01.3-03-05, either organization has deals or games with state gaming stamps that are not accounted for, it is delinquent in paying any tax, interest, penalty, or monetary fine due, or either organization was convicted of violating this article or North Dakota Century Code chapter 12.1-28 or 53-06.1. An auxiliary that is not a closely related organization is eligible for a local permit. Except for an educational organization, a county, city, state, political subdivision, or federal entity is not eligible for a license or local permit. A nonprofit social, hobby, trade, business, professional, ~~or other~~ similar club or association, or organization whose primary purpose mainly provides a direct benefit to its officers is not a public-spirited organization.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01, 53-06.1-01.1

99-01.3-01-02. Site authorization.

1. An eligible organization shall obtain a site authorization for a site within a city or county from the governing body of that city or county. A separate site authorization is required for each site. A site authorization is issued by a governing body and approved by the attorney general. It may be issued for a site located on public or private property and may be

restricted. Restrictions may include types of games, days of the week, and designation of an area at a site where games will be conducted. An organization shall comply with a restriction of a site authorization until an amended site authorization is issued by a governing body and approved by the attorney general. A site authorization must describe the gaming area designated by an organization that restricts where games may only be conducted and played. No restroom may be part of the gaming area. A governing body may revoke or suspend a site authorization based on good cause.

2. A governing body may issue a site authorization to two or more organizations to conduct games at the same site if the site authorizations restrict the organizations to different days of the week. However, more than one organization may be issued a site authorization for a fairground or similar open space of land.
3. For an initial application for a site authorization for an organization that desires to be recognized as a public-spirited organization, a governing body of a city or county shall determine whether the organization qualifies by examining:
 - a. A copy of an organization's articles of incorporation, charter, bylaws, or similar document to determine its primary purpose and date of origin; and
 - b. A copy of an organization's statements of revenues and expenses for the two preceding years to determine whether the primary purpose has been achieved within this state for both years. A governing body shall examine a copy of the minutes of a board of director's meeting which must include a resolution that states the intended use of net proceeds. An organization's financial officer or president shall attest to the accuracy of this information.
4. If a special event as determined by a local governing body is held which does not exceed fourteen days, if no more than two events are held per quarter, if written approval is granted by a local governing body, and if the monthly rent amount does not increase, an organization may temporarily use more twenty-one tables at a site than a site authorization allows. The site authorization does not need to be amended, regardless of where the tables are placed.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-03

99-01.3-01-03. License.

1. An organization may not conduct games at a site unless a site authorization is approved by the attorney general and it receives from the attorney general a license for that city or county. A separate license is required for each city or county. If the attorney general determines that an organization's actual primary purpose does not qualify it as an eligible organization, the attorney general shall deny the application or revoke the license.
2. An application must include information prescribed by the attorney general and is subject to approval by the attorney general. A license is effective for one year beginning July first and ending June thirtieth. If an organization plans to conduct a raffle on or after July first, a license cannot be issued before January first.
3. An organization that is first licensed may not conduct any game until after the gaming manager satisfactorily demonstrates to the attorney general that the organization is capable of properly managing and controlling the game to be conducted.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-03

99-01.3-01-04. Reporting a change in information. If information on a site authorization or license application that is filed with the attorney general becomes inaccurate or outdated in a material way, including a change in an organization's primary purpose or articles of incorporation, an organization, distributor, or manufacturer shall provide the attorney general, in writing, items of change and a copy of any new documents within fourteen days following the change. ~~This rule does not apply to restrictions of a site authorization or an amended rental agreement.~~

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-01-05. Local permit.

1. A local permit is issued by a city or county governing body. It may be issued for a site located on public or private property and may be restricted. Restrictions may include types of games, days of the week, and designation of an area at a site where games will be conducted. A governing body may revoke or suspend a local permit based on good cause.
2. A local permit is required for each site at which games have been authorized. An organization may be issued two or more

local permits at the same time; however, the award of prizes, in the aggregate for raffles, bingo, and sports pools, may not exceed six thousand dollars per year. No single cash prize can exceed one thousand dollars.

3. When a governing body issues a local permit, it shall assign a local permit number, specify the period for which it is effective, and send a copy of it to the attorney general within fourteen days from when it was issued. An organization that has a license may not at the same time have a local permit.
4. An organization may receive one or more local permits to conduct bingo, raffles, and or sports pools from a city or county governing body during a fiscal year July first to June thirtieth. However, for a calendar year raffle, a local permit may be issued for a calendar year January first to December thirty-first. If an organization plans to conduct a raffle on or after July first, a local permit cannot be issued before January first. The maximum primary merchandise and cash prizes must be according to the gaming law. A donated merchandise prize is valued at its retail price when it is acquired.
5. For bingo, an organization shall comply with section 99-01.3-04-01 through 99-01.3-04-03. For a raffle, an organization shall comply with sections 99-01.3-05-01 through 99-01.3-05-05. For a sports pool, an organization shall comply with section 99-01.3-07-01.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-03, 53-06.1-06

CHAPTER 99-01.3-02

99-01.3-02-01. Definitions. As used in this article:

1. "Attorney general" includes an agent of the attorney general.
2. "Bar" means retail alcoholic beverage establishment.
3. "Bar employee" is a person, employed by a bar that is not operated by an organization, who redeems winning pull tabs or bingo cards, or both, involving a dispensing device for an organization.
4. "Cash on hand" means coin, currency, and checks, plus an IOU due from another source of cash or nongaming funds, less an IOU owed to another source of cash or nongaming funds.
5. "Cash prize" means coin, currency, marketable security, and a similar item that can be readily redeemed or converted into legal tender. Cash prize does not include precious metal bullion, a coin of precious metal or antique coin that has a market value greater than its face value, or a merchandise gift certificate. The value of a marketable security is its cost.
6. "Cash profit" means:
 - a. For bingo, excluding a dispensing device, total ending cash on hand, less starting cash on hand and prizes paid by check, for a bingo session.
 - b. For a raffle, total receipts less prizes paid by cash and check.
 - c. For a commingled game of pull tabs, total ending cash on hand, less starting cash on hand and cash prizes paid by check, for a day's activity.
 - d. For a commingled game of pull tabs and bingo involving a dispensing device, total currency withdrawn from a dispensing device, less the value of daubers sold, credits paid on a credit redemption register, cash long or short from an employee bank, and prizes paid, for an interim period.
 - e. For a club special, tip board, seal board, and punchboard, the total daily difference between ending cash on hand and starting cash on hand and less prizes paid by check, for the game.

- f. For a coin board, the total daily difference between ending cash on hand and starting cash on hand, less prizes paid by check and cost of coins, for the game.
 - g. For a sports pool, the total daily difference between ending cash on hand and starting cash on hand, less prizes paid by check.
 - h. For twenty-one, total ending cash on hand, plus drop box cash, less total starting cash on hand, for a day's activity.
 - i. For poker, total ending cash on hand, less starting cash on hand, for a day's activity.
 - j. For calcuttas, total ending cash on hand, less starting cash on hand, prizes paid by check, and refunds to players, for the event.
 - k. For paddlewheels described by subsection 1 of section 99-01.3-11-01, total ending cash on hand, less starting cash on hand and prizes paid by check, for a paddlewheel ticket card.
 - l. For paddlewheels described by subsection 2 of section 99-01.3-11-01, total ending cash on hand, plus drop box cash, less starting cash on hand, for a day's activity.
7. "Conduct of games" means the direct operation of a game on a site, including placing pull tabs or bingo cards in or withdrawing currency from a dispensing device.
 8. "Deal" in pull tabs means each box or bag or series of boxes or bags containing one game with the same serial number. "Deal" in bingo means each box of bingo cards, regardless of the serial number.
 9. "Employee" includes a person employed by an organization, an employee of a temporary employment agency who provides services to an organization, and a volunteer of an organization.
 10. "Flare" refers to a flare, master flare, or prize flare:
 - a. Flare. A flare is a display with the state gaming stamp affixed which describes a punchboard, sports-pool board, calcutta board, deal of pull tabs, club special, tip board, coin board, seal board, and deal of bingo cards involving a dispensing device. The flare for a punchboard is its face sheet. A flare for a sports-pool board, calcutta board, coin board, club special, tip board, and seal board is the game board.

- b. Master flare. A master flare for a game of pull tabs is the same as a "flare" but it does not have a state gaming stamp affixed. A master flare for paddlewheels is described by subsection 4 1 of section 99-01.3-15-06 99-01.3-11-02.
- c. Prize flare. A prize flare is a posted display which describes a winning bingo pattern and prize amount involving bingo cards used in a dispensing device.
11. "Gaming equipment" means a game piece or device specifically designed for use in conducting games, including integral components of a dispensing device such as a currency validator, processing board, and EPROM microchip or other data storage device. The term excludes fill and credit slips and a bingo dauber.
12. "Inside information" is any information about the status of a game when that game is conducted that may give a person an advantage over another person who does not have that information, regardless if the person uses or does not use the information, when providing that information is prohibited by the gaming law or rules. It includes information provided through written, verbal, or nonverbal communications that implies or expresses the number of unsold chances; relationship of a game's cash on hand to its ideal adjusted gross proceeds; number of unredeemed top tier or minor winning game pieces that is not posted, value of a hole card in twenty-one, number under the tape of a sports-pool board, or number under a seal.
13. ~~"Member"--means--a--person--described--by--bylaws--or--articles--of--incorporation--of--an--organization.~~ "Organization" in reference to a local permit includes a "group of people".
14. "Primary game" is the principal game conducted on a site. Determining factors include frequency of conduct, square footage used, duration of time conducted, and volume of activity.
15. ~~"Volunteer" is a member of an organization~~ means a person who conducts games for no compensation. A volunteer may receive a gift not exceeding a total retail value of fifteen dollars for a consecutive twenty-four-hour period, cash tips, and reimbursement for documented business expenses. No gift may be cash or convertible into cash. See definition of employee.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06

99-01.3-02-02. Record check.

1. Unless a person is not required to have a record check according to subsection 5 4, an organization or distributor may not employ the person as an "employee" until the organization or distributor has initiated a record check on the person, or the person has independently requested a record check from the bureau of criminal investigation within one year prior to employment. However, an organization or distributor may temporarily employ a person pending a record check.

2. An organization or distributor shall initiate a record check of a person by submitting a "request for record check" form to the attorney general within fourteen days from when the person begins temporary employment. If the attorney general determines that a fingerprint card or special authorization form, or both, are necessary, the attorney general shall provide this card or form, or both, to an organization or distributor which shall submit the card or form, or both, to the attorney general within ten days from when the card or form, or both, were received. An organization or distributor may only request a record check of a person who has a written promise of employment or who is temporarily employed pending the result of the record check. A person shall attest to the accuracy of the information on the form and authorize the attorney general to release information on any criminal record found, including a copy of the bureau of criminal investigation's criminal history record information, to an organization or distributor which requested the record check.

3. ~~If a person is not employed or does not have a written promise of employment from an organization or distributor and desires a record check, the person may independently request a record check from the bureau of criminal investigation according to North Dakota Century Code section 12-60-16.6. If a person has requested a record check from the bureau of criminal investigation, the person shall provide an organization or distributor with a copy of the bureau of criminal investigation's letter on whether a criminal record was found and, if applicable, a copy of the bureau of criminal investigation's criminal history record information. An organization or distributor shall review this report to determine whether a person is eligible for employment as an employee according to subdivision a or b of subsection 5 of North Dakota Century Code section 53-06.1-06. An organization or distributor shall provide a copy of the bureau of criminal investigation's letter and information to the attorney general.~~

4. For the purpose of this section, the definition of an "employee" is:
 - a. A person who directly operates games on a site;

- b. A person who is a shift or gaming manager;
 - c. A person who is employed by a bar that is not operated by an organization, and who is authorized by an organization under subsection 3 4 of section 99-01.3-12-02 to withdraw currency or a drop box from a pull tab or bingo card dispensing device;
 - d. A person who places a deal of pull tabs or bingo cards in a dispensing device, removes currency from the device, or reimburses a bar for redeemed pull tabs or bingo cards;
 - e. A person who is a member of a twenty-one drop box cash count team; or
 - f. A person who directly sells or distributes gaming equipment for a distributor.
- 5- 4. These employees of an organization are not required to have a record check:
- a. A volunteer, except a gaming manager;
 - b. An employee who is sixteen or seventeen years of age;
 - c. An employee who has an expired work permit and who continues to be employed by the same organization or distributor that the person was employed by when the work permit expired;
 - d. An employee who has had a record check done and, within one year of the record check, has become reemployed by the same organization or employed by a different organization or distributor, or bar than the person was employed by when the record check was done, and who provides the notification copy of a "request for record check" form and, if applicable, a copy of the bureau of criminal investigation's criminal history record information, to the new employing organization or distributor, or bar; or
 - e. ~~To--the--extent--that--the--attorney--general--is--authorized--to exempt--the--following--employees:~~
 - {1} An employee, other than a gaming manager, who only conducts a calcutta, raffle, and or sports pool; or
 - {2} f. An employee, other than a gaming manager, employed by an organization that conducts games on no more than fourteen days during a calendar year.
- 6- 5. The attorney general may require fingerprints of a person. A local law enforcement agency may charge a fee for taking fingerprint impressions.

- ~~7-~~ 6. The fee for a record check is twenty dollars and is not refundable. However, if a federal agency or local law enforcement agency has done a record check, the attorney general may waive the fee. The fee must be remitted by an organization, distributor, or person with the request form.
- ~~8-~~ 7. The attorney general shall do a record check and provide a copy of the "request for record check" form to an organization or distributor which requested the record check and the person on whom the record check was done. This copy must indicate whether a criminal record was found or not found. If a criminal record is found, the attorney general shall also provide an organization or distributor and person with a copy of the bureau of criminal investigation's criminal history record information. An organization or distributor shall review this report to determine whether a person is eligible for employment as an employee according to subdivision a or b of subsection 5 of North Dakota Century Code section 53-06.1-06.
- ~~9-~~ 8. If a person is not eligible for employment but has been temporarily employed pending a record check, an organization or distributor, within five days of receiving the copy of the "request for record check" form, shall terminate the person's employment. This period cannot be extended.
- ~~10-~~ 9. An organization or distributor shall retain the copy of a "request for record check" form for one year from the end of the month in which a person voluntarily separated from employment, a person was involuntarily separated from employment, or the organization or distributor received the copy and a person had or had not been temporarily employed pending a record check.
- ~~11-~~ 10. If a person, while employed by an organization or distributor, pleads guilty to or has been found guilty of a felony or misdemeanor offense referenced by subdivisions a and b of subsection 5 of North Dakota Century Code section 53-06.1-06, the person must immediately notify the organization or distributor. Upon notification, an organization or distributor, within five days, shall terminate the person's employment.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06

99-01.3-02-03. Restrictions and requirements.

1. An employee shall wear an identification tag while working in the gaming area of a site. The tag must clearly display a person's first name and first initial of the last name or the

person's identification number, and organization's name. The tag must be worn on the upper one-third of a person's body. An organization shall provide a tag to a person and is equally responsible with the person that the tag is properly displayed.

2. An organization shall have the gaming law; chapter 99-01.3-02, general rules; chapter 99-01.3-03, accounting rules; and the rules chapter of each game type conducted at a site available in the gaming area for review by any person.
3. An organization shall have a policy manual on its conduct and play of games in the gaming area at a site available for review by any person. The manual must include policies for resolving a question, dispute, or violation of the gaming law or rules. The manual cannot include internal controls.
4. An organization shall maintain a list of all employees on a site including their name, address, and telephone number. The list must be safeguarded and be available to the attorney general and law enforcement officials.
5. An organization shall post a description of the "gaming area" of a site authorization for applying subsection 1, and sections ~~99-01.3-02-05(3)(f)~~; ~~-----99-01.3-02-08(2)~~; 99-01.3-04-03(1)(f), 99-01.3-06-02(3)(d), 99-01.3-08-06(3), ~~99-01.3-12-02(2)(e)~~ 99-01.3-12-02(3)(c), and 99-01.3-12-04(2)(c).
6. An organization's top official shall provide to the governing board and membership in writing each quarter information on an organization's adjusted gross proceeds; cash profit; cash long or short; net proceeds; excess expenses; reimbursement of excess expenses; and, for a fraternal, veterans, or civic and service organization, a list of eligible uses. This information and how it was provided must be included in an organization's records. If an administrative complaint is issued to an organization, the top official shall disclose the allegation, in writing, to the board within seven days from the date the complaint was received. If an allegation is substantiated, the top official shall disclose to the board and membership, in writing, the allegation and sanction imposed within ninety days of the final disposition of the complaint.
7. ~~An organization or employee may not award a door prize unless:~~
 - a. ~~No payment, service, or purchase is required of a person to be eligible;~~
 - b. ~~No door prize may be a game piece or be drawn from a ticket bought for a meal, dance, or other activity;~~

~~e. -- Participation is open to any person at a site; and~~

~~d. -- No purchased ticket references a door prize drawing.~~

8. A person may not modify a state gaming stamp or flare, including a last sale prize. An organization may not, independent of a distributor, add or delete a last sale prize.
9. 8. A person under the age of twenty-one may not conduct or play games, except bingo and raffles, and, at an alcoholic beverage establishment, may not be a member of a drop box cash count team. An employee under the age of eighteen may not count drop box cash. A person under the age of sixteen may not conduct bingo.
10. 9. An employee or a bar employee may not use or provide inside information ~~of a game~~ to any person.
11. 10. The attorney general may waive a rule when it is for the best interest of the gaming industry and public.
12. 11. If an organization does not reapply for a license by September thirtieth or relinquishes a license, it shall return its unplayed games to the attorney general or distributor within fourteen days. An organization may not destroy an unplayed or unreported game without permission of the attorney general.
13. 12. When an organization disposes played deals of pull tabs and bingo cards, club specials, coin boards, tip boards, seal boards, and punchboards, the disposal method must assure complete destruction.
14. 13. If an organization is forced to dispose accounting records or game pieces damaged in a natural or extraordinary disaster, it shall document each item disposed and provide a copy of the documentation to the attorney general within fourteen days before the disposal.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-02-04. Equipment acquisitions and use.

1. An organization shall procure gaming equipment only from a distributor. However, an organization may:
 - a. Buy raffle tickets with a detachable stub from a printer or buy double admission tickets from any vendor;
 - b. Buy, lease, or sell a used pull tab or bingo card dispensing device from or to a distributor or another

organization provided that a distributor records the transaction on a sales invoice; or

- c. Buy, sell, rent, lend, or give its own used playing cards, jar bar, twenty-one or poker table, bingo hard cards, bingo machine, flashboard, dealing shoe, discard holder, chip tray, paddlewheel, or paddlewheel table from or to any organization. An organization may not sell or otherwise provide any of these particular items or any other item of gaming equipment, except playing cards, to any other person unless approval is obtained from the attorney general.
2. An organization may not use or knowingly permit its gaming equipment to be used for an illegal purpose.
3. An organization or an employee may not conduct or ~~be in possession of~~ possess a deal of pull tabs or bingo cards, club special, tip board, seal board, coin board, punchboard, sports-pool board, calcutta board, or series of paddlewheel ticket cards unless its flare has a gaming stamp.
4. If an organization or distributor suspects that a deal of pull tabs or bingo cards, club special, tip board, coin board, or punchboard may be defective, the organization or distributor shall comply with guidelines prescribed by the attorney general.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06, 53-06.1-14

99-01.3-02-05. Lessor and organization - Restrictions.

1. Except as prohibited by subdivision d of subsection 3, a lessor's oncall, temporary, or permanent employee may not, directly or indirectly, conduct games at a site, including accessing a dispensing device, as an organization employee on the same day the person is working in the area of the bar where alcoholic beverages are dispensed or consumed.
2. No game may be directly operated as part of a lessor's business. However, a lessor may donate a gift certificate or cash or merchandise prize, but not a dispensed alcoholic drink, to an organization.
3. A lessor, lessor's spouse, lessor's common household member, management, management's spouse, officer, board of directors member, or, lessor's employee or agent who approved the lease, may not:

- a. As an officer or board member of an organization, participate in an organization's activity decisionmaking that is a conflict of interest with gaming;
 - b. Loan money or provide gaming equipment to an organization;
 - c. Interfere with or attempt to influence an organization's selection of games, determination of prizes, including a bingo jackpot prize, or disbursement of net proceeds. However, a lessor may recommend an eligible use. If the lessor violates this rule, the attorney general may suspend any or all games at the site for up to six months;
 - d. Conduct games, including selling raffle tickets for any organization, at any of the organization's sites or play games any game at the lessor's site. Refer to the definition of "bar employee" for an exception to this rule;
 - e. Require an organization's employee to assist, for or without compensation, in a lessor's business at the site. However, an organization's employee may voluntarily order drinks for customers; or
 - f. ~~Station---an---automated---teller--machine--or--any--other electronic-device-that--provides--a--person--with--a--cash advance--or--withdrawal--in--the--gaming-area;-or~~
 - g. Count drop box cash.
4. Unless an organization or its employee has first received approval from the attorney general, follows guidelines prescribed by the attorney general, or an organization's employee patronizes a lessor in the normal course of a lessor's business, the organization or its employee may not buy a gift certificate or merchandise as a gaming prize directly or indirectly from a lessor, or buy merchandise, food, or alcoholic or nonalcoholic drinks from the lessor for the lessor's employees or patrons. Except as provided by subdivision e of subsection 3, an employee of an organization may not be an agent of the bar for any bar activity.
5. An organization, employee, or bar may not, directly or indirectly, give a free game piece or alcoholic drink to a person to play a game or as a prize in a game at a site.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06

99-01.3-02-06. Rental agreement.

1. ~~If an organization conducts games at a leased site, it shall have a~~ A rental agreement must be signed and dated by ~~authorized persons of both parties~~ a lessor and organization.

2. An agreement must contain:

a. Term of the agreement which must be on a fiscal year basis from July first to June thirtieth or, if a site authorization is for a shorter period, the term is for the shorter period. Except for a site where bingo is the primary game, an agreement may not exceed three years;

b. Monetary consideration;

c. The inclusion of this statement with proper selections made:

"The lessor agrees that the (lessor), (lessor's) spouse, (lessor's) common household members, (management), (management's) spouse, officers, board of directors, and an employee of the lessor who is in a position to approve or deny a lease may not, directly or indirectly, conduct or play games at the site. However, a bar employee may redeem a winning pull tab or bingo card involving a dispensing device on behalf of an organization";

d. If an organization provides a lessor with a temporary loan of funds for redeeming winning pull tabs and or bingo cards involving a dispensing device, a statement that the lessor agrees to repay the entire loan immediately when the organization discontinues using a device at the site; and

e. Statements that:

(1) Bingo is or is not the primary game conducted;

(2) Twenty-one or paddlewheels, or both (involving a playing table), is or is not conducted and the number of tables on which the rent is based;

(3) Pull tabs is or is not conducted;

(4) The rental agreement is automatically terminated, at a lessor's option, if an organization's license is suspended for more than fourteen days or revoked; and

(5) An oncall, temporary or permanent employee, except a bar employee defined by subsection 3 of section 99-01.3-02-01 will not, directly or indirectly, conduct games at the site as an organization employee on the same day the employee is working in the area

of the bar where alcoholic beverages are dispensed or consumed.

3. Rent must be a fixed dollar amount per month.
 - a. A participatory or graduated rate arrangement based on gross proceeds or adjusted gross proceeds is prohibited.
 - b. If bingo is the primary game and it is not conducted through a dispensing device or if a site is leased by an organization that has the alcoholic beverage license for that site, the monthly rent must be reasonable. Factors include time usage, floor space, local prevailing rates, and available sites and services. An organization may pay seasonal expenses, such as snow removal, air-conditioning and heating, to a vendor.
 - c. If bingo is not the primary game or if bingo is the primary game and it is conducted through a dispensing device, the maximum monthly rent must be according to subsection 5 of North Dakota Century Code section 53-06.1-11. Special considerations are:
 - (1) If two or more organizations conduct twenty-one or paddlewheels, or both, involving a table and pull tabs for less than a month at a temporary site which is a public or private ~~premises~~ premise, or if two or more organizations are issued site authorizations to conduct games at a site on different days of the week, the maximum monthly rent, in the aggregate, may not exceed the limit set by subsection 5 of North Dakota Century Code section 53-06.1-11; and
 - (2) If poker is conducted with twenty-one, paddlewheels, or pull tabs, no additional rent is allowed. Otherwise, the rent for poker must be reasonable.
 - d. Except for applying ~~subsections~~ subsection 3 or 4 of section 99-01.3-03-04, an organization or employee may not pay, nor may a lessor accept, any additional rent or expense from any source directly or indirectly for any other purpose, such as office or storage space, snow removal, maintenance, equipment, furnishings, or utilities. Except for a leased site at which bingo is the primary game conducted, an organization may not pay for any capital or leasehold improvements. ~~Unless an organization or its employee has first received approval from the attorney general or an employee patronizes a lessor in the normal course of a lessor's business, the organization or its employees may not buy a gift certificate or merchandise as a gaming prize from the lessor or buy merchandise, food, or alcoholic or nonalcoholic drinks for the lessor's employees or patrons.~~

4. If there is a change in the monthly rent or any other material change to a rental agreement, the agreement must be amended and a copy of it provided postmarked or hand-delivered to the attorney general ~~fourteen-days~~ before its effective date.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06, 53-06.1-07.4

99-01.3-02-07. Gaming manager, shift manager, and reporting violations.

1. An organization shall designate one person as the gaming manager. A gaming manager may not be an employee of a temporary employment agency. A gaming manager is the person who manages is responsible and held accountable for managing and controls controlling the overall gaming operation. A person may be a gaming manager for two or more organizations ~~at-the-same-time-if-each-organization-had-total-adjusted-gross proceeds-for-the-previous-year-ended--June--thirtieth--of--one hundred--thousand--dollars--or--less.~~ When the gaming manager changes, an organization shall notify the attorney general on a prescribed form within fourteen days of the change.
2. An organization shall designate an employee at a site as a shift manager for each shift of each day. A shift manager shall be on the site during that shift and may not be an employee of a temporary employment agency. A shift manager is a person who is ~~assigned-the-responsibility-to~~ responsible and held accountable for regularly manage managing games at a site and ensure ensuring compliance with the gaming law and rules by an employee, lessor, and player.
3. An organization, distributor, or gaming or shift manager shall immediately report any material violation of the gaming law and rules and any gaming-related criminal activity to the gaming division of the office of attorney general and a local law enforcement agency.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-02-08. Currency of play, credit play, and borrowing from gaming funds.

1. Play of a game must be in United States currency. Play of a game must be on a cash basis. An organization may, by policy, accept checks. No credit may be extended to a player. The consideration to play a game must be paid before play. An employee may not loan money to a player, accept a postdated

check, allow a player to alter a check, permit a player to establish an account by depositing cash for making periodic withdrawals, or any similar practice. An organization may allow a player to buy back a check with cash and may return a player's check to the player as part of a prize payout but may not unnecessarily delay the bank deposit of that check.

2. ~~An organization may not station or allow to be stationed an automated teller machine or any other device that provides a person with a cash advance or withdrawal in the gaming area.~~
3. An employee may not borrow gaming funds as a personal loan or substitute a personal check for gaming funds.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-02-09. Persons restricted from playing games.

1. An employee who is a shift or gaming manager may not play any game at any of the organization's sites. An employee who services a pull tab or bingo card dispensing device may not play the device at that site.
2. An employee may not play any game while on duty. However, for the game of bingo, if an organization's total gross proceeds for the previous fiscal year, for which tax returns were filed, was twenty-five thousand dollars or less, a volunteer who is not a bingo caller, shift manager, or gaming manager, may play bingo not involving a dispensing device while on duty.
3. An employee may not play pull tabs, including through a dispensing device, tip board, club special, coin board, or punchboard until after three hours of active play have occurred, ~~or two deals have been added to a game of pull tabs~~, since the employee went off duty at that site. "Active" play means that a game has been available for play. A player may not provide and an employee may not accept an unopened pull tab as a tip.
4. An employee who is not a volunteer may play twenty-one while off duty at that site only on a table that has a video surveillance system.
5. A bar employee may not play bingo or pull tabs, which involve a dispensing device, while on duty. A bar employee may play bingo involving a device while off duty, and may play pull tabs involving a device while off duty after three hours of active play have occurred, ~~or two deals have been added to the game~~, since the bar employee went off duty at that site,

unless otherwise prohibited by subdivision d of subsection 3 of section 99-01.3-02-05.

6. An employee or bar employee taking a temporary break is still considered on duty.
7. If an organization allows an employee to play games at its site, it shall post the policy at that site.
8. A shift manager may not permit and an employee may not allow an employee's common household member, spouse, child, parent, brother, or sister, ~~or-in-laws~~, at a site, to:
 - a. Play pull tabs of a game while the employee is on duty as a jar operator for that game, regardless if the employee takes a temporary break or rotates to conduct another game. This rule does not apply to an employee who only places pull tabs in or withdraws currency from a dispensing device; or
 - b. Play twenty-one or paddlewheels at a table when the employee is dealing or is a wheel operator at that table.
9. An organization may prohibit a person from playing games at a site.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-02-10. Training and acknowledgment of the gaming law and rules.

1. A gaming manager and ~~bookkeeper~~ a person who is responsible for audit or bookkeeping services, who have no previous gaming-related experience as a gaming manager or bookkeeper, within ~~ninety~~ thirty days of starting employment, and, ~~--within ninety--days--of--each--promulgation--of--rules;~~ shall request training from the attorney general. A gaming manager and a person who is responsible for audit or bookkeeping services, within thirty days of each promulgation of rules, shall request training from the attorney general. The training must include the gaming law and rules, recordkeeping, internal control, and tax return.
2. An employee shall read and acknowledge in writing, within thirty days of employment and the effective date of new gaming laws or rules, that the person has read and understands the provisions of the gaming law and rules which relate to the person's job duties. The attorney general shall designate the provisions to be read. An acknowledgment must be dated,

reference the provisions, and be part of the person's personnel file.

3. This Except for a gaming manager and a person who is responsible for audit or bookkeeping services, this section does not apply to an employee who only conducts a raffle, calcutta, poker, paddlewheels described by subsection 1 of section 99-01.3-11-01, and or sports pool.
4. This section does not apply to an independent contractor.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-02-11. Independent contractor services restricted.

- 1: Only an organization member, employee, or member of an auxiliary to an organization may manage, control, or conduct games. ~~An organization may employ, on a temporary basis of up to three months, a person to serve in an advisory capacity;~~
- 2: An organization may have an independent contractor, including another organization, provide only these the following gaming-related services to it. The organization shall ensure that the independent contractor complies with the gaming law and rules:
 - a: 1. Summarize or Perform audit a services, including auditing closed game games and daily activity, do interim audits of games, verify bank deposits, and reconcile inventory of gaming equipment and cash banks;
 - b: ~~Prepare budgets, financial statements, tax returns, payroll reports, and reconcile bank statements;~~
 - e: 2. Perform accounting and bookkeeping services, write checks, reconcile inventory, and store records and played games including recording receipts and disbursements, processing payroll and payroll reports, reconcile bank statements, write checks, and prepare budgets, financial statements, and tax returns. However, an independent contractor may not have signatory authority of a bank account;
 - d: ~~Repair and store a dispensing device;~~
 - e: ~~Train personnel how to conduct games and operate a dispensing device; and~~
 - f: ~~Take a locked bank bag or locked drop box to a financial institution provided the independent contractor has no access key; and~~

~~g. An independent contractor that is a security agency or financial institution may count drop box cash.~~

3. Train personnel how to conduct games and operate a dispensing device;
4. Repair and store a dispensing device;
5. Access, store, and review videotapes;
6. Store records and played games;
7. Take a locked bank bag or locked drop box to a financial institution provided the independent contractor has no access key; and
8. An independent contractor that is a security agency or financial institution may count drop box cash.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06

99-01.3-02-12. Audit and inspection of facilities and records.

~~1. All records of an organization, distributor, and manufacturer are subject to audit by the attorney general, without notice. The audit may be performed at a site, office, or location chosen by the attorney general. Upon an audit, an organization, distributor, or manufacturer shall provide records and assistance to the attorney general as requested. A person may not prohibit or impede an audit.~~

~~2. A site and an organization's, distributor's, and manufacturer's facility must at all times be open to inspection, without notice, by the attorney general or a local law enforcement official. Repealed effective July 1, 2000.~~

History: Effective May 1, 1998.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-02-13. Denial, suspension, or revocation of a license.

1. The attorney general may deny, suspend, or revoke a license of an organization, distributor, or manufacturer when the applicant or licensee has:
 - a. Violated, failed, or refused to comply with any provision of the gaming law or rules or any other law of North Dakota or has knowingly allowed, caused, aided, abetted,

or conspired with another person to cause the person to violate any provision of the gaming law or rules or any other law of North Dakota;

- b. Falsified information on a license application or obtained a license by fraud, misrepresentation, concealment, or mistake;
 - c. Denied the attorney general access to a site or manufacturing facility, or failed to timely provide information requested or required by the attorney general, gaming law, or rules;
 - d. Misrepresented, or failed to disclose, a material fact to the attorney general; or
 - e. Engaged in any act or practice to defraud or cheat a person, or has used a device or scheme to defraud a person.
2. Upon revocation of a license, an organization, distributor, or manufacturer shall return the license and, if applicable, site authorization to the attorney general.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-03, 53-06.1-14, 53-06.1-16

CHAPTER 99-01.3-03

99-01.3-03-01. Accounting records and system of internal control.

1. Except as otherwise provided by rule, an organization shall retain purchase invoices, receipts, accounting and bank records, including receipts documenting eligible uses and solicitations for net proceeds, for three years from the end of the quarter in which the activity was reported.
2. Except for an organization that has gross proceeds of twenty-five thousand dollars or less, only conducts a calcutta, raffle, sports pool, and or poker, or is involved only in conducting no more than two events during a fiscal year of July first through June thirtieth and each event lasts no more than fourteen calendar days, a governing board of the organization shall establish a written system of internal control, comprised of accounting and administrative controls. An organization may not permit any person to review this system, except the attorney general, law enforcement officials, authorized employees, and an adviser. If the attorney general determines that a system of internal control is inadequate, an organization shall remedy the inadequacy.
3. Accounting controls must include procedures and records that achieve these objectives:
 - a. Transactions are executed as authorized by management;
 - b. Gaming activity is properly recorded;
 - c. Access to cash, games, and other assets is permitted as authorized by management; and
 - d. Assets recorded on records are periodically compared to actual assets and any differences are resolved.
4. Administrative controls must describe the interrelationship of employee functions and their division of responsibilities.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-03-02. Gaming account.

1. An organization shall maintain at least one gaming account at a financial institution located in North Dakota. This Except as provided by subsection 3, this account must be used for depositing gaming funds and transferring net proceeds to a

trust fund account. For purposes of this rule, net proceeds is calculated as adjusted gross proceeds, less gaming and excise taxes, and less the greater of the actual gaming or allowable expenses. This transfer must be made by the last day of the quarter following the quarter in which the net proceeds were earned. The gaming account may be used for payment of expenses. An organization may transfer funds to its general account for payment of expenses. ~~This account must be at a financial institution located in North Dakota.~~ If an organization is not required to maintain a trust account, a disbursement of net proceeds to an eligible use must be payable to the ultimate use or recipient.

2. Interest earned is other income. A service fee is an expense.
3. Except to reimburse the account for a negative imbalance, and to deposit raffle nongaming funds, bingo dauber receipts, fees from players who use bingo card marking devices, prizes paid by an insurance company to an organization for payment to a player, and sales tax, an the organization may not deposit nongaming funds into a gaming account.
4. If an organization buys a qualifying item of video surveillance equipment according to subsection 2 of section 99-01.3-08-04 and later sells or rents the item, it shall make a record of the transaction, deposit the gross receipts or rental income directly into its gaming account, and make a proper adjustment on the tax return.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-11

99-01.3-03-03. Trust account.

1. Unless an organization only conducts ~~games for not~~ a calcutta, raffle, sports pool, and or poker, or is involved in conducting no more than two events per during a fiscal year of July first through June thirtieth and each event lasts no more than fourteen calendar days, an organization shall maintain at least one trust account at a financial institution located in North Dakota. Except to reimburse the account for a negative imbalance and as provided by subsection 5, this account must receive only funds from a gaming account. This account is used only to disburse net proceeds to eligible uses. A transfer of net proceeds to another trust account or to a closely ~~connected~~ related organization is not a disbursement of net proceeds. Net proceeds cannot be pledged as collateral for any loan.
2. An organization shall disburse net proceeds within a reasonable period. ~~However,--if--an--organization--does--not~~

~~reapply for a license before July first, relinquishes its license, or its license is revoked, all net proceeds must be disbursed within ninety days of this action unless an extension is approved in writing by the attorney general. The disbursement must be reported to the attorney general.~~

3. Except for transferring funds to another trust account, an organization may not transfer funds from a trust account to any other bank account. A disbursement must be payable directly to the ultimate use or recipient. However, an organization may make a payment directly to a credit card company for charges on a credit card if the credit card use is restricted to eligible uses and may only reimburse its general account for compensation that qualifies as an eligible use and which is paid from the general account. A reimbursement must be documented by a supporting schedule.
4. An organization may not deduct an actual loss on an investment of net proceeds in a marketable security on the tax return. Interest earned and actual gains on an investment of net proceeds in a marketable security must be disbursed to an eligible use. A service fee is an adjustment to the account's balance.
5. ~~Unless an organization is exempt from maintaining a trust account, if it~~ If an organization is involved in any of these the following types of transactions, it shall deposit the net proceeds or income directly into its trust account or, if it is exempt from maintaining a trust account, deposit the net proceeds or income into its gaming account, and make a proper adjustment on a tax return:
 - a. The organization receives net proceeds from another organization and the net proceeds have been designated for a specific eligible use which the recipient has paid for or will pay for with net proceeds, or the net proceeds have not been designated for a specific eligible use;
 - b. The organization loans net proceeds and receives a repayment of principal or interest, or both; or
 - c. A recipient returns net proceeds or interest income or reimburses the organization.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06

99-01.3-03-04. Restrictions and requirements.

1. An organization is allowed an expense according to subsection 2 of North Dakota Century Code section 53-06.1-11

and an additional expense for qualifying items of security and video surveillance equipment according to subsection 2 of section 99-01.3-08-04 or based on guidelines prescribed by the attorney general. The allowable expense amount may be used for any purpose that does not violate the gaming law or rules.

2. An organization may not base an employee's compensation on a participatory percentage of gross proceeds, adjusted gross proceeds, or net proceeds. An organization may pay a fixed bonus through an incentive program.
3. An organization may not pay or reimburse, nor may a lessor accept a payment or reimbursement from an organization, for any media advertising done by the lessor or any other person that is related to games at a site unless the organization's share of this expense is reasonably prorated to the benefit the organization receives and the media advertising is voluntary by the organization.
4. An organization may not pay or reimburse a lessor or share in the cost, nor may a lessor accept a payment, reimbursement, or sharing of the cost from an organization, of any sign advertising related to games at a site unless the sign is not owned by the lessor. If a lessor rents an advertising sign from a vendor, the organization's share of this expense must be prorated to the benefit the organization receives and the sign advertising is voluntary to the organization.
5. A player's uncollectible check returned by a bank as unpaid for any reason and which is uncollectible after a good faith effort of collection by an organization is a deduction toward adjusted gross proceeds based on guidelines prescribed by the attorney general an expense. If an organization establishes a policy to reduce a player's cash prize by the amount of the player's uncollectible check and award the player the difference, if any, the organization shall post that policy.
6. If a door prize is awarded as a promotion of games, the cost of the door prize is an expense.
7. A net cash short is an expense and a net cash long is other income for a quarter.
8. Only an unopened pull tab, unopened set of stapled jar tickets, or set of banded jar tickets that has the band intact may be accounted for as unsold or defective when a game is reported on a tax return. An organization shall account for any single unsold or defective jar ticket at a proportional selling price of a stapled set of jar tickets.
9. If foreign currency is exchanged into United States currency, any loss is an expense.

10. ~~No~~ The attorney general shall determine whether a theft of an organization's gaming funds can be deducted toward adjusted gross proceeds on the its tax return unless-an and notify the organization. The attorney general shall consider whether the organization:
- a. Immediately reported the theft to a local law enforcement agency and ~~gaming-division-of-the-office-of~~ the attorney general;
 - b. Has documentation that substantiates the theft amount;
 - c. Had physical security of the funds;
 - d. Has an adequate system of internal control; and
 - e. Incurred an identifiable theft.
11. If an organization rents out gaming equipment, the income is nongaming income.
12. ~~If--an--employee--needs-to-replenish-or-increase-cash-on-hand, the-employee-shall:~~
- a. ~~Execute--a--cash--withdrawal--from--the-gaming-account-and reference-the-specific-game's-cash-bank;-or~~
 - b. ~~Record--a-check-amount,-and-the-amount-of-cash-which-is-to be-withdrawn,-on-a-deposit-slip-of-the-gaming-account--and reference--the--specific--game's--cash--bank;--An-employee shall-initial-and-date-the--deposit--slip--which--must--be validated.~~
13. All accounting records must be completed and initialed or signed with a nonerasable ink pen. An organization shall maintain a register of each employee's name and the employee's initials or signature as the employee normally writes them on a record or report. The initials or signature of a person on a record or report attests that to the person's best knowledge the information is true and correct.
14. 13. A fee charged a player for entry into a twenty-one ~~or-poker~~ tournament, less the cost of a prize awarded, must be reported ~~on--a--tax--return;--The-amount-reported-for-twenty-one-is~~ as other income. The-amount A fee charged a player for entry into a poker tournament, less the cost of a prize, must be reported for-poker-is as gross proceeds.
15. 14. For computing prizes on a tax return, a merchandise prize and a gift certificate are valued at an organization's actual cost and a donated prize is valued at zero. An organization shall document the cost of a merchandise prize.

- 16- 15. If a raffle, sports pool, or calcutta prize is forfeited and has previously been reported on a tax return, an organization shall report the prize as other income.
- 17- 16. When a deal of pull tabs, deal of bingo cards involving a dispensing device, club special, tip board, seal board, coin board, sports-pool board, calcutta board, or a series of paddlewheel ticket cards is placed in play, an employee shall compare the game serial number on the pull tab, bingo card, board, or card to the serial number on the state gaming stamp. If the two serial numbers are different, an employee shall immediately notify the distributor and complete a prescribed form and attach it to the deal's flare prescribed by the attorney general.
- 18- 17. If an organization pays a fee directly or indirectly to an insurance company to insure a contingency cash or merchandise prize for bingo or a raffle, the fee is an expense. If the insurance company pays or provides a prize directly or indirectly to a winning player, it is not reported as a prize on a tax return. ~~However, it is classified as a bingo prize in applying subsection 26 of section 99-01-3-04-03.~~
18. If an organization conducts twenty-one, it may pay monthly rent for more than one table provided that, for each additional table, the table is used at least thirteen times a quarter. This level of activity is based on a site's historical average experience, or seasonal activity, of each of the previous four quarters, regardless of which organization conducted twenty-one at the site. If an additional table is used at least thirteen times in at least one but not all of the previous four quarters, the allowable monthly rent for that table must be prorated over all the active months of the licensing year. For example, if a second table was used at least thirteen times in only two of the previous four quarters, the additional monthly rent for the second table would be a maximum of two hundred dollars per month multiplied by six months (totaling one thousand two hundred dollars) and prorated to one hundred dollars per month for the licensing year.
19. If an organization does not intend to reapply for a license for the next fiscal year of July first through June thirtieth, its license is revoked or license application is denied, and it has net proceeds that are not disbursed, the organization shall file an action plan with the attorney general. The plan must be filed within thirty days of the expiration of the license or when the license is relinquished or revoked or the license application is denied, and include:
- a. The organization's financial statements for gaming and nongaming activity for the most recent year;

b. Planned sources of funds, dates of fundraising activities, and net income; and

c. Planned timetable for disbursing all the net proceeds and anticipated uses.

If the action plan is not timely filed, net proceeds must be disbursed within ninety days of the expiration of the license or when the license is relinquished or revoked or the license application is denied. The disbursement must be reported to the attorney general.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06, 53-06.1-11

99-01.3-03-05. Reconciliation of net proceeds and trust account carryovers. If an organization's gaming account check register balance is less than its net proceeds carryover balance and or its trust account check register balance is less than its trust account carryover balance, or both, as reported on the tax return for the quarter ended December thirty-first, the organization shall deposit the amount of the difference in the respective account by January thirty-first or an extended date approved by the attorney general. The source of the deposit must be nongaming funds. An organization shall provide the attorney general with evidence of the deposit.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-03-06. Gross proceeds, IOUs, documenting cash and chip banks.

1. Gross proceeds for a game must be separately maintained while the game is conducted. An organization shall use a separate cash bank for each game. If an employee needs to replenish a cash bank by withdrawing funds from the gaming account, the employee shall execute a cash withdrawal by check or authorized transfer and reference the games' cash bank. If a game's separate cash bank needs replenishment and another game's cash bank, cash reserve bank, or nongaming funds are used as a source of cash, an IOU form must be used to record the loan and payback. An IOU form must include:

a. The source and destination of the funds;

b. For a club special, coin board, tip board, seal board, series of paddlewheel ticket cards, and punchboard, the game's gaming stamp number;

- c. Amount and date of loan and repayment; and
 - d. Initials of a cash bank cashier or an employee for each transaction.
2. An organization shall document each game's daily starting and ending cash on hand, including a cash reserve bank. Unless there is only one employee on duty when a site opens or closes, ~~the two persons shall count of the cash must--be--done by--two--persons.~~ Both persons shall independently count the cash in the presence of each other and resolve any difference. Then, one person shall record the count, and both persons shall initial the record.
 3. An organization shall document the daily starting and ending twenty-one and paddlewheel chip (including betting and--payout chips) banks. Unless there is only one employee on duty when a site opens or closes, ~~the two persons shall count of the chips must--be--done-by-two-persons and be-reeorded~~ record the count by each denomination of chip. Both persons shall independently count the chips in the presence of each other and resolve any difference. Then, one person shall record the count, and both persons shall initial the record.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-03-07. Prize register. For a bingo session, raffle drawing, and sports-pool board, and calcutta board, an employee shall legibly print this information on a prize register when a prize is issued to a player:

1. Name of the site;
2. Game type:
 - a. Bingo - Date of the session and game number.
 - b. Raffles - Date of the drawing, winning ticket number, and initials of two employees who conducted the drawing unless the initials are on another document.
 - c. Sports pools - Date of the sports event, winning score, and gaming stamp number;.
 - d. Calcutta - Date of the sports event and gaming stamp number;
3. Amount of a cash prize or a description and cost of a merchandise prize;

4. Name and address of the player. If a record of win is made or a cash prize or retail value of a merchandise prize is fifty dollars or less, a player's address is not necessary;
5. Total amount of cash and cost of merchandise prizes awarded; and
6. Initials of preparer.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-03-08. Record of win.

1. If a player wins a last sale prize or a seal prize, cash prize greater than two hundred dollars, or a merchandise prize that has a retail value exceeding two hundred dollars, an employee shall record the win. If a pull tab has two or more winning prize patterns, the requirement is based on the value of each prize pattern. A record of win must be completed for the total cash prize even if a player splits the prize with another person. The record must be a check drawn from the gaming account, numbered receipt, or flare of a sports-pool board, calcutta board, club special, tip board, coin board, punchboard, or seal board. A bar employee shall print this information on a receipt or an employee shall print this information on a check, receipt, or flare, unless it is already provided:
 - a. Name of the site;
 - b. Game type and, by game type:
 - (1) Bingo, excluding a dispensing device - Date of the session, game number, cash prize amount or description of a merchandise prize and retail value, and date of prize payout if different from the date of the session.
 - (2) Bingo, involving a dispensing device - Name of the game, cash prize amount, date of activity, and game serial number.
 - (3) Raffles - Date of the drawing, winning ticket number, cash prize amount or description of a merchandise prize and retail value, and date of prize payout if different from the date of the drawing.
 - (4) Pull tabs, including a dispensing device, punchboards, club special, tip board, seal board, and coin board - Name of the game, cash prize amount or

description of a merchandise prize and retail value, date of activity, and game serial number.

(5) Sports pools - Date of the event, cash prize amount, date of prize payout, and gaming stamp number.

(6) Calcuttas - Date of the event, cash prize amount, date of prize payout, and gaming stamp number;

c. A player's full name, address, and driver's license number, including the state of license registration. If the player is not personally known by a bar employee or an employee, this information must be recorded from a pictured driver's license or tribal, government, or military identification. If a player does not have one of these pictured identifications, a bar employee or an employee shall record the player's full name from two other forms of identification or mail the prize to the player; and

d. Initial of a bar employee or an employee.

2. After a record of win is completed at a site, a player shall sign and date it. However, this rule does not apply to a prize mailed to a player.

3. Unless a prize is for a last sale prize feature, a bar employee or an employee shall print, in ink, the check or receipt number on a pull tab, punchboard punch, or a bingo card involving a dispensing device.

4. A player who has actually won a prize shall claim the prize. A bar employee or employee may not falsify or permit a player to falsify a record of win or enable a player to conspire with another person to have the other person claim a prize. If a bar employee or employee determines that a player has falsified or attempted to falsify a record of win before the prize payout, the bar employee or employee shall deny the player the prize and notify the attorney general and local law enforcement agency.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-11

99-01.3-03-09. Inventory records of games, paper bingo cards, tickets, cash banks, and chips and reconciliation.

1. An organization shall maintain master and site inventory records of all deals and games that have a state gaming stamp affixed to their flares. The master records must include the sales invoice number and, date received, name of game, dates

of issuance to and received from a site, site name, period played, and quarter tax return on which reported, by gaming stamp number. ~~Unless an organization has only one site that is the location of its home office, it shall also maintain inventory records at each site.~~ The site records must include the gaming stamp number, date received, date placed, and date closed, by site and name of game. If an organization has only one site that is the location of its home office, it may combine the master and site inventory records. Each quarter an organization shall reconcile its inventory records of all deals and games that have a state gaming stamp affixed to their flares that are recorded as being in play and in inventory as unplayed to the items that are actually in play and in inventory. A person shall count these items that are actually in play and in inventory, compare this count to the inventory records, and resolve any difference.

2. An organization shall maintain master and site inventory records of paper bingo cards. The master records must include the for each primary color and type of card, the sales invoice number and, date received, primary color or serial number of each type of card and collated booklet, number of faces per card, number of cards per collated booklet, number of cards bought, dates of issuance to a site, and site name, or include information prescribed by a method approved by the attorney general. An organization shall also maintain inventory The site records at each site including the must include site name, primary color or and type of card, serial number of each type of card and collated booklet, quantity received, date received, and quantity issued and returned for each session, or include information prescribed by a method approved by the attorney general. Each quarter an organization shall reconcile its inventory records of paper bingo cards that are recorded as being in inventory to the cards that are actually in inventory. A person shall count these items that are actually in inventory, compare this count to the inventory records, and resolve any difference.
3. An organization shall maintain master inventory records of rolls of tickets. ~~Each roll of tickets must be recorded on a log when received. A log~~ The record must include the date each roll is acquired, ticket color, beginning and ending ticket numbers, and number of tickets on the roll. Each quarter an organization shall reconcile its inventory of rolls of tickets that are recorded as being at the home office and site to the rolls of tickets that are actually on hand. A person shall count the rolls of tickets at the home office and site, compare this count to the inventory records, and resolve any difference.
4. An organization shall maintain a master record of ideal cash bank amounts and account for permanent increases or decreases. For each cash bank, the record must include the site, game

type, game identifier, and amount. When a cash bank is started or when the ideal amount is permanently increased or decreased, the date, check number, amount, source or destination of the funds, and updated ideal cash bank amount must be recorded. Temporary increases or decreases in a daily cash bank do not need to be recorded. Each quarter an organization shall reconcile its master cash bank records to the actual cash banks. A person shall count the cash banks, compare the count to the current ideal cash bank amount recorded on the record, and resolve any difference.

5. An organization shall maintain a twenty-one and paddlewheel chip (betting and payout chips) master and site inventory logs to record additions and reductions of chip inventories records. The records must include the dates chips are acquired, transferred to, and received from a site and running totals, by value of chip. Each quarter an organization shall reconcile its inventory of twenty-one and paddlewheel (betting and payout chips) chips that are recorded as being at the home office and site to the chips that are actually in inventory. A person shall count the chips in inventory at the home office and site, compare this count to the inventory records, and resolve any difference.

~~5. Each quarter an organization shall reconcile its inventory records of paper bingo cards, and all deals and games that have a state gaming stamp affixed to their flares that are recorded as being in play and in inventory as unplayed, to the items that are actually in play and in inventory as unplayed. A person shall inspect and count these items that are actually in play and in inventory as unplayed, compared this count to the inventory records, and resolve any difference. The inspection and count must be done by a person who does not have access to inventory.~~

~~6. Each quarter an organization shall reconcile its inventory of twenty-one and paddlewheel (betting and payout chips) chips that are recorded as being at the home office and site to the chips that are actually in inventory at the home office and site. A person shall count the chips in inventory at the home office and site, compare this count to the inventory records, and resolve any difference. The count must be done by a person who does not have access to inventory.~~

7. A The count and reconciliation must be done by a person who does not have access to deals, games, paper bingo cards, rolls of tickets, cash banks (and who does not have sole signatory authority of the gaming account), or chips. It must be documented, including the name and title of the person who does the count and reconciliation, date and procedure performed, result, corrective action taken, and initials of that person.

History: Effective May 1, 1998; amended effective July 1, 2000.
General Authority: NDCC 53-06.1-01.1
Law Implemented: NDCC 53-06.1-01.1

99-01.3-03-10. Bank deposit and audit.

1. The cash profit, less a documented increase or plus the decrease in the starting cash on hand for the next gaming activity, plus cash and merchandise prizes paid by check and cost of coins for a coin board, must be deposited in the gaming account by the third banking day following the day of a bingo session; club special, coin board, tip board, seal board, or punchboard is removed from play; sports-pool game; calcutta event; poker occasion; day's or interim period's pull tab, twenty-one or paddlewheel activity; or closed bingo prize flare involving a dispensing device. However, the ~~total~~ receipts for a raffle, calendar, and master sports-pool board must be deposited in the gaming account by the third banking day following receipt of the cash by the person responsible for the activity.
2. For a day's pull tab activity, bingo session, raffle drawing, poker occasion, twenty-one and activity, paddlewheel activity, and interim period's pull tab or bingo activity involving a dispensing device, a deposit slip or receipt must reference a site, name of the game, date of activity, and deposit amount. For a club special, coin board, tip board, seal board, punchboard, sports-pool board, calcutta board, and series of paddlewheel ticket cards, a deposit slip or receipt must reference a site, name of the game, date removed from play, deposit amount, and gaming stamp number. For all game types, an employee who prepares a deposit shall initial the bank deposit slip. If another employee makes the bank deposit and has access to the cash, the employee shall also initial the bank deposit slip.
3. If an organization prepares a deposit slip for more than one type of game, it shall record on the deposit slip or a supporting schedule by each game type, the information required by subsection 2. A supporting schedule must reconcile to a validated bank deposit slip or receipt. A validated bank deposit slip or receipt and any supporting schedule must be included with the accounting records of each game type. If a bank does not return a validated bank deposit slip that contains information required by subsection 2, an organization shall prepare a duplicate deposit slip, make a copy of it, or prepare a supporting schedule that reconciles to the bank deposit amount.
4. For a bank deposit, a person shall record the amount to be deposited on the game's accounting record and retain the copy of a two-part bank deposit slip and any supporting schedule

with the accounting record. This person shall forward the accounting record, copy of the bank deposit slip, and any supporting schedule directly to a bookkeeper. A second person shall take custody of the bank deposit funds and the original of the bank deposit slip and take them to a financial institution or arrange for the funds to be deposited. If, before the bank deposit is made, the custody of bank deposit funds is transferred directly from a person to another person, face-to-face, and the cash is accessible to be counted, both persons shall independently count the cash in the presence of each other and resolve any difference. Then, one person shall record the amount on the accounting record, and both persons shall initial and date the record. The person who makes the bank deposit shall forward a validated bank deposit slip or receipt directly to a bookkeeper. An organization shall comply with this rule unless it uses another bank deposit procedure which has proper accounting control.

5. If an employee prepares or has custody of a bank deposit which is not scheduled to be immediately deposited, the employee shall safeguard the funds.
6. An employee who did not have access to the cash to be deposited shall, within a reasonable time, verify that the amount recorded on a daily or interim accounting record to be deposited was actually deposited according to a bank statement. The employee shall document the verification by initialing the accounting record and dating it. If more than one deposit amount is recorded on an accounting record, the employee shall initial the record ~~and--date--it~~ for each verified deposit amount and date the record.
7. A closed game or daily activity must be audited, within a reasonable time, by a person who did not conduct the game and who did not have access to the total receipts or cash profit for the activity. This person may not have sole signatory authority of the gaming account. A person who audits a closed game or daily activity shall verify the number and value of unsold chances, gross proceeds, number and value of prizes, adjusted gross proceeds, and cash profit. If the audit reveals an irregularity, the person shall notify the appropriate organization representative.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-03-11. Audit. ~~A--closed-game-or-daily-activity-must-be audited;-within-a-reasonable-time;-by-a-person-who-did-not--conduct--the game--and--who--did-not-have-access-to-the-total-receipts-or-cash-profit for-the-activity;--This-person-may-not-have-sole-signatory-authority--of the-gaming-account;--A-person-who-audits-a-closed-game-or-daily-activity~~

shall verify the number and value of unsold chances, gross proceeds, number and value of prizes, adjusted gross proceeds, and cash profit. If the audit reveals an irregularity, the person shall notify the appropriate organization representative. Repealed effective July 1, 2000.

History: Effective May 1, 1998.
General Authority: NDEC-53-06.1-01.1
Law Implemented: NDEC-53-06.1-01.1

CHAPTER 99-01.3-04

99-01.3-04-01. Bingo.

1. This chapter applies to bingo not involving a bingo card dispensing device.
2. "Bingo" is when a player buys a card or uses a bingo card marking device and marks squares as a caller announces a letter and number or only a number for speedball bingo. Speedball bingo is a game in which a bingo caller announces the drawn numbers in a fast manner. Except for a bonanza bingo or a game that has all of its numbers predrawn, a winning player of a game is the player who first covers a predetermined pattern of squares by matching letters and numbers on a bingo card with balls drawn and called for that or another game and the player has timely called bingo. Except for a game that has all of its numbers predrawn, there must be a winning player. Bonanza bingo is a game in which a bingo caller predraws a certain quantity of balls before a session begins for a predetermined pattern and players buy and play cards throughout the session. During the session when the bonanza bingo game is conducted, unless a player has already won, the caller will draw additional balls until a player wins the game. In a game in which a bingo caller draws a certain quantity of balls for the game before a session begins for a predetermined pattern, players may buy and play the cards throughout the session.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-04-02. Equipment. An organization shall use this equipment:

1. A device from which balls are withdrawn or a random number generator. If a random number generator is not used, a set of either seventy-five or ninety balls bearing the letters and numbers corresponding to the bingo cards in play. The balls must be stored in a safe storage place when not in use and be available for inspection by a player before a session begins. The balls must be equal size, weight, shape, and balance, and must be in a receptacle before each game begins. A flashboard is optional.
2. Hard cards and paper cards, including paper cards that have two numbers in a square or enable a player to select and print numbers on a blank card, may be used. A blank card may be used if:

- a. A card is a two-part carbonless card with a control number and five columns of numbers;
 - b. A player shall legibly print in ink one number in each blank square. A middle square, if any, may be a free space. The numbers cannot be repeated on a card and they must correspond with the letters and numbers of the bingo balls;
 - c. After a card is completed, a player shall provide an employee with the card before the start of the game. An employee shall ensure that the numbers are legible, validate the original and duplicate parts of a card, retain the original part, and return the duplicate part to the player; and
 - d. An employee shall verify a winning player's card and match the card's original part to the duplicate part. A card must be voided if it is illegible or altered.
3. Before conducting a bingo session, an employee shall test the equipment and ensure it is working properly.
 4. An organization may not separate a collated set of paper bingo cards or cut up a paper bingo card that has two or more faces on it to separately sell the cards or faces.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-04-03. Conduct and play.

1. These rules and information must be posted:
 - a. A person may not separate a paper card when there are two or more faces on a sheet;
 - b. A person under eighteen years of age may not play bingo unless an individual, eighteen years of age or older, accompanies a minor when buying a bingo card or package and throughout the session. The adult may not be an employee on duty. This rule is not required to be posted if a person under twenty-one years of age is not allowed on the site;
 - c. If an organization does not restrict duplicate cards from being in play for a game, including cards played through a bingo card marking device, it shall post or convey that information to all players before their purchase of cards or packages;

- d. The actual letter and number on a ball drawn or freely awarded is official;
 - e. If a person uses a fraudulent scheme or technique to cheat or skim involving bingo, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail or both;
 - f. A bingo card is void if it is taken outside the gaming area; and
 - g. If a player attempts to falsify or falsifies a record of win, the prize is forfeited.
2. An organization shall comply with and post these policies:
- a. A policy of when an organization may cancel a bingo session;
 - b. A policy that if a player has more than one bingo on one card or on two or more cards for a game, whether it is considered as one bingo or more than one bingo for splitting a prize with another winning player;
 - c. A policy that a bingo is timely called by a player when, on the last number called, the player calls the word "bingo" or other required word before the bingo caller announces the whole letter and number of the next ball to be called, or other policy; and
 - d. A policy on sharing a prize by two or more winning players on identically or differently priced cards. A policy must include the following except that an organization may award a minimum prize:
 - (1) If a prize is cash and all winning players bingo on identically priced cards, the cash prize must be divided equally. An organization may round fractional dollars.
 - (2) If a prize is cash and the winning players bingo on differently priced cards, an organization shall award each winning player:
 - (a) The designated prize;
 - (b) An equal share of the designated prize; or
 - (c) A proportional part of the designated prize for that card or any other fair method. The proportional part is the ratio that each winning player is in relation to the total number of winning players. To illustrate, if three

players bingo on differently priced cards, each player is to be awarded one-third of the designated prize for that player's card.

- (3) If a prize is merchandise and it cannot be divided, an organization shall do one of these options which must be disclosed in the bingo program or promotional material or announced before the bingo session:
 - (a) Award each winning player a substitute merchandise prize which must be of at least equal value and total the retail price of the original prize. A merchandise prize may be redeemable or convertible into cash at an organization's option;
 - (b) Award a certain cash split amount; or
 - (c) Conduct a continuous or separate playoff game between the winning players;
- e. A policy that a player may or may not use a bingo card marking device and play additional paper bingo cards at the same time; and
- f. A policy that a player may or may not share the player's cards with another player.
3. An organization shall make these announcements:
 - a. Before each session, the ~~policy on when a bingo is timely called by a player;~~ and policies on:
 - (1) When a bingo is timely called by a player;
 - (2) Whether the bingo caller, floorworker, or both must hear and acknowledge a player who calls the word "bingo" or other required word; and
 - (3) That a player is responsible for ensuring that the bingo caller, floorworker, or both hear and acknowledge the player; and
 - b. Before each game, the game's winning bingo pattern.
4. An employee may only assist a disabled player in playing a bingo card or assist a player in how to use a bingo card marking device. A legally blind or disabled player may use the player's personal braille or special card when an organization does not provide such a card. An organization may inspect and reject the card.
5. An employee may not sell a gift certificate unless:

- a. A gift certificate is accounted for when it is sold. An employee shall issue a gift certificate to the purchaser and retain a copy or stub of the certificate with the daily records and record the certificate on a register to document the sale. An organization shall recognize a sale of a gift certificate as gross proceeds on the tax return for the quarter in which it was sold. A gift certificate must be used to buy only a bingo card or package;
 - b. A register is maintained which accounts for all gift certificates sold at a site. A register must include, for each certificate, a consecutive control number, selling price (value), dates issued and redeemed, sites at which it is issued and redeemed, and initials of the employees who issue and redeem the certificate; and
 - c. A redeemed gift certificate is signed by a player and retained by an organization with the daily accounting records. A player is issued a bingo card or package at the site when the gift certificate is redeemed.
6. If an organization changes a publicly announced bingo program for a session in which a potential prize or the number of games is reduced, an employee shall notify a player of the change before the player buys a card.
 7. If an organization sells two or more differently priced cards or packages for a game ~~that provides for different prizes,~~ an employee it shall use a distinct different type or color of cards or mark each card by a method that enables the employee to distinguish card for each differently priced card or package or use a method approved by the attorney general.
 8. If an organization accepts a discount coupon, the redeemed coupon must contain the dollar value or percentage discount and be signed by a player. An employee shall write the value of the bingo card or package purchased on the face of the coupon unless the value is already stated, and retain the coupon with the daily records. The value of a player's one or more coupons must be less than the value of the card or package bought.
 9. If an organization accepts a donated item in exchange for a discount, an employee shall account for the discount on a register as part of the daily records. A discount must be less than the value of the card or package bought. A register must contain:
 - a. Bingo session and date of the session;
 - b. Amount of the discount;
 - c. Value of the bingo card or package bought;

- d. Signature of the player;
 - e. Total amount of bingo card or package discounts for the session; and
 - f. Initials Date and date initials of the cashier.
10. A card or package must be bought on a site immediately before the start of a game or during a session. Except for a bonanza bingo or a game that has all of its numbers predrawn, no card may be sold for a game which is in progress or concluded. If a paper bingo card is included in a package for a game in progress or concluded, the card must be withdrawn and voided or destroyed. An employee may exchange a purchased package for another package if the employee accounts for all the ~~components~~ cards of the first package and a session has not started.
11. An organization may allow a player to use a bingo card marking device provided by the organization that marks an electronic card image of a purchased card as follows:
- a. A device cannot be reserved for a player unless a player is disabled. An organization shall provide each player an equal opportunity to use the available devices on a first-come, first-served basis. A device cannot be issued through a floorworker;
 - b. A device must be used only at a site where the site system is located and the session is being conducted;
 - c. A device must be rented for a fixed amount, regardless of the price for a card or package or number of cards played through the device, or provided free to a player for the player's temporary use during the session;
 - d. No player can use more than one device at a time during a session;
 - e. No player can play more than seventy-two cards per game on a device and cannot choose or reject downloaded cards;
 - f. An organization shall ensure that any paper bingo cards used during the session are of a series different than the cards downloaded in the devices;
 - g. If a card or package may be used in a device and in paper form, it must be sold for the same price. An organization may sell a special card or package to a player for use only in a device. The organization may require a player to buy a minimum-priced card or package to use a device;

- h. An organization may print a facsimile of a winning card and post it for players to inspect;
 - i. A player shall use an input function key on a device to mark each number as it is called. When a player inputs a number, a device may automatically mark all the player's cards that contain that number;
 - j. If a player has a winning card, the player shall:
 - (1) Timely call bingo according to subdivision c of subsection 2 and it must be by a method other than through a device; and
 - (2) Provide the device with the winning card displayed to a floorworker to verify according to subsection 18;
 - k. If a player's call of a bingo is disputed or if the attorney general makes a request, an organization shall print the winning card stored on the device;
 - l. An organization shall have one spare device available should a device in use malfunction. If a player's device malfunctions, the player may exchange the device for a spare device. An organization shall restore the player's same cards from the site system;
 - m. An organization may perform routine maintenance on a device; and
 - n. An organization shall back up all of a site system's accounting information for a session on separate electronic media immediately after that session and retain the backup file for one year from the end of the quarter in which the activity was reported on a tax return.
12. An organization may not refund the purchase price of a card or package unless a site incurs an electrical power loss, there is inclement weather, an organization experiences an extraordinary incident, a session is canceled, or a player has an emergency.
- 12- 13. If an organization sells hard cards before each game, an employee shall collect the cards not paid for. A person may not play a card not bought from an organization. An organization may allow a player to share the player's hard or paper cards with another person during the game an employee shall count the number of hard cards played by all the players to the number recorded as sold. If the comparison reveals an irregularity, the gaming manager shall take corrective action.
- 13- 14. An organization may not do an "all the cards you can play" promotion for a fixed price.

- 14- 15. If a game has an actual or potential prize valued at five hundred dollars or greater or involves two or more differently priced cards ~~for different prizes or packages~~, an employee shall use an electronic bingo card verifier; record in writing the called numbers and the sequence in which they were drawn and retain the record for three months; or audiotape the bingo caller calling the balls and retain the tape for three months. Also, when a player bingos, an employee shall record in writing or audiotape the following and retain the record for three months.
- a. Game number, winning pattern, type of card (regular, premium, super), series (card) number, and last number called; and
 - b. Cash register receipt number, if applicable.
- 15- 16. Except for speedball bingo or when a monitor or random number generator is used, a caller shall manually display the letter and number on the ball to players. An employee shall announce the letters and numbers on the balls or displayed by a random number generator in their exact sequence; however, numbers freely awarded do not need to be announced. If a player calls bingo and the bingo is invalid, the next ball called must be in sequence of the balls drawn.
- 16- 17. A player may bingo more than one time on the same card when an organization conducts continuation games of more than one pattern on the same card. ~~A winning card must be verified by an employee and one neutral player or person unless an electronic bingo card verifier is used. A floorworker may not access a verifier.~~
18. A winning card must be verified by an employee and one neutral player or person unless an electronic bingo card verifier is used. A floorworker may not access a verifier. For a winning card on a bingo card marking device, an employee shall compare the serial number of the device to the receipt for the cards played on that device.
- 17- 19. An organization may offer a variety of prizes to a winning player who may choose a prize by random selection. A player may win an additional prize by choosing the prize by random selection or playing a game of skill if the player is not required to give anything of value. An organization shall disclose the potential prizes in the bingo program and notify a player of these prizes before the player chooses a prize or plays a game of skill.
- 18- 20. No bingo card or package may be a prize. An organization may not award, as a prize, a gift certificate that can be redeemed for a bingo card, package, or any other game piece.

- 19: 21. An organization may conduct a qualifying game whereby a player wins the game's prize and an opportunity to play in a special game, but not for free.
- 20: 22. An organization may award a bonus that is based on a factor incidental to a bingo program if it is disclosed in a program, calendar, or flyer, ~~or is~~ and announced before a session, and is recorded on a prize register. Factors include a player binging on a certain last number called or winning a game on the player's birthday.
- 21: 23. If a player bingos and an employee determines that the player is playing more bingo cards than were bought, the player's bingo is void.
- 22: 24. Bonanza bingo and a game that has all of its numbers predrawn must be conducted as follows:
- a. A caller shall initially call a certain quantity of balls. While a caller initially calls the bingo balls or before the caller calls the next continuous number, a player shall verify that the letter and number on the balls drawn are correctly displayed. A posted display must be used for the games, have restricted access, and reference that game;
 - b. A card must be sealed and unpeekable when it is sold;
 - c. An organization may sell or exchange cards throughout a session until sales are closed. Except for a game that has all of its numbers predrawn and an organization that does not permit exchanged cards, an employee shall, before the next continuous number is called, fully account for the floorworkers' sales of cards according to section 99-01.3-04-07. A floorworker may not turn in any exchanged card after the accounting is begun;
 - d. If a player bingos before the next continuous number is called, the player wins. Otherwise, an additional bingo ball is drawn until a player bingos. This rule does not apply to a game that has all of its numbers predrawn;
 - e. A game may not extend beyond a session;
 - f. If an organization permits a player to exchange a partially played card for a new card and pay a discounted or exchange price, an employee shall:
 - (1) Uniquely mark (validate) each card to be used during the session by:
 - {a}--~~Validating~~--a validating the date of the session on the card with a mechanical device or rubber

~~stamp with a unique symbol;--The validation must identify the card with a particular session--for that--date. A card validated for a session, but not sold, must be voided;--and. The organization shall use a different color card for each game of a session and for each session of a day;~~

~~(b)--Requiring a player to write the player's name on the face of the exchanged card;~~

- (2) Retain the exchanged cards as part of the daily records for six months;.
- (3) Record the validation designations and card color combinations by session;.
- (4) Reconcile the cards, accounting for:
 - (a) Number of cards taken from inventory which must be independently counted and verified by two employees who shall initial and date the verification;
 - (b) Number of cards sold;
 - (c) Number of cards exchanged, which must be separately maintained for each floorworker. The cards must be recounted by an employee who is not a floorworker and who did not complete the floorworker sales report. The employee who controls the floorworker sales report shall band each floorworker's exchanged cards separately, identify the banded group with the floorworker's name, session, and date initial and initial date. A floorworker shall also initial the floorworker's banded group;
 - (d) Number of ~~card~~ cards returned to inventory and voided which must be independently counted and verified by two employees. Each person shall initial and date the verification; and
 - (e) Document any discrepancy and corrective action taken; and

g. All voided cards must be retained for six months.

23: 25. If an employee determines, during or immediately after the play of a game and before a card is verified as a winning bingo, that a ball is missing, the employee shall void the game and offer the players a fair alternative.

- 24: 26. Except for a game that has all of its numbers predrawn and for which ~~a winning card contains~~ an organization has recorded the information required by section 99-01.3-03-07 on the winning card and is retained retains the card, an employee shall record a prize and bonus prize on a register according to section 99-01.3-03-07.
- 25: 27. Unless written approval is obtained from the attorney general for use of another receipting method, an organization shall receipt gross proceeds, including an additional amount paid by a player for a chance to win an extra prize in a special game, by a cash register, tickets, paper card count, or floorworker sales report. The receipting method must reference the primary color and type, and serial number of the cards sold, or reference other information approved by the attorney general.
- 26: 28. For a site where bingo is the primary game or a site that is leased by a licensed organization, the organization or any person may not pay bingo prizes in which the total bingo prizes ~~exceeds~~ exceed total bingo gross proceeds for a ~~ninety-day period~~ two consecutive quarters. However, if bingo is the primary game at the site, a bingo prize that equals or exceeds ten thousand dollars is excluded from the calculation of total bingo prizes.
- 27: 29. An organization shall have a written bingo program for each session. However, if the program does not change each day, an organization may retain one program and record the dates on which it applied. A program must contain:
- a. Name of a site or organization;
 - b. Date of the session or dates of the sessions;
 - c. Description of each game and the game's prize; and
 - d. Selling prices of the cards or packages.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-07.1

99-01.3-04-04. Cash register. This receipting method may be used to record gross proceeds of packages, hard cards, and paper cards, excluding floorworker sales, by issuing consecutively numbered receipts.

1. A receipt must contain:
 - a. Name of a site or organization;
 - b. Date of the session; and

- c. Selling price of a card or package, and receipt number.
2. A cash register must:
 - a. Have at least a consecutive four-digit receipt number which does not return to zero at the end of any use and retain its transaction count between uses if it is off or without electricity; and
 - b. Separately record each type of regular ~~or~~ and discounted priced card or package sold and, including a sale of a card or package related to a redeemed gift certificate, and provide a total for each type of sale. For a discounted card or package, the regular ~~or-discounted~~ price may be recorded; ~~--if-the-regular-price~~ provided that the discount is recorded; -a-discount-must-be and accounted for on a supporting schedule. When a gift certificate is sold, the selling price may be recorded on a cash register.
 3. A cash register receipt for a void, ~~mistake~~ refund, or similar item must be initialed and retained with the daily records.
 4. All transactions and control totals must be recorded on an internal tape that must be retained with the daily records. If a cash register is also used for a purpose other than bingo, the internal tape from the other use must also be retained.
 5. A cash register cashier may not issue a refund or void a sale that has been recorded as a transaction, but may do a no sale transaction to access a cash drawer. For a refund, a cashier's supervisor shall execute a refund, and initial the refund transaction on the internal tape. For a voided sale, a cashier's supervisor shall execute a void and initial the void transaction on the internal tape. If a supervisor is not available or if the cashier is the supervisor, another employee shall comply with this rule.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-04-06. Paper card count. The paper card count receipting method may be used to record gross proceeds of paper bingo cards. The daily records must include the total number of cards or collated sets taken from inventory and returned to inventory. Unless there is only one employee on duty when the cards or sets are taken from or returned to inventory, the count of the cards or sets must be done by two persons. Both persons shall independently count the cards or sets in the presence of each other and resolve any difference. Then, one person shall record the count, and both persons shall initial the record. The

record must include the ~~serial-number-or-color~~; selling price of the card or set; and number of cards or sets issued, returned, voided, and sold for each type of sale.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-04-08. Recordkeeping.

1. For each session, records must include:
 - a. The gross proceeds for each type of sale or game. If a site system involving bingo card marking devices is used, records must include the summary report for the session according to subdivision c of subsection 1 of section 99-01.3-16-10;
 - b. The starting and ending cash on hand and IOU records according to section 99-01.3-03-06;
 - c. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all sessions for a quarter must reconcile to the tax return;
 - d. Prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08;
 - e. Inventory records according to section 99-01.3-03-09 99-01.3-03-09(2);
 - f. If bingo is the primary game at a site, the number of players and time of the count;
 - g. A copy of or reference to a bingo program according to subsection 27 29 of section 99-01.3-04-03; and
 - h. Redeemed gift certificates and discount coupons; and
 - i. Purchase invoice or receipt documenting the cost of a merchandise prize.
2. The cash profit (see subdivision a of subsection 6 of section 99-01.3-02-01) must be deposited intact according to section 99-01.3-03-10.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-05

99-01.3-05-02. Tickets - Limitations and requirements.

1. Each raffle ticket is a separate and equal chance to win with all other tickets sold. A person may not be required to buy more than one ticket, or to pay for anything other than the ticket, to enter a raffle. An organization may sell several tickets or sell tickets in advance of a special event to a person at a discount. A discounted ticket must be specifically designated as a discounted ticket on the ticket and its stub. The number of discounted tickets must be predetermined and separately issued and accounted for when issued to a ticket seller.
2. An organization may not allow a raffle ticket seller to retain a ticket for free or retain any portion of the price of a ticket as compensation, and may not compensate the seller a certain amount or provide a gift for selling a winning ticket. An organization may compensate a raffle ticket seller a fixed amount for selling the most or a certain number of tickets. No raffle ticket can be resold.
3. A raffle ticket must have a ~~stub-or-other~~ detachable section stub which is consecutively numbered. Except for the use of double admission tickets, a stub must have a duplicate number corresponding to the number on the ticket and contain the purchaser's name, address, and telephone number. A ticket must be issued, as a receipt, to a player. For a raffle conducted by a licensed organization, the ticket numbers must be mechanically or electronically imprinted. For a raffle conducted by an organization that has a local permit, the ticket numbers may be manually imprinted.
4. An employee may not sell a ticket on a site where another organization is licensed or has a local permit unless the employee is granted permission by the lessor and other organization.
5. A ticket seller shall return the stubs of all tickets sold. The stubs must be intermixed in a receptacle.
6. An organization shall return the price of a ticket to a player if the stub of the player's ticket was not placed in the receptacle for the drawing.
7. For a calendar raffle, the stub of each ticket sold must be entered in all the drawings conducted since the ticket was sold. A licensed organization may not conduct a calendar raffle for other than a fiscal year beginning July first and ending June thirtieth.

8. An organization may not conduct a drawing unless two employees are present. A drawing must occur at an authorized public or private site.
9. In conducting a drawing, an employee shall draw a stub for the highest valued prize first. If there is more than one prize, an employee shall continue drawing for the prizes in the order of descending value. A prize is valued at its cash value or retail price. An organization may defer announcing the names of the winning players and respective prizes until after all the drawings have occurred and may make the announcement in any sequence. This rule does not apply when an organization adopts a written policy to place a winning player's stub immediately back into a receptacle to potentially be drawn for another prize.
10. An organization may not print any work or phrase on a ticket, promotional material, or advertising which implies or expresses that a purchase of the ticket is a charitable donation.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-05-03. Prize restrictions.

1. No prize may be real estate, ticket for entry into another raffle, or live animal except for beef or dairy cattle. A prize must be an item that may be legally owned and possessed, and has a value. No prize can be a coupon or discount that requires a winning player to first purchase something to receive a prize. Cash or merchandise prizes may be awarded. A cash prize may be based on a percentage of gross proceeds. A single cash prize cannot exceed one thousand dollars and, during one day, the total cash prizes cannot exceed three thousand dollars.
2. An organization may convert a merchandise prize to a cash prize; provided, that the retail price of a single merchandise prize does not exceed one thousand dollars and, during one day, the retail price of the converted merchandise prize and cash prizes do not exceed three thousand dollars.
3. An organization shall own or have a contract to acquire a merchandise prize before a drawing. However, an organization does not need to register or title an automobile or similar item.
4. Besides a prize that is stated on a ticket to be awarded, an organization may offer an additional unguaranteed merchandise prize provided:

- a. A ticket must describe the prize and state that it is not guaranteed to be won;
 - b. The prize is predetermined and limited to a winning player of one of the other prizes;
 - c. A player is not required to pay an additional amount or forfeit a prize to participate;
 - d. Unless an organization owns a prize, an award of the prize must be insured; and
 - e. A drawing is conducted from all tickets sold.
5. If an organization has not been able to recover the cost of the prize, it may cancel a raffle and refund the gross proceeds.
 6. A prize winner must be drawn or determined on the date indicated on a ticket unless a different date is requested in writing and approved by the attorney general. If a different drawing date is approved, an organization shall notify the purchasers of the tickets of the change by contacting each purchaser or by making a public announcement. The attorney general may, for good cause, change the date for a drawing. This subsection does not apply to double admission tickets.
 7. Within seven days of a raffle, an organization shall notify the winning player verbally or, if the value of the prize exceeds two hundred dollars, in writing, of the prize and arrange the pickup or delivery of the prize. If a prize remains unclaimed by a winning player for thirty days following the date of the written notification and an organization has made a good-faith effort to contact the winner to redeem the prize, the organization may retain the prize, have a second prize drawing, or award it in another game. This subsection does not apply to double admission tickets.

~~8. If a player attempts to falsify or falsifies a record of win, an organization shall deny the prize to the player.~~

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 36-21.1-09, 53-06.1-01.1, 53-06.1-10.1

99-01.3-05-04. Information on a ticket. Except for double admission tickets, each ticket must contain this preprinted information:

1. Name of organization;
2. Ticket number;

3. Price of the ticket; ~~including any discounted price;~~
4. Prize, description of an optional prize selectable by a winning player, and or option to convert a merchandise prize to a cash prize. However, if there is insufficient space on a ticket to list each minor prize that has a retail price not exceeding ten dollars, an organization may state the total number of minor prizes and their total retail price;
5. For a licensed organization, print "office of the attorney general" and license number. For an organization that has a local permit, print the city or county and local permit number;
6. A statement that a person is not required to be present at a drawing to win;
7. Date and time of the drawing and, if the winning player is to be announced later, date and time of that announcement. For a calendar raffle, if the drawings are on a same day of the week or month, print the day and time of the drawing;
8. Location and street address of the drawing;
9. If a merchandise prize requires a title transfer involving the department of transportation, a statement that a winning player is or is not liable for sales or use tax;
10. If a purchase of a ticket or winning a prize is restricted to a person of a minimum age, a statement that a person must be at least " _____ " years of age to buy a ticket or win a prize; and
11. A statement that a purchase of the ticket is not a charitable donation.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-05-05. Double admission tickets. An organization may use double admission tickets provided:

1. Two single tickets must be printed side by side on a roll with a consecutive number. Both tickets must have the same number;
2. If there is more than one prize, an organization may use a different receptacle for each prize to enable a player to place the player's ticket in the receptacle related to a certain prize. All tickets must be sold consecutively at a site on the day of the raffle. All the tickets of each separately colored roll must be sold for the same price on

that day. ~~No ticket may be sold at a discount.~~ An organization may use a separate colored roll to sell several tickets to a person at a discount. The organization and player each retains one ticket;

3. A winning player need not be present when a drawing is held but shall claim the prize within ~~one hour of the drawing~~ a reasonable redemption period set by the organization that day. Otherwise, an organization shall conduct a second prize drawing, or more, until the prize is claimed. ~~However, for the last hour of an event, an organization may set any redemption period.~~ A statement of the time of the drawing and ~~one hour~~ redemption requirement period must be on all promotional material and be posted at a site; and
4. An organization shall record in its daily records; the color and selling value of each ticket; and the lowest and highest numbered ticket sold from each roll. Any tickets left on a roll which will not be sold in any other raffle must be retained as part of the daily records. This ~~rule~~ subsection does not apply to a local permit.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-05-07. Recordkeeping.

1. For each raffle, records must include:
 - a. Purchase invoice documenting the purchase of tickets, range of ticket numbers printed, ticket seller's name, quantity issued, range of single and discounted raffle ticket numbers issued to a seller, and quantity sold;
 - b. Reconciliation of the cash received from each ticket seller based on the number of tickets sold, including discounted tickets, date cash is received, and a schedule of bank deposits;
 - c. For double admission tickets, the daily starting and ending cash on hand ~~and~~, IOU records according to section 99-01.3-03-06, and daily records according to subsection 4 of section 99-01.3-05-05;
 - d. A sample of a ticket;
 - e. The stubs of all sold tickets which must be retained for one year from the end of the quarter in which the activity was reported on a tax return;

- f. Prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08; and
 - g. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all raffles for a quarter must reconcile to the tax return; and
 - h. Purchase invoice or receipt documenting the cost of a merchandise prize.
2. For double admission tickets, inventory records according to subsection 3 of section 99-01.3-03-09.
 3. The total receipts, less a cash prize, must be deposited according to section 99-01.3-03-10.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-06

99-01.3-06-01. Games - Definitions. This chapter applies to an organization that conducts pull tabs, club specials, tip boards, seal boards, coin boards, and punchboards, but not pull tabs involving a dispensing device. The maximum price per chance is two dollars. A coin board, club special, punchboard, seal board, and tip board are conducted as a single game which may have a cash or merchandise prize and may offer a seal prize. A game that allows a seal prize may have more than one seal. The value of a last sale prize cannot exceed the value of a top tier winning prize. If a merchandise prize is awarded, its retail value must be stated on a flare. An organization shall complete the description of a merchandise prize and retail value of the prize on a flare for a game that has a merchandise prize. For pull tabs described by subsection 3, only a cash prize can be awarded, not a merchandise or seal prize.

1. "Coin-board" means a board used with pull tabs and to which coins of various values are affixed. Under each coin, a cash prize value is preprinted. A board contains numbered lines and may contain a seal covering a winning number. A player having a pull tab with a number matching a predesignated number on a board for a seal prize signs the player's full name on the numbered line or supplemental sheet. However, if the number matches a winning number for a coin or minor prize, the player wins that coin or prize, and a cash prize value stated under the coin. A last sale prize may be awarded. When the board is closed, a seal is removed to reveal the winning line number. A player whose signature is on that line wins the seal prize. No board may be closed unless all the top tier winning pull tabs have been redeemed, all the pull tabs are sold, or the board has been conducted for ninety calendar days. A seal prize is not considered a top tier prize. If a coin is not awarded, an organization shall determine the prizes to report on a tax return by prorating the total cost of the coins, according to their face value, of the coins that were awarded to the total face value of all the coins. An organization may use an unawarded coin as a prize in another game, or sell the coin or deposit it in the gaming account. The maximum number of pull tabs in a deal is two thousand. The maximum cash prize or seal prize value, including the retail price of a merchandise prize, is five hundred dollars. "Club special" means a placard used with pull tabs and it contains numbered lines and a seal covering the winning number of the top tier prize. A player may win a minor prize or, if the player has a pull tab with a number matching a predesignated number on the placard, would sign the player's full name on the line. When all the lines are signed, a seal is removed to reveal a winning line number. A player whose signature is on that line wins the seal prize. The maximum number of pull tabs in a deal is four hundred ten.

The maximum cash prize or seal prize value, including the retail price of a merchandise prize, is one hundred dollars.

2. "Club--special"--means--a--placard--used--with--pull--tabs--and--it--contains--numbered--lines--and--a--seal--covering--the--winning--number--of--the--top--tier--prize.--A--player--may--win--a--minor--prize--or,--if--the--player--has--a--pull--tab--with--a--number---matching---a--predesignated--number--on--the--placard,--would--sign--the--player's--full--name--on--the--line.--When--all--the--lines--are--signed,--a--seal--is--removed--to--reveal--a--winning--line--number.--A--player--whose--signature--is--on--that--line--wins--the--seal--prize.--The--maximum--number--of--pull--tabs--in--a--deal--is--four--hundred--ten.--The--maximum--cash--prize--or--seal--prize--value,--including--the--retail--price--of--a--merchandise--prize,--is--one--hundred--dollars. "Coin board" means a board used with pull tabs and to which coins of various values are affixed. Under each coin, a cash prize value is preprinted. A board contains numbered lines and may contain a seal covering a winning number. A player having a pull tab with a number matching a predesignated number on a board for a seal prize signs the player's full name on the numbered line or supplemental sheet. However, if the number matches a winning number for a coin or minor prize, the player wins that coin or prize, and a cash prize value stated under the coin. A last sale prize may be awarded. When the board is closed, a seal is removed to reveal the winning line number. A player whose signature is on that line wins the seal prize. No board may be closed unless all the top tier winning pull tabs have been redeemed, all the pull tabs are sold, and all the seals have been opened, or the board has been conducted for ninety calendar days. A seal prize is not considered a top tier prize. If a coin is not awarded, an organization shall determine the prizes to report on a tax return by prorating the total cost of the coins, according to their face value, of the coins that were awarded to the total face value of all the coins. An organization may use an unawarded prize in another game, sell the prize, or deposit the coin in the gaming account. The maximum number of pull tabs in a deal is two thousand. The maximum cash prize or seal prize value, including the retail price of a merchandise prize and sales tax, is five hundred dollars.
3. "Pull tab" means a folded or banded ticket (jar ticket) or a card with break-open tabs (pull tab) or latex covering. Unless otherwise stated, the terms "pull tab" and "jar ticket" are used interchangeably. A winning pull tab contains certain symbols or numbers. The maximum cash prize is five hundred dollars.
4. "Punchboard" means a board comprised of holes that contain numbered slips of paper (punches). A punchboard may include a seal prize, and more than one last sale prize if the punchboard is split into more than one section. A player extracts a punch from the punchboard. If the number on the

punch matches a number on a flare, the player wins a prize. No punchboard may be closed unless all the top tier winning punches have been redeemed, all the punches are sold, or the punchboard has been conducted for ninety calendar days. A seal prize and a last sale prize are not considered top tier prizes. The maximum cash prize or seal prize value, including the retail price of a merchandise prize, is five hundred dollars.

5. "Seal board" means a placard containing consecutively numbered lines. A seal covers the winning number. A player buys a blank "line" and signs the player's full name on it. After all the lines are signed, the seal is removed to reveal the winning line number. An organization shall complete the retail value of prize and cost per play on a board. The maximum seal cash prize value or retail price of a merchandise prize is five hundred dollars.
6. "Tip board" means a placard to which jar tickets are attached. A seal covers the winning number of the top tier prize. A player may win a minor prize or, if the number of a player's jar ticket matches a number on the placard, the player signs the player's full name on the line. After all the lines are signed, the seal is removed to reveal the winning line number. The maximum number of jar tickets in a deal is four hundred. The maximum cash prize or seal prize value, including the retail price of a merchandise prize, is one hundred dollars.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-08

99-01.3-06-02. Conduct and play.

1. Deals of pull tabs must be commingled for a game as follows:
 - a. Two or more deals must be placed in a receptacle and be thoroughly intermixed. When an organization's predetermined number or range of numbers of winning pull tabs remain in a game as unredeemed, an additional deal is added. An employee shall add a deal to a game if there are about two hundred fifty pull tabs remaining and the game cannot be or is not being closed. The new pull tabs must be intermixed with the pull tabs in the receptacle before any pull tab is sold.
 - b. Except for the game serial number, and a minor difference in printing that is approved by the attorney general, the deals must be identical. If deals of a game involve folded or banded jar tickets, the color of the tickets' band must be the same; however, neapolitan colored bands may be used. When a deal is added to a game, an employee

shall compare the color of a deal's pull tabs to the color of the game's pull tabs. If the two colors are not the same, the deal cannot be used;

- c. A master flare or flare for at least one deal of a game must be displayed with the game and be visible to and not easily removed by a player. An organization shall retain all original flares at a site while a game is in play. If a deal has a last sale prize feature, the deal's flare must also be displayed. Only the flare of one deal of a game may have a last sale prize feature;
- d. If an indicator for adding a deal to a game has been reached and an organization does not have a proper deal to add, the organization shall temporarily suspend the game until it procures a proper deal. ~~If---twenty-five consecutive---calendar---days---elapse---since---a---game---was---placed in---play,---a---proper---deal---has---not---yet---been---procured,---and---all top---tier---winning---pull---tabs---have---been---redeemed,---an organization---may---close---the---game:---otherwise,---the organization---shall---reactivate---the---game---until---all---top---tier winning---pull---tabs---are---redeemed---or---it---is---the---end---of---a quarter,---whichever---occurs---first.~~ However, if the organization is unable to procure a deal from the distributors and all the top tier winning pull tabs have been redeemed, it may close the game;
- e. If a site's total gross proceeds of pull tabs averages twelve thousand five hundred dollars or less per quarter, a game may be closed anytime if all top tier winning pull tabs have been redeemed;
- f. Except as provided by subdivision g, if a site's total gross proceeds of pull tabs averages more than twelve thousand five hundred dollars per quarter, no game may be closed unless an organization discontinues gaming at the site, or all the top tier winning pull tabs have been redeemed and:
 - (1) Fifty deals have been added to a game;
 - (2) A game's actual gross proceeds ~~is~~ are twenty-five thousand dollars; or
 - (3) A game has been in play for twenty-five consecutive calendar days; and
- g. An organization shall close a game by the end of a quarter. If all top tier winning pull tabs have been redeemed, an organization may close a game for the quarter within fourteen calendar days before the end of that quarter. An organization may start a new game for the next quarter within fourteen calendar days before the next

quarter begins. However, an organization may not start a new game and end that game within this fourteen-calendar-day period.

2. An employee may not place a deal of pull tabs, club special, or coin board in play which has a manufacturer's or distributor's seal broken on the games' container when the game was received from a distributor. A person may not take off a deal's manufacturer's cellophane shrink wrap or break the manufacturer's or distributor's security seal on the deal's container until the deal is to be placed in a receptacle. If a distributor's or manufacturer's security seal is broken before the deal is used, an organization shall return the deal to the distributor. If a deal is packaged in two or more containers, the full deal must be placed in play at the same time.
3. These rules must be posted:
 - a. Restricting the play of a game to one player or a group of players is prohibited;
 - b. A winning pull tab must be redeemed within a fifteen-minute time limit;
 - c. If a person solicits, provides, ~~or~~ receives, or uses any inside information, from or to any person, by any means, or uses a fraudulent scheme or technique to cheat or skim involving pull tabs, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail or both;
 - d. A pull tab cannot be redeemed if it has been taken from the gaming area;
 - e. To the best of the organization's knowledge, a coin remaining on a board relates to a winning pull tab that has not been bought. This rule is not required to be posted if an organization does not conduct a coin board;
 - f. A deal may be added to a game at any time; and
 - g. If a player attempts to falsify or falsifies a record of win, the prize is forfeited. This rule is not required to be posted if an organization does not pay a prize that requires a record of win.
4. An organization shall comply with and post these policies and information:
 - a. Method If there is a last sale prize, post the method of determining which player is entitled to buy the last pull tab or punch for a last sale prize when two or more

players desire to buy the last pull tab or punch:---This policy---is---not---required---to---be---posted---if---an---organization does-not-pay-a-last-sale-prize;

- b. The information, if any, authorized by subdivision a or b, or both, of subsection 6;
 - c. If there is any limit on the number of pull tabs or punches that a player may buy at a time, post that limit; and
 - d. When a game is being closed, an employee shall:
 - (1) Post a notice that the game is being sold out; and
 - (2) If there is any limit on the number of pull tabs or punches that two or more players may buy at a time, post that limit.
5. A player may not redeem and an employee may not knowingly pay a prize for a pull tab after fifteen minutes has elapsed since the pull tab was bought. If a player attempts to redeem a pull tab after the time limit, an employee shall retain and void the pull tab.
6. A person may post the information referenced by subdivision a or b, or both, for a commingled game provided that the posting contains a statement that the information is correct to the best of the organization's knowledge and that the information is not guaranteed to be accurate. If an organization does not have a policy on when to stop posting this information when a game is being closed, it shall stop posting the information when there are less than six winning pull tabs, through a level of prize value determined by the organization, that remain unredeemed. Posted information may be as described in subdivision a or subdivision b, or both:
- a. The minimum number of unredeemed winning pull tabs or a range of numbers of unredeemed winning pull tabs, through a level of prize value determined by an organization, that will always be in a game unless the game is being closed. This information may be for each prize value or the total of several prize values. The level of prize value must be posted. If a pull tab has two or more winning prize patterns, the information must be based on the value of each prize pattern.
 - b. The number of unredeemed winning pull tabs, through a level of prize value determined by an organization, that remain in a game. This information may be for each prize value or the total of several prize values. The level of prize value must be posted. If a pull tab has two or more winning prize patterns, the information must be based on

the value of each prize pattern. The information must be continually updated.

7. An organization may limit the number of pull tabs a player may buy regardless if the player is redeeming a winning pull tab.
8. An employee may not selectively pick a pull tab from a receptacle based on its game serial number or other factor. An employee shall take a handful of pull tabs from a receptacle and count off the number bought. An employee may not permit a player to physically handpick a pull tab or honor a player's request to select a specific pull tab. However, an employee may honor a player's suggestion to select a pull tab from a general area of a receptacle. In applying subsection 2 of North Dakota Century Code section 53-06.1-16, the phrase "fraudulent scheme or technique" includes an employee selecting, by any method, only certain pull tabs in a game or an employee not thoroughly intermixing pull tabs of the initial or added deals.
9. An employee may only assist a disabled player in opening a pull tab.
10. An employee shall deface a winning number or symbol of a pull tab and punchboard punch when it is redeemed. If a pull tab has two or more winning prize patterns, a winning number or symbol of at least one pattern must be defaced. An employee may not knowingly pay a prize to a player who is redeeming a pull tab that has been defaced, tampered with, counterfeited, or has a game serial number different from the serial numbers of the deals in the game, or is defective.
11. If a player buys a set of stapled jar tickets and, before or after opening any jar ticket, determines that the set contains less than the standard number of tickets, an ~~organization~~ employee may issue the player only the number of tickets actually missing. If a player buys a set of banded jar tickets and, before breaking the band, determines that the set contains less than the standard number of tickets, an ~~organization~~ employee may issue the player a new set in exchange for the defective set. An ~~organization~~ employee may staple together the proper number of loose jar tickets of a game to sell. An ~~organization~~ employee may, at any time, sell a loose unopened jar ticket or partial set of banded jar tickets at a proportional selling price of a full set.
12. When a game is being closed, an organization may continue to conduct the game although all of its top tier and minor winning pull tabs have been redeemed. An employee may not permit a player to buy out a game except when a game is being closed. If an organization closes a game that has pull tabs unsold, it may not open or place the pull tabs back into play.

13. Unless an organization conducts a commingled game according to subdivision e of subsection 1 or closes a commingled game at least monthly, an employee who did not conduct the game shall do a monthly interim audit of the game. If the percent-of-accuracy of all the games of a site for the previous quarter was less than ninety-eight and one-half percent, an employee who did not conduct the game shall do a weekly interim audit of the games ~~at the~~ for that site for twelve continuous weeks. An organization shall start the weekly audits no later than the date on which its tax return for the quarter was filed with the attorney general.
14. An employee shall award the last sale cash or merchandise prize to the player who actually buys the last pull tab or punch.
15. An organization may transfer a commingled game, club special, tip board, seal board, coin board, and punchboard from a site to another site, or rotate games among sites. If an organization discontinues gaming at a site, it may close a game. If a game is in the process of being conducted through a jar bar, the game cannot be transferred to a dispensing device. A game must be reported for the site at which it was closed and on a tax return for the quarter in which it was closed.
16. ~~Except for a last sale prize, an~~ An employee may not pay, from gaming funds or any other source, a prize to a player unless the player redeems an actual winning pull tab, except for a last sale prize, from a game conducted at the site.
17. Before leaving a jar bar unattended, an employee shall safeguard the games, cash, and records.
18. An organization may not publicly display a redeemed pull tab.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-08

99-01.3-06-03. Recordkeeping. Records must include:

1. ~~A flare for each deal of a game.~~ All redeemed and unsold pull tabs or punches for a game must be retained as documentation for gross proceeds and prizes for one year from the end of the quarter in which the activity was reported on a tax return;
2. For a commingled game, an accounting of each deal's, shift's, or day's redeemed pull tabs, including the number by prize value, total prizes, and number of redeemed top tier pull tabs by game serial number. This accounting must be consistent and be done each time a deal is added to a game, a shift ends, or

at the end of each day. If the accounting is done each time a deal is added to a game, the redeemed winning pull tabs for the period must be grouped separately and retained with all other groups of pull tabs of that game. If the accounting is done at the end of each shift or day, the redeemed winning pull tabs for each shift or day must be banded and each banded group must be dated with the date of activity and be retained in a storage container with all other banded groups of that game. For each game, there must be a daily accounting of deals added to a game, by gaming stamp and game serial numbers, and of the cash profit and bank deposit;

3. For a club special, tip board, seal board, coin board, and punchboard, and accounting of prizes, by gaming stamp number;
4. A daily accounting of starting and ending cash on hand and IOU records according to section 99-01.3-03-06;
5. For a deal of pull tabs or coin boards, the deal's game information sheet ~~which must be attached to the deal's flare or game's daily records~~ and flare with the state gaming stamp affixed must be retained for three years from the end of the quarter in which the game was reported on a tax return;
6. A summary of ideal gross proceeds, value of unsold pull tabs or punches, gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries for a quarter must reconcile to the activity reported on the tax return;
7. Record of win according to section 99-01.3-03-08;
8. Inventory records according to subsection 1 of section 99-01.3-03-09;
9. For a commingled game, the cash profit (see subdivision c of subsection 6 of section 99-01.3-02-01) must be deposited intact according to section 99-01.3-03-10;
10. For a club special, tip board, seal board, coin board, and punchboard, the cash profit (see subdivisions e and f of subsection 6 of section 99-01.3-02-01) must be deposited intact according to section 99-01.3-03-10; and
11. Interim audit records according to subsection 13 of section 99-01.3-06-02; and
12. Purchase invoice or receipt documenting the cost of a merchandise prize.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-07

99-01.3-07-01. Sports pool. A "sports pool" is comprised of wagers paid by players for a line or square that will determine which player wins. The maximum cost per line or square is five dollars. The conduct of a sports pool is the selling of chances on the board and award of a prize. Only cash prizes can be awarded. No sports-pool board with the state gaming stamp affixed may be conducted off of a site.

1. A sports-pool board must be a ten or twelve line or twenty-five or one hundred square board; and be acquired from a distributor.
2. An organization shall complete the cost per play, date of sports event, ideal prizes, and method of prize payout on a board. The method of prize payout may be at periodic intervals or the end of a game. The total payout cannot exceed ninety percent of the gross proceeds.
3. A sports pool must be conducted for a professional sporting event only. An organization shall designate one opponent along the vertical columns of numbers and the other opponent along the horizontal rows of numbers. However, if the opponents are unknown when the board is being sold, an organization shall designate identifiable conferences, divisions, or games. A purchaser of a square or line shall write the player's full name in that square or on that line. Except for a calendar sports pool, no tapes may be removed until all the squares or lines are sold and the opponents are designated. If all the squares or lines are not sold, an organization may advance the board to another game or refund the players' money. If opponents were designated but the board is advanced to another game, an organization shall keep the same opponents or designate new opponents. An When an unsold board is advanced to another game, an organization shall post a notice on a site disclosing its policy for of advancing an--unsold the board. Gross proceeds must be separately maintained for each board.
4. An organization may conduct a calendar or master sports pool for two or more games of the same sport. An organization shall use one board for each game and buy the necessary number of boards before selling any square. For example, if a sports pool involves sixteen games, an organization shall buy sixteen boards. A player buys the same square on each board for all the games for a maximum price of five dollars per square per game. If all the books of a calendar sports pool or all the squares of a master sports pool are not sold before the first game, an organization shall refund the players' money and void all the boards. The voided boards must be reported on the tax

return as "no activity". Otherwise, each board is reported separately on a tax return for the quarter in which the game was held.

5. A calendar sports pool must be conducted as follows:
 - a. The tapes covering the numbers assigned the horizontal rows and vertical columns of the boards must be removed to reveal the numbers. One opponent must be designated along the vertical columns of numbers and the other opponent designated along the horizontal rows of numbers. The board must state the game and its date;
 - b. Each square of each board must be assigned a consecutive number starting with number one. The numbering must be in sequence, left to right;
 - c. Each board must be printed and may be reduced in size. The quantity printed is based on the type of board. For example, for a one hundred square board, each board must be printed one hundred times. A printed board for each game and a receipt comprise a book;
 - d. A receipt must contain:
 - (1) A consecutive receipt number starting with one. A statement that the receipt number is the player's assigned square for all the boards in the book;
 - (2) Name and address of organization and name of site;
 - (3) For a licensed organization, print "office of the attorney general" and site license number. For an organization that has a local permit, print the name of the city or county and local permit number;
 - (4) Price of the book, method of prize payout and prize; and
 - (5) A detachable section containing a player's full name, address, telephone number, and matching receipt number which is retained by an organization;
 - e. An employee may not sell a book on a site where another organization is licensed or has a local permit unless the employee is granted permission by the lessor and other organization-;
 - f. A player may not choose a particular book to buy. When a book is sold, a receipt's detachable section is completed. After a player buys a book, the player may see the numbers assigned that player's square on the boards; and

a board, the board must contain the information required by section 99-01.3-03-07.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-09

99-01.3-07-02. Recordkeeping.

1. For each sports-pool board, records must include:
 - a. The sold board indicating the winning square or line. A board must be retained for one year from the end of the quarter in which the activity was reported on a tax return. However, if an organization uses a board as a prize register or record of win, the board must be retained for three years from the end of the quarter in which the game was reported on a tax return;
 - b. The daily starting and ending cash on hand and IOU records according to section 99-01.3-03-06;
 - c. The type of professional sport and amount of each prize;
 - d. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all sports-pool boards conducted during a quarter must reconcile to the activity reported on a tax return; and
 - e. Prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08.
2. Inventory records according to subsection 1 of section 99-01.3-03-09.
3. The total receipts, less a cash prize, must be deposited according to section 99-01.3-03-10.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-08

99-01.3-08-02. Table, drop box, cards, and dealing shoe.

1. If there is more than one table at a site, a table must have a number. A table playing surface must display ~~up--to~~ no more than seven separate betting spaces and these statements:

BLACK JACK PAYS 3 TO 2
and
DEALER MUST STAND ON 17 AND MUST DRAW TO 16

2. A table must have a drop box that meets the specification of subsection 5 of section 99-01.3-15-02. If there is more than one table at a site, a drop box must have a number matching the table number. A drop box must have a money plunger which must remain in the slot unless the plunger is used to insert currency or forms.
3. The cards must be four, six, or eight complete decks and be dealt from a dealing shoe located at a dealer's left. The cards must be the same size, shape, design, and be jumbo-faced. The color of the backs of all decks must be one predominate color, or one-half of the number of decks must be one predominate color and the other decks a different predominate color. The design on the back of each card must be identical.
4. A dealing shoe must have a face plate, base plate, and sides, and hold four or more complete decks of playing cards.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-08-03. Chips.

1. A wager and tip must be made with chips. If an organization accepts a five dollar wager, it shall provide five dollar chips to players for their optional use. Chips may be issued in values of fifty cents, one dollar, two dollars, and five dollars. An organization may not use different chips of the same value at a site.
2. Each chip must be round in shape, be one and nine-sixteenths inches [39.62 millimeters] in diameter and be permanently impressed, engraved, or imprinted on one side with an organization's name and on the other side with the value of the chip. The name may be represented by a unique identification that differentiates an organization's chips

from all other organizations' chips. If a site had twenty-one gross proceeds averaging ten thousand dollars or more for two consecutive quarters and this level of activity is expected to continue or an organization installs a video surveillance system at a site, regardless of the value of wagers accepted at the site, the chips must meet the specifications of subsection 3.

3. As required, each value of chip must have the following prescribed primary color. Along with the primary color, a chip must have one or two contrasting secondary colors as edge spots. Edge spots must be visible on the perimeter of both sides of a chip and on the chip's circumference. An organization may not use a secondary color on any value of chip that is identical to the primary color used by the organization on another value of chip that results in a reversed combination of primary and secondary colors between the two values of chips. The primary colors and edge spots must be:
 - a. Fifty cent chip - mustard yellow which is the color classified as 5Y 7/6 on the Munsell system of color coding. This chip has no edge spots.
 - b. One dollar chip - white which is the color classified as N 9/ on the Munsell system of color coding. A one dollar chip must have four solid edge spots and each edge spot must be one-half of one inch [12.7 millimeters] in width.
 - c. Two dollar chip - pink which is the color classified as 2.5R 6/10 on the Munsell system of color coding. A two dollar chip must have four split edge spots and each edge spot must be three-eighths of one inch [9.40 millimeters] in width. Each of the two split portions of an edge spot and the space between the two split portions must be one-eighth of one inch [3.05 millimeters] in width. The two split portions of an edge spot must be the secondary color and the middle space may either be the primary color or a third color.
 - d. Five dollar chip - red which is the color classified as 2.5R 4/12 on the Munsell system of color coding. A five dollar chip must have six solid edge spots and each edge spot must be one-quarter of one inch [6.35 millimeters] in width.
4. An employee shall safeguard chips by placing them in a safe storage area or, if on a table with a locking cover. If a table has been opened and no dealer is stationed at it, an employee shall secure the chip tray with a locking cover.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-10

99-01.3-08-04. Video surveillance system. If a site had twenty-one gross proceeds averaging ten thousand dollars or more per quarter for two entire consecutive quarters, this level of activity is expected to continue, and wagers exceed two dollars, an organization shall have a video surveillance system operational at the site within forty-five days from the end of the second quarter. However, for a site with seasonal activity, this level of activity is based on the average gross proceeds of the active quarters within the fiscal year July first through June thirtieth. A level of activity is based on a site's recent historical experience, but not earlier than the previous fiscal year, regardless of which organization conducted twenty-one at the site. If an organization conducts twenty-one at a newly acquired site that has a level of activity requiring a video surveillance system, it shall have the system for a table operational within forty-five days of conducting twenty-one or limit wagers to two dollars until the system is operational. A system must be operational for each twenty-one table that is ~~continually~~ regularly located on a site, regardless of how infrequent a table is used or the value of wagers accepted at the table. A temporary table that is brought onto a site for fourteen or fewer consecutive days for a special event, but for not more than two events per quarter, does not need a system. An organization shall:

1. Install a system that meets these specifications:

- a. A super VHS (S-VHS) real time ~~or time-lapse~~ video cassette recorder must be used. It must be secured in a cabinet or area, plugged into an outlet that cannot be switched off, and be programmable with a seven-day memory backup. A recorder must have a built-in or separate time and date generator that displays the time and date on videotape without significantly obstructing a recorded picture. ~~For a time-lapse recorder, the twelve-hour recording speed must be used.~~ A recorder used to review a videotape must have forward and reverse frame-by-frame and high-speed scanning capability; and may be operable by a wireless remote control;
- b. A super VHS or high resolution color camera that has four hundred or more active lines of horizontal resolution must be used. A camera must have a signal to noise ratio, with the automatic gain circuitry off, of forty-five decibels or better. A camera must be positioned above the center of a table ~~or middle of the players' side of the table~~ and record gaming activity from the dealer's perspective. A camera must be plugged into a surge protector and use an outlet that cannot be switched off. ~~If a camera is installed on or after May 1, 1998, it must be protected by a slotted or clear dome;~~

- c. A camera lens must have an f-stop rating of f-1.2 or better, be color corrected and have a format size equal to or greater than the format size of a camera. A lens may be fixed or variable focus. A lens must have a field of view to record the face of a dealing shoe, all betting spaces, discard holder, chip tray, currency plunger, and table number;
 - d. A ~~super--~~VHS color video monitor with a super VHS connection that produces lines of horizontal resolution that equal or exceed the number of active lines of horizontal resolution that a video camera is outputting. A monitor's screen must measure at least thirteen inches [330.2 millimeters] diagonally;
 - e. For a super VHS color camera, super VHS YC or coaxial video cable must be used. For a high resolution color camera, coaxial video cable must be used. The cable must meet these specifications:
 - (1) If the length of a cable is one hundred linear feet [30.48 linear meters] or less and the cable will not be flexed, exposed outside a building, or constantly moved, the center conductor must be stranded or solid pure copper material. Otherwise, the center conductor must be stranded pure copper material.
 - (2) The shield must be braided pure copper material. The dielectric must be foam material. A cable must be rated for seventy-five ohms of impedance. If a cable is to be placed in a return air system, the jacket must be teflon or other accepted fire-rated material; and
 - f. Super VHS (S-VHS) videotapes must be used.
2. Buy or lease qualifying items. Additional allowable expense funds may be used for only these qualifying items which are bought for the initial installation:
- a. Super VHS video cassette recorder, time and date generator and locking vented enclosure;
 - b. Super VHS or high resolution color camera with a fixed or zoom lens and dome;
 - c. Super VHS or high resolution color video monitor;
 - d. Super VHS YC or coaxial video cable;
 - e. Super VHS videotapes and tape storage cabinet;
 - f. Table number and site identification;

- g. Installation of equipment, including lighting fixture;
 - h. Motion-detector-or-trigger-device;
 - i. In-line video cable amplifier, surge protector, video printer, tape rewinder, battery backup, and tape eraser; and
 - j. i. Lease payment and interest expense on a financing loan.
3. If an organization has conducts twenty-one at more than one site, a table must have a site identification. A site identification and any table number must be visible on videotape.
 4. Use If a playing surface is installed on or after July 1, 2000, it must be a bright green playing surface. Only maroon and black jumbo-faced playing cards may be used.
 5. If a recorder or camera for a table is not properly operating or producing a an unobstructed view and clear picture of cards, currency, and chips and not repaired or remedied within seventy-two continuous hours, either close the table or limit wagers to two dollars at all the tables at the site until the equipment is repaired.
 6. Maintain a clean dome and a proper field of view on the playing surface.
 7. Authorize only a gaming or shift manager or an independent person to:
 - a. Access a recorder, camera, and stored videotapes;
 - b. Start and stop a recorder to record a table when chips are first made available for use on the table and continue recording until the table is permanently closed for the day. ~~However, an organization may discontinue recording a table while it is temporarily closed during a day if the table is recorded for ten minutes after it is temporarily closed and when chips are again made available for use on it;~~ and
 - c. Change a videotape in a recorder for a table at the beginning, during, or at the end of a day's activity, regardless if the authorized person is a dealer or wheel operator at the site. ~~While a tape for a table is changed during a day's activity, gaming on the table must be temporarily suspended.~~ An organization may use a ~~time-lapse or~~ two real time recorders in sequence to record a table's activity that exceeds the recording capability of one tape. If two recorders are used for one

table, their separate recordings for a day's activity must overlap by ten minutes.

8. Retain a videotape in a safe storage place for thirty days.
9. ~~On~~ If the percent-of-hold for twenty-one of a site for the previous quarter was twenty-one percent or more, on a monthly basis a qualified person shall review one hour of activity multiplied by the number of tables used and document the review. If the percent-of-hold for twenty-one of a site for the previous quarter was at least sixteen percent but less than twenty-one percent, on a weekly basis a qualified person shall review one hour of activity multiplied by the number of tables used and document the review. Otherwise, on a weekly basis, a qualified person shall review ~~one hour~~ two hours of activity ~~of--each-table-of-a-site~~ multiplied by the number of tables used and document the review. Percent-of-hold is computed as adjusted gross proceeds divided by gross proceeds. If paddlewheels are conducted on a site, on a weekly basis a qualified person shall review one hour of activity of the table and document the review. A person may not review a videotape of a twenty-one or paddlewheel table on which the person ~~conducted-a-game~~ dealt or was a wheel operator.
10. Use the attorney general's current recordkeeping system unless approval is obtained from the attorney general for use of another system. An organization shall track a dealer's and wheel operator's percent-of-hold performance.
11. Limit its purchase or lease of a camera, lens, cable, camera dome, time and date generator, and installation, including moving a camera to another location, to a vendor approved by the attorney general. However, an organization may buy or lease a qualifying item from another organization provided the equipment meets the specification of subsection 1. If an organization acquires video surveillance equipment at a new site from another organization or moves a camera to another location at the site, the organization shall provide the attorney general with a sample tape to evaluate. An organization shall defer remitting at least fifty percent of the cost or lease price of this equipment to a vendor until the attorney general approves the clarity of the videotape for a table. A vendor shall provide the attorney general with a sample tape to evaluate. If an organization moves a table to a different location at a site, the organization or vendor shall, within fourteen days, provide the attorney general with a sample tape to evaluate. If the quality of the sample tape is not satisfactory, an organization and vendor shall resolve the deficiency.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-10, 53-06.1-11

99-01.3-08-05. Distributing and removing chips.

1. A Except as prescribed by subsection 8, a fill slip must be used to distribute twenty-one or paddlewheel chips (betting and payout) from a chip bank to a table and a credit slip to return chips from the table to the chip bank;~~including an exchange of chips between a chip bank and table.~~ An organization may not transfer or exchange chips directly between two tables. An organization shall use a fill and credit slip to temporarily transfer a chip tray to or from a table and jar bar. Access to a fill and credit slip must be restricted to an authorized person.
2. A fill slip and credit slip must be separate forms. Fill and credit slips must be mechanically or electronically consecutively prenumbered two-part carbonless forms, be used in sequential order, and be all accounted for. Originals and copies of voided fill and credit slips must be marked "VOID" and be initialed by the preparer.
3. A fill slip must be prepared by a chip bank cashier, pit boss, or shift manager. A credit slip must be prepared by a dealer, wheel operator, pit boss, or shift manager. The original and copy of a fill and credit slip must contain:
 - a. Reference to twenty-one or paddlewheels, site, date and time, and any table number;
 - b. Quantity and total value of chips, by value, and grand total value of chips; and
 - c. For a fill slip, the initials of a chip bank cashier. However, if a dealer ~~or wheel operator~~ is the only employee on duty, this person shall initial the fill slip. For a credit slip, the initials of a dealer or wheel operator.
4. After preparation of a fill slip, a chip bank cashier shall retain the original. However, if a dealer ~~or wheel operator~~ is the only employee on duty, this person shall retain the original. After preparation of a credit slip, a dealer or wheel operator shall deposit the original in a drop box.
5. If an organization has a shift manager or authorized employee on duty who is not presently dealing or operating a paddlewheel, this person shall verify the quantity and value of the chips, initial the original part of the fill or credit slip, and transfer the copy of the fill slip with the chips to a table, or transfer the copy of the credit slip with the chips to a cashier.
6. A dealer or wheel operator shall verify the information on the copy of a fill slip and, if correct, initial and deposit it in

- a drop box. A cashier shall verify the information on the copy of a credit slip and, if correct, initial and retain it. However, if a dealer ~~or wheel operator~~ is the only employee on duty, the dealer shall retain the copy of a credit slip.
7. As an option, an organization may have:
 - a. A dealer or wheel operator initial the original part of a fill slip before it is retained by a chip bank cashier; and
 - b. A chip bank cashier initial the original part of a credit slip before it is retained by a dealer or wheel operator.
 8. An organization shall use a credit/cash transfer slip and comply with procedures prescribed by the attorney general to:
 - a. Transfer a paddlewheel payout chip from a twenty-one table to the chip bank cashier and transfer cash from the paddlewheel cash bank cashier to the twenty-one table; and
 - b. Transfer a twenty-one chip from a paddlewheel table to the chip bank cashier and transfer cash from the twenty-one cash bank cashier to the paddlewheel table.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-08-06. Chip bank services.

1. An organization shall sell chips at a table only for cash, no checks. However, a paddlewheel payout chip may be exchanged for a twenty-one chip at a twenty-one table ~~or~~ and a twenty-one chip may be exchanged for a paddlewheel betting chip at a paddlewheel table. Checks may be cashed by a cashier. Cash for chips sold must be kept separate from all other cash until it has been counted. Only a two-person audit team may access a drop box before the drop box cash count.
2. An organization shall redeem a chip for cash at the value for which it was sold, except when a chip was obtained or used unlawfully. If an organization discontinues twenty-one or paddlewheels at a site, it shall redeem its chips, at its business office or active site, for thirty days thereafter. An employee shall redeem a dealer's and wheel operator's tips through cash on hand. Unless a table has a video surveillance system, a dealer and wheel operator shall redeem the actual chips received as tips. This rule does not prohibit pooling of tips.

3. An employee may not take any chip, including tips, to a location outside the gaming area of a site. A dealer shall redeem tips before leaving a site.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-10

99-01.3-08-09. Betting.

1. An original wager must be an even dollar amount ranging from one dollar to five dollars. A wager of one dollar must be accepted and an organization may establish a maximum wager for each table. If all the tables at a site have the same betting limit, the limit must be posted. Otherwise, a plaque must be placed on top of a table indicating the maximum wager for the table. A wager that exceeds the maximum wager is valued at a table's maximum wager and the excess must be returned to a player. An organization shall post and announce a change in the maximum wager at a table with adequate notice to a player.
2. An original wager is the amount bet per hand before the first card is dealt and excludes tip betting. After the first card has been dealt, no original wager or tip bet may be changed. A separate wager may be a split, double-down, insurance bet, and tip bet.
3. Splitting is permitted on any pair or any two 10-count value cards. A player is allowed a maximum of four hands per betting space. A player's right-hand card in a split must be played to completion before the adjacent split hand is dealt a second card. A player shall take at least one card on a split hand. A wager on each hand must equal the original wager. Split aces draw only one card each. A two-card twenty-one after a split is not a natural twenty-one.
4. Doubling-down is permitted on the first two cards dealt to a betting space or the first two cards of a split hand, except on split aces. A wager must be equal to or less than the original wager. Only one additional card is dealt.
5. An organization may permit insurance betting except on a tip wager. An insurance bet is placed when a dealer's faceup card is an ace and it must be one-half the original wager. The payoff on a winning bet is two to one.
6. An organization may permit tip betting and doubling-down on tip bets. A tip bet is made when the original wager is made by placing a chip outside a betting space, but with the chip touching the lower left edge of the betting space, from a dealer's perspective. A betting space is limited to one tip bet ~~which cannot be increased or doubled-down~~. A tip bet does

not have to equal an original wager and may range from fifty cents up to a table's maximum wager. A doubled-down tip bet must equal the original tip bet. If a player's hand wins, a tip bet is paid off at an equal amount and the tip bet and payoff are placed in a dealer's tip receptacle. If the dealer's hand wins, a tip bet is placed in the chip tray. If a player's and dealer's hands tie, a tip bet is a standoff (push).

7. If a player's wager consists of two or more values of chips, a player shall neatly stack the lowest value chip on top of the highest value chip. If the chips are improperly stacked, a dealer shall tell the player and either the dealer or player shall properly stack the chips.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-10

99-01.3-08-11. Playing.

1. After the first two cards have been dealt to each betting space and if a dealer's faceup card is an ace, the dealer shall ask the players if they desire to make an insurance bet. A player shall make an insurance bet by placing a chip on the insurance line of the playing surface. A dealer shall reposition the chip below the lower right-hand corner of the first card dealt and to the immediate right of the second card dealt, from the dealer's perspective. A dealer shall then announce "insurance bets are closed". However, if a player who has been dealt a natural twenty-one (blackjack) desires to make an insurance bet and does not desire to double-down, a dealer may, at an organization's option, do an even money payoff rather than having the player place an "insurance" bet. To exercise this option, a dealer shall state "even money" and immediately do a chip payoff to a player equal to the player's original wager. A This even money payoff must be done according to subdivision a of subsection 16. A dealer shall then place the player's cards in a discard holder. For this option, a tip bet is a standoff (push). This rule does not apply if an insurance bet is not permitted.
2. A dealer may announce the dealer's faceup card one time to all the players at a table. Then, a dealer shall, beginning from the dealer's left and for each player's hand, prompt a player to indicate whether the player desires to split or double-down, or both. As a prompt, a dealer may announce the point total of each player's hand. For splitting a hand, a player shall place an additional wager, equal to an original wager, horizontal to the original wager. For doubling-down on a--hand an original wager or tip bet, a player shall place a chip vertical to an-original the wager. A player may not

double-down on a tip bet unless the player also doubles-down on the original wager. If a dealer is unsure of a player's intent, the dealer shall ask the player and properly reposition a chip.

3. If a player has split or doubled-down, or both, a dealer shall play each hand as follows:
 - a. When a player places a wager for a split, a dealer shall split the cards side by side. If a player has also placed a tip bet, a dealer shall assign and reposition the tip bet to the split hand located at the foremost left of a betting space, from the dealer's perspective. Each split hand must be played separately. If aces are split, one additional card must be dealt face upwards to each of the hands and placed at a right angle to the first card dealt.
 - b. A doubled-down hand must be dealt one additional card face upwards and placed at a right angle to the first two cards dealt. However, if a table does not have a video surveillance system, the card may be placed beneath a player's original wager.
4. A dealer may not take a hit card from a dealing shoe nor may a dealer bypass a player unless the player has first indicated the player's request for a hit card or to stand by a distinct hand signal.
5. As a player indicates to stand or draw a hit card, other than on a hand that has split aces or a double-down, a dealer shall deal face upwards and an additional card or cards as the player requests. A player is responsible for correctly computing the total card count of the player's hand.
6. If a player did not split, double-down, or place an insurance bet, and busts (a player's total card count exceeds twenty-one), the player loses an original wager and any tip bet. A dealer shall immediately collect and place a player's chips, including any tip bet, in a chip tray and the cards in a discard holder.
7. If a dealer's faceup card is not an ace or a ten-count card and a player split or doubled-down and busts, the player loses the wager for that split or double-down hand and any tip bet (including any double-down bet) assigned to it. A dealer shall immediately collect and place a player's chips, including any tip bet and double-down bet, in a chip tray and the cards in a discard holder.
8. If a dealer's faceup card is an ace or a ten-count card and a player split, doubled-down, or placed an insurance bet and busts, the dealer shall gather the cards of that hand and place them outside the betting space. Then, a dealer shall

reposition the player's split and or doubled-down wagered chips, in the same betting position, on top of the player's cards of that hand. A tip bet for such a split or double-down hand that busts is lost. A dealer shall immediately place the tip bet chips in a chip tray.

9. If a dealer's faceup card is not an ace or a ten-count card and all players bust, a dealer shall end the round. If a dealer's faceup card is an ace or a ten-count card and all players bust, and no player split, doubled-down, or placed an insurance wager, a dealer shall end the round.
10. If the decisions of all players have been carried out, a dealer shall turn up the dealer's facedown card (hole-card-no-peek method) or deal a second card face upwards to the dealer (no-hole-card method). However, for the ~~no-hole-card~~ no-hole-card method, a dealer may not remove the dealer's second card from a dealing shoe until the dealer first announces that it is the dealer's card. Then, a dealer shall announce the total card count of the two cards. A dealer shall play the dealer's hand as follows:
 - a. If a dealer's faceup card is an ace and the dealer's hand is not a natural twenty-one, the dealer shall immediately, starting with the player to the dealer's right and moving left around the table, collect all the players' insurance bet chips, with the dealer's right or left hand, in a sweeping motion, and place them in a chip tray. A dealer may not use the right and left hand at the same time. Then, for all the players' busted hands that have been split, doubled-down, or both, a dealer shall immediately, starting with the player to the dealer's right and moving left around the table, collect the chips of busted hands, with the dealer's right or left hand, in a sweeping motion. A dealer may not use the right and left hand at the same time. When no other busted hand remains, a dealer shall place the collected chips in a chip tray, collect those players' busted hands, and place the cards in a discard holder. A dealer may, at an organization's option that is consistently applied at a site, collect each player's insurance bet chips and busted hands and related chips with only the dealer's right hand, on a hand-by-hand basis, and place the chips in a chip tray and the cards in a discard holder. Then, for all the players who have been dealt a natural twenty-one, the dealer shall immediately, starting with the player to the dealer's right and moving left around the table, do the payoff according to subsection 15 or 16, and collect and place those players' cards in a discard holder. If a player's hand remains in play, a dealer shall proceed according to subdivision f or g, and do the payoff procedure on any winning hand according to subsection 15 or 16.

- b. If a dealer's faceup card is a ten-count card and a dealer's hand is not a natural twenty-one, for all the players' busted hands that have been split, doubled-down, or both, the dealer shall immediately, starting with the player to the dealer's right and moving left around the table, collect the chips of busted hands, with the dealer's right or left hand, in a sweeping motion. A dealer may not use the right and left hand at the same time. When no other busted hand remains, a dealer shall place the collected chips in a chip tray, collect those players' busted hands and place the cards in a discard holder. A dealer may, at an organization's option that is consistently applied at a site, collect each player's busted hands and related chips with only the dealer's right hand, on a hand-by-hand basis, and place the chips in a chip tray and the cards in a discard holder. Then, for all the players who have been dealt a natural twenty-one, the dealer shall immediately, starting with the player to the dealer's right and moving left around the table, do the payoff according to subsection 15 or 16, and collect and place those players' cards in a discard holder. If a player's hand remains in play, a dealer shall proceed according to subdivision f or g, and do the payoff procedure on any winning hand according to subsection 15 or 16.
- c. If a dealer's faceup card is an ace, the dealer's hand is a natural twenty-one, and a player has placed an insurance bet, the player wins the insurance wager at the rate of two to one. A dealer shall do the payoff procedure according to subsection 15 or 16. However, if a player's original hand also is a natural twenty-one, subdivision d also applies.
- d. If a dealer's faceup card is an ace or a ten-count card and the dealer's hand is a natural twenty-one, the dealer organization wins all original wagers and original tip bets (~~organization--wins--tip--bets~~), unless a player's original hand also is a natural twenty-one which results in a standoff. All other players lose.
- e. If a player has doubled-down or split against a dealer's faceup card of an ace or a ten-count card and the dealer's hand is a natural twenty-one, only the player's original wager is lost unless the player's original hand also is a natural twenty-one which results in a standoff. All separate splitting and doubling-down wagers are voided. A dealer shall return the chips of the separate wagers to the players.
- f. If the count of a dealer's hand is sixteen or under, the dealer shall draw a hit card until the count exceeds sixteen. An additional card must be dealt face upwards to

the immediate right of a dealer's first two cards dealt, from the dealer's perspective, and the dealer shall announce the total card count.

- g. If the count of a dealer's hand exceeds sixteen but does not exceed twenty-one, the dealer shall stay (not draw a hit card). If a dealer's hand contains an ace and a count of seventeen, eighteen, nineteen, twenty, or twenty-one can be obtained by counting the ace as an eleven, a dealer shall value the dealer's hand as such and stay. A dealer shall announce the final total card count of the dealer's hand.
- h. If a dealer's hand busts, the remaining players with active hands win.
11. If a player's original hand is a natural twenty-one and a dealer's faceup card is not an ace or a ten-count card, the player's hand wins and is paid off at a rate of three to two, unless the player chooses to double-down. A dealer's chip payoff on a player's wager may occur immediately or when the dealer, in the order of hands, comes to that player's hand.
12. A wager is won or lost by comparing the total card count of each player's hand to the dealer's hand. A dealer or player with the highest total card count wins. Wagers, including tip bets, are paid off at an equal amount according to subsection 15 or 16. All ties are a standoff - no payoff is made, including on a tip bet.
13. If a player's hand loses against a dealer's hand, an organization wins any tip bet, including any double-down bet. A dealer shall immediately, starting with the player to the dealer's right and moving left around the table, collect the chips of adjacent losing hands, including any tip bet and double-down bet, with the dealer's right or left hand, in a sweeping motion. A dealer may not use the right and left hand at the same time. A dealer may, at an organization's option that is consistently applied at a site, collect the chips of losing hands, including any tip bet and double-down bet, with only the dealer's right hand, on a hand-by-hand basis. When a tie hand is reached, the dealer shall recognize that hand with a tap on the tabletop and announce that it is a push. When a winning hand is reached, a dealer shall place any previously collected chips in a chip tray and do the payoff procedure for adjacent winning hands according to subsection 15 or 16. When a losing hand is again reached, the dealer shall repeat the collection and payoff procedure until all losing wagers have been collected and all winning hands have been paid. The dealer shall then collect all the remaining cards according to subsection 17.

14. If a player's hand wins against a dealer's hand and the player placed a tip bet, the dealer wins the tip bet and any double-down bet and the one-to-one payoff from a chip tray according to subsection 15 or 16.
15. If a player's hand wins against a dealer's hand and a table does not have a video surveillance system, the payoff procedure is:
 - a. Normal hand. A payoff chip must be placed beside the original wagered chip in a betting space.
 - b. Split hand. The payoff chip must be placed beside the wagered chips in a betting space.
 - c. Double-down hand. The payoff chips must be placed beside the two wagered chips in a betting space.
 - d. Insurance bet. A payoff chip must be first placed beside the insurance bet chip, fanned, then placed on top of the insurance bet chip and the chips pushed to a player.
 - e. Natural twenty-one. The payoff chips must be pyramided with the higher value chip placed beside the original wagered chip in a betting space and the smaller value chip placed on top over the center of the other two chips.
 - f. Tip bet. A payoff chip must be placed beside the tip bet chip and any double-down chip in the inner table area. Then, a dealer shall place the chips directly in a tip receptacle.
16. If a player's hand wins against a dealer's hand and a table has a video surveillance system, the payoff of each winning hand must be done on a hand-by-hand basis. The payoff procedure is:
 - a. A dealer shall fan all of a player's wagered chips toward the dealer or side with only the dealer's left hand. A dealer may, at an organization's option that is consistently applied at a site, fan all of a player's wagered chips toward the dealer or side with only the dealer's right hand. However, for a site that has a pit boss on duty and the organization requires a double-down wager to equal the original wager, a dealer may, for a player that has split or doubled-down, or both, fan only one of the player's winning wagers. A dealer shall reposition a tip bet chip and any double-down chip in the inner table area with the dealer's left hand and fan the ~~tip--bet~~ chips. A dealer may, at an organization's option that is consistently applied at a site, fan all the players' tip bets and double-down chips after the payoff procedure has been done on all winning players' hands. A

dealer shall, with the dealer's right hand, take a chip from a chip tray, equal in value to the player's wagered chips (not tip bet chips), place the payoff chip in a stacked manner ~~beside~~ beside the wagered fanned chips, fan the payoff chips toward the dealer or side, and move the dealer's hands away from the chips. A dealer shall repeat this procedure for each separate winning hand.

- b. After the payoff procedure has been done on all winning players' hands and the tip bet chips and any double-down chips have been fanned, a dealer shall, with the dealer's right hand, take a chip from a chip tray of the same value as the tip bet chip and any double-down chip, place the payoff chip in a stacked manner beside the fanned chips, and fan the payoff chips. A dealer shall repeat this procedure for each separate winning tip bet. Then, a dealer shall move the dealer's hands away from the chips. After a dealer has picked up the cards according to subsection 17, the dealer shall place the chips directly in a tip receptacle.
17. At the end of a round of play, a dealer shall pick up all the cards remaining on the playing surface so that they can be played back to recreate each hand, starting with the player to the dealer's right and moving to the left around the table. After the cards have been collected in a sweep or hand by hand, a dealer shall pick up the dealer's cards against the top of the players' cards and place them in a discard holder.
 18. If a table has a video surveillance system, a dealer's shift ends, and the dealer:
 - a. Does not desire to exchange the dealer's tips for other chips in the chip tray, the dealer shall momentarily show both sides of the dealer's hands, with fingers extended, within a camera's view. A dealer shall then take the tip receptacle and leave the table.
 - b. Does desire to exchange the dealer's tips for other chips in the chip tray, the dealer shall take all the chips out of the tip receptacle. A dealer shall place the chips in the inner table area at the dealer's left; sort, stack, and fan only the chips to be exchanged; take chips from a chip tray equal in value to the fanned chips; place the replacement chips at the dealer's right; sort, stack, and fan the chips, momentarily move the dealer's hands away from the chips so the chips are within a camera's view; place the exchanged chips in a chip tray; then place the replacement chips and unexchanged chips in a tip receptacle. A dealer shall then momentarily show both sides of the dealer's hands, with fingers extended, within a camera's view, take the tip receptacle, and leave the

table. As an option, a dealer for the next shift may exchange the present dealer's tips.

19. A dealer may not allow a player to touch a card.
20. A dealer may not switch or remove a player's card or chip, pay on a standoff, or do anything to alter a fair and legal outcome of a betting hand.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-10

99-01.3-08-13. Posting. These rules and notice must be posted:

HOUSE RULES

Use Hole-Card-No-Peek method of dealing

- or -

Use No-Hole-Card method of dealing (Choose one when posting)

PLAYER RULES

Must compute the card count of the player's hand

Must be twenty-one years of age or older

Hand signals must be used

No touching of cards

Two betting spaces maximum

No side bets

No payoff on tie counts

Splitting on any pair and two 10-count

value cards and limited

to a maximum of 4 hands per betting space

Doubling-down on the first 2 cards dealt

or the first 2 cards of any split hand, except on split aces, and

be equal to or less than the original wager

Insurance not permitted

- or -

Insurance permitted - pays 2 to 1 (Choose one when posting)

Tip betting permitted

- or -

Tip betting not permitted (Choose one when posting)

Doubling-down on tip bets permitted - must be equal to the original tip bet

- or -

Doubling-down on tip bets not permitted (Choose one when posting)

NOTICE

If a player uses a fraudulent scheme or technique to cheat or skim involving twenty-one, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail or both.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-10

99-01.3-08-14. Drop box cash count.

1. A drop box that has been used must be removed from a table by the end of the day's activity. If a drop box is removed from a table and the cash is not counted immediately, the drop box must be transported by the shift manager and, if there is more than one employee on duty, escorted by an employee to a safe storage place. An empty drop box; ~~when not used during a shift;~~ may be stored on a table; ~~otherwise, an empty drop box must be stored~~ or in a safe storage place.
2. A drop box must be opened by a two-person count team. The persons must be independent of each other. A count team may be an independent person, including a representative of a financial institution, and a gaming employee; two representatives of a financial institution; two nongaming employees; or two gaming employees provided they did not conduct games at different sites the same site on the day of the gaming activity and day of the count. One of these two gaming employees may have conducted games at the site associated with the drop box cash. A count team may not be two persons who have a direct supervisor and subordinate relationship or include an employee of a lessor unless this employee conducts games as an employee of the organization. A count team member may not be a common household member, spouse, child, parent, brother, or sister of the other count team member.
3. The key to the lock securing the contents of a drop box must be controlled by one count team member who may not access the drop box unless both count team members are present. If there are two separate locks that secure the contents of a drop box, the key to the second lock must be controlled by the other count team member.
4. Each person shall independently count the drop box cash in the presence of the other person and resolve any difference between the two counts. Then, one person shall record the count and the other person shall verify the recorded amount, and both persons shall initial and date the cash count report for each drop box.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-08-15. Tournaments. An Except as provided by this section, an organization shall conduct a tournament according to these this chapter. These rules, which must be posted disclosed to players:

1. An Except as provided by subsection 5, an organization may charge a player an entry fee, shall set a minimum player buy-in amount for the preliminary and championship rounds or for the tournament, and shall set the time or number of shoes or hands to be played. A--player--shall--register--before participating--and--the--player--may--be--charged--an--entry--fee. An organization shall maintain a register of players.
2. An organization may assign a player one or two betting spaces. An organization may use a rotating button to signify the order of betting. If a button is used, it must move clockwise one position after each hand.
3. A player may not move from table to table, temporarily stop playing, or transfer chips to or from another player. A bet must be made on each hand. A player shall play with chips prescribed by subsection 3 of section 99-01.3-08-03 and issued for the tournament and keep the chips on top of a table. A player may not cash out before the end of play unless the player withdraws.
4. A player's score is the difference between the player's total buy-in amount and value of the chips redeemed. An organization may advance players with the highest scores from each preliminary round to the next round or championship round. An organization shall post all the players' scores at the end of a tournament. A player with the highest score, based on preliminary rounds or a championship round, wins. A cash or merchandise prize may be awarded.
5. An--organization's--decision--on--a--dispute--is--final. As an option, an organization may conduct a tournament in which the organization charges a player an entry fee and provides the player a fixed number of no-value chips. The entry fee cannot exceed one hundred dollars and has no relationship to the number of chips issued to the player. The chips have no cash redemption value. An organization shall set a minimum bet limit and may set a maximum bet limit based on a number of chips. A player with the most number of chips, based on preliminary rounds or a championship round, wins. A cash or merchandise prize may be awarded.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-08-16. Recordkeeping.

1. For each day's activity, records must include:
 - a. The starting and ending cash and chip banks and IOU records according to section 99-01.3-03-06;
 - b. Drop box cash and values of fill and credit slips of each table;
 - c. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all twenty-one activity for a quarter must reconcile to the tax return; and
 - d. For a video surveillance system, dealer percent-of-hold information, videotape inventory log, and videotape review record. These records must be retained for one year from the end of the quarter of activity; however, a videotape review record can be disposed of after thirty days unless it references criminal activity.
2. Chip inventory records according to subsection 5 of section 99-01.3-03-09.
3. The cash profit (see subdivision h of subsection 6 of section 99-01.3-02-01) must be deposited intact according to section 99-01.3-03-10.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-09

99-01.3-09-02. Limitations and fees.

1. An organization may only conduct poker on two occasions per year. An occasion may include more than one site. A nontournament occasion is a twenty-four-hour period of play. A tournament occasion is a consecutive three-calendar-day period of play.
2. For nontournament play, if an organization does not provide a dealer, players must use cash. ~~For a tournament, an organization shall provide a dealer and use value chips.~~
3. ~~For nontournament play, an~~ An organization shall charge a player a fee not to exceed two dollars per one-half hour of playing time and collect the fee in advance. An employee shall record the fee when it is collected. ~~For tournament play, an organization may charge a player an entry fee not to exceed one hundred dollars in place of or in addition to the fee. The fee schedule must be posted on a site.~~
3. For a tournament, an organization shall provide a dealer, charge a player an entry fee, and provide the player a fixed number of no-value chips. The entry fee cannot exceed one hundred dollars and has no relationship to the number of chips issued to the player. The chips have no cash redemption value. An organization shall set a minimum bet limit and may set a maximum bet limit based on a number of chips. A player with the most number of chips, based on preliminary rounds or a championship round, wins. A cash or merchandise prize may be awarded.
4. An organization that conducts poker through a "poker run" involving more than one site shall comply with guidelines prescribed by the attorney general.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-07.2

CHAPTER 99-01.3-10

99-01.3-10-01. Calcutta. A "calcutta" is a sporting event of two or more competitors in which players wager at an auction on the performance of the competitors. The conduct of a calcutta is the auction. An auction pool is comprised of the wagers paid by players who offered the highest bid bids on the competitors. When the event is over, the The auction pool is distributed to the player who had wagered on the winning competitor. The winning competitor may be one competitor, a team of competitors, or ranked competitors. The payout of the cash prize to a winning player is based on a predetermined percentage of the auction pool, which may not exceed ninety percent. Only cash prizes may be awarded.

1. A calcutta may only be conducted for a professional or amateur sporting event held in North Dakota, but not for an elementary, secondary, or postsecondary education sporting event. An organization may conduct more than one calcutta on the same sporting event. More than one organization may independently conduct a calcutta on the same event.
2. An organization shall acquire a calcutta board from a distributor and complete on it the sporting event, date of the sports event, and manner of distributing the auction pool as a prize. An organization shall post the requirements of the players on the site.
3. Each competitor in a sporting event must be identified before the auction begins. A competitor may also be a player who may wager on oneself.
4. Each competitor listed on a calcutta board must be eighteen years of age or older and be offered through an auction to prospective players. A player who offers the highest bid for a competitor by a verbal, sealed, or open bid wagers on that competitor. A player may wager any amount and buy more than one competitor. A competitor may only be auctioned off only to one player.
5. An open bid enables a potential player, during a certain time, to write the player's name and bid for a competitor on a register assigned that competitor. Each successive potential player interested in that competitor shall write the player's name and bid, of an amount higher than the previous bid, on the register. When the time period ends, the last player listed on the register wagers the amount bid on that competitor.
6. An organization shall conduct an auction at its site and a that may be where the sporting event is held. A player must be present to bid. ~~An organization may conduct an auction~~

~~where-the-sporting-event-is-held-provided-it-is-an--authorized site-~~

7. The sequence of a verbal bid auction must be determined by a random drawing of the numbers assigned each line.
8. Before an auction, an employee shall:
 - a. Verbally announce the predetermined percentages of the auction pool that will be paid to a winning player and retained by an organization. The amount a player may win depends on the total amount of the auction pool and not on any odds; and
 - b. Complete for each line on a board a sequential number starting with the number one and a name of a competitor.
9. If a competitor is not bid on by a player, an organization shall may sell the competitor by:
 - a. If there is more than one competitor not bid on, placing the competitors in one or more groups and auction a group as one competitor; or
 - b. Allowing a competitor to purchase oneself for a predetermined minimum wager.
10. After an auction, an employee shall complete this information for each line on a board; and total the amounts wagered:
 - a. Name Full name and address of the player who bought the competitor; and
 - b. Amount wagered by the player.
11. If a competitor was bought by a player and does not compete in the event, an organization shall refund the wagered amount to the player.
12. After a sporting event, an employee shall complete on the board, for each winning player, the amount of the auction pool won. A winning player is the player who wagered on the competitor who won the event. An organization may award the prize to a winning player where the event is held.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-07.3

99-01.3-10-02. Recordkeeping.

1. For each calcutta, records must include:

- a. A calcutta board indicating the winning competitor and player. The board must be retained for one year from the end of the quarter of activity;
 - b. The starting and ending cash on hand and IOU records according to section 99-01.3-03-06;
 - c. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all calcuttas conducted for a quarter must reconcile to the tax return; and
 - d. Record Prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08.
2. Inventory records according to subsection 1 of section 99-01.3-03-09.
 3. The cash profit (see subdivision j of subsection 6 of section 99-01.3-02-01) must be deposited according to section 99-01.3-03-10.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-11

99-01.3-11-02. Paddlewheels - Excluding the use of a table. This section applies to the method of paddlewheels described by subsection 1 of section 99-01.3-11-01.

1. All paddlewheel tickets of a card must be preprinted; ~~detachable-from-a-paddlewheel-ticket-card~~; and contain one or more numbers or symbols corresponding to a paddlewheel. A number or symbol cannot be repeated on any of the tickets of a card number. A ticket must have a game serial number corresponding to the number printed on the ticket card's stub. A master flare for a series of paddlewheel ticket cards must state the type of paddlewheel tickets, cost per ticket, range of card numbers, have a state gaming stamp affixed to it bearing the card number of the ~~lowest--number~~ lowest-numbered ticket card, and be posted.
2. The maximum price per ticket is two dollars. All the tickets of a series of paddlewheel ticket cards must be sold for the same price and the tickets cannot be discounted. A person may not be required to buy more than one ticket. All tickets must be sold on a site the day the game is conducted. All the tickets of a card must be sold before a spin. Otherwise, an employee shall refund the gross proceeds in exchange for the players' unplayed tickets.
3. A winner must be determined by spinning a paddlewheel. An organization may spin a paddlewheel multiple times to award multiple prizes for one paddlewheel ticket card. A paddlewheel must make at least four revolutions. Otherwise, the spin is void and the paddlewheel must be spun again.
4. No cash prize may be a variable multiple of the price of a ticket. No cash prize or the retail price of a merchandise prize for one winning ticket may exceed one hundred dollars. After a prize payoff, an employee shall record the date, card number, and cash prize amount or description of a merchandise prize; and retain the winning ticket.
5. All paddlewheel ticket cards of a series related to the same master flare must be reported on the tax return in the quarter in which the series was first played. An organization may not carry over a partial series of paddlewheel ticket cards to another quarter. Any cards of a series which remain unsold during a quarter when other cards of that series were sold must be retained as part of the accounting records; and cannot be used or disposed.
6. These rules and policy must be posted:

- a. A player may not bet tickets that exceed a value of twenty dollars for one spin;
- b. A paddlewheel must make at least four revolutions;
- c. Whether a player is or is not required to be present when the paddlewheel is spun to win; and
- d. The time limit for the winning player to claim the prize; however, the limit cannot exceed one hour from the time of the drawing.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-07.4

99-01.3-11-03. Paddlewheel, table, chips, and video surveillance system.

- 1. A paddlewheel is a round mechanical vertical wheel, at least thirty inches [76.2 centimeters] in diameter, and may be divided into a maximum of five concentric circles. The outer circle must contain at least forty numbers or symbols. A paddlewheel may have house numbers or symbols for an optional odd or even bet. Each inner circle may contain up to one-half of the number of numbers or symbols as that circle's adjacent outer circle. The numbers and symbols may repeat on a circle. Each circle must be divided into equally spaced sections, be a different primary color, and correspond to the colored numbers or symbols of a table playing surface. The colored numbers or symbols of all concentric circles must be at least five-eighths of one inch [15.88 millimeters] in height.
- 2. A peg must protrude, on the circumference of a paddlewheel, between each section of the outside circle. A pointer must be positioned above a paddlewheel. It is used to stop a spin of a paddlewheel and determine the winning colored number or symbol.
- 3. A table must have:
 - a. A chip tray and a rail for holding a player's chips;
 - b. A playing surface which must be permanently imprinted with colored numbers or symbols of at least one and one-half inches [3.81 centimeters] in height relating to each circle of a paddlewheel. A set of colored numbers or symbols is a line bet. A table may have a space spaces for various wagers, including sets of numbers, colored numbers, symbols, and "ODD" and "EVEN" bets;

- ~~c. A betting spot for each type of bet, and either~~ Either a mirror to reflect or a color video camera and monitor to display; the winning colored number or symbol on the paddlewheel; and
 - ~~d. A "drop box" that meets the specification of subsection 5 of section 99-01.3-15-02. A drop box~~ must have a money plunger which must remain in the slot unless the plunger is used.
4. An organization shall issue solid color-coded sets of chips for betting purposes. No betting chip can be a twenty-one chip or be the primary color of mustard yellow. The number of different sets and number of chips within each set is based on an organization's discretion. Each chip must be round in shape, be one and nine-sixteenths inches [39.62 millimeters] in diameter and be permanently impressed, engraved, or imprinted on one side with an organization's name ~~and on the other side with the value~~. The name may be represented by a unique identification that differentiates an organization's chips from other organizations' chips. Each chip is valued at one dollar.
5. An organization may issue payout chips in values of one dollar, five dollars, twenty-five dollars, and one hundred dollars for paying a winning bet or exchanging a betting chip. Each chip must meet the specifications of subsection 4, be a prescribed primary color, and have white edge spots visible on the perimeter of both sides of a chip and on the chip's circumference, as follows:
 - a. One dollar chip - gray which is the color classified as N 5/ on the Munsell system of color coding. A one dollar chip must have three white solid edge spots and each edge spot must be fifteen thirty-seconds of one inch [12.18 millimeters] in width.
 - b. Five dollar chip - orange which is the color classified as 2.5YR 6/14 on the Munsell system of color coding. A five dollar chip must have three white split edge spots and each edge spot must be fifteen thirty-seconds of one inch [12.18 millimeters] in width. Each of the two split portions of an edge spot must be one-eighth of one inch [3.05 millimeters] in width. The space between the two split portions must be three-sixteenths of one inch [4.56 millimeters] in width.
 - c. Twenty-five dollar chip - green which is the color classified as 2.5G 5/12 on the Munsell system of color coding. A twenty-five dollar chip must have eight white solid edge spots and each edge spot must be five thirty-seconds of one inch [4.06 millimeters] in width.

- d. One hundred dollar chip - black which is the color classified as N 2/ on the Munsell system of color coding. A one hundred dollar chip must have four white triple split edge spots and each edge spot must be one-half of one inch [12.7 millimeters] in width. Each of the three split portions of an edge spot and the two spaces between the three split portions must be one-sixteenth of one inch [1.52 millimeters] in width.
6. An employee shall safeguard the chips in a safe place or, if a table has been opened and no wheel operator is stationed at it, remove or lock up the chips.
7. An organization shall have a picture-in-picture video surveillance system on a table and paddlewheel. The system must meet the specifications prescribed by ~~subsections 1 through 11, except subsection 4, of section 99-01.3-08-04.~~

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-07.4

99-01.3-11-04. Opening and closing a table, number of employees, chip bank services, procedure for accepting currency and chips, and drop box.

1. To open a paddlewheel table, an employee shall inspect each peg and the pointer of a paddlewheel for uneven wear, immediately replace any worn peg or pointer, and evaluate the balance of a paddlewheel. To close a table, an employee shall make it inoperable.
2. An organization may not conduct paddlewheels unless two employees are on duty at the site.
3. A fill, credit, and credit/cash transfer slip must be prepared and used according to section 99-01.3-08-05. An organization shall perform chip bank services according to section 99-01.3-08-06.
4. A wheel operator, upon receiving currency from a player at a table, shall spread each bill of currency facedown and flat, in sequence of denomination, in the inner table area, perpendicular to a chip tray, and momentarily move the wheel operator's hands away from the currency so it is within a camera's view. A wheel operator, upon receiving a payout or twenty-one chip from a player at a table to be exchanged for a betting chip, shall place the chip in the inner table area at the dealer's left, and sort, stack, and fan the chips. A wheel operator shall then take betting chips from the chip tray, equal in value to the currency or payout or twenty-one chips, fan the betting chips, and momentarily move the

dealer's wheel operator's hands away from the betting chips so they are within a camera's view. A wheel operator shall then restack the betting chips, push the betting chips to the player, and place the currency in a drop box ~~and/or~~ or place the payout or twenty-one chips in the chip tray, or both.

5. After a day's activity, an employee shall transport a drop box from a table, store it, and count drop box cash according to section 99-01.3-08-14.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-11-05. Conduct and play.

1. An organization may limit the number of players and may require a minimum number of players to open a table.
2. A player shall buy a betting chip with currency or may exchange a payout or twenty-one chip for a betting chip. A payout or twenty-one chip cannot be used to place a bet.
3. The maximum betting limit of a player for each spin is betting chips valued at twenty dollars. Each chip is a separate chance to win. Unless an organization has a restrictive posted policy, a player may bet more than one chip on the same colored number or symbol for a spin. To bet, a player shall place a chip on a the betting space layout of a table. A If a player's total bet that exceeds a value of twenty dollars on a spin or exceeds an organization's maximum wager on a spin, the entire bet is void and, unless an organization has a posted policy, only a player's chips in excess of the limit are forfeited. A player may not place a tip bet for a wheel operator.
4. After all the players have bought a betting chip and before a paddlewheel is spun, a wheel operator shall announce that the players' bets for the next spin must now be placed. A wheel operator may place a chip for a player if the wheel operator first states, in a voice loud enough to be heard by all the players at a table, that the player is being assisted. When a wheel operator has determined that no other person desires to bet, the wheel operator shall announce bets closed. Thereafter, a player may not bet or touch any placed betting chip or obstruct the view of the playing surface until after a wheel operator pays off all winning wagers. A wheel operator shall double spin a paddlewheel by pulling it in a downward or upward direction and releasing it. While the paddlewheel is in motion, a wheel operator shall again pull it in a consistent downward or upward direction. A paddlewheel must rotate at least four full unrestricted revolutions.

Otherwise, the spin is void and a paddlewheel must be spun again.

5. When a paddlewheel stops, a wheel operator shall announce the winning colored number or symbol in a tone of voice loud enough to be heard by all the players at a table. The announcement must be in sequence of the outermost circle first to the innermost circle last. A wheel operator shall first remove all losing betting chips from the table and place them in the chip tray. Then, a wheel operator shall pay off the winning betting chips in the sequence of the ~~lowest-payoff-bet first-to-the-highest-payoff-bet-last-or-in-the-sequence-of-the~~ payoff bets that are most accessible to the players first and to the payoff bets that are least accessible to the players last.
6. To pay off a winning betting chip (wager), a wheel operator shall fan all of a player's betting chips toward the wheel operator or side. A wheel operator shall take a betting chip or chips of the same color as the winning chip ~~and/or~~ or take a payout chip or chips, or combination of betting and payout chips, equal to the prize amount of the winning chip or chips, from the chip tray, place the betting ~~and/or-payoff~~ or payout chips, or betting and payout chips, in a stacked manner beside the wagered fanned betting chips, fan the ~~payoff~~ chips toward the wheel operator or side, and momentarily move the wheel operator's hands away from the chips so they are within a camera's view. ~~A-wheel-operator-shall-repeat--this--procedure-for--each--winning-betting-chip-~~ However, if the prize payoff exceeds twenty betting or payout chips or betting and payout chips, the wheel operator may use a rack to account for one or more sets of twenty payout chips and fan the remaining payout chips.
7. A tip for a wheel operator must be made with a betting or payout chip. If a tip is made with a betting chip, a wheel operator shall immediately exchange the betting chip for a payout chip in the inner table area, momentarily move the wheel operator's hands away from the chip so it is within a camera's view, place the betting chip in the chip tray and payout chip in the tip receptacle. When the wheel operator's shift ends, the wheel operator shall take the tip receptacle and leave the table.
8. If a player desires to redeem betting chips, an organization shall exchange the player's chips for payout chips at the paddlewheel table. A player shall redeem a payout chip with the cash bank cashier or ~~may~~ exchange a payout chip for a twenty-one chip at a twenty-one table.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-07.4

99-01.3-11-06. Posting.

1. These rules must be posted:
 - a. A player may not bet chips that exceed a value of twenty dollars for one spin.
 - b. A player must bet by placing a betting chip ~~in or~~ properly on a the betting space layout. No payout or twenty-one chip can be used to place a bet.
 - c. A player may not touch a betting chip after the wheel operator announces "bets closed" and may not obstruct the view of the playing surface until after a wheel operator pays off all winning wagers.
 - d. A paddlewheel must make at least four revolutions.
 - e. If a pointer stops on top of a peg, the number preceding the peg is the winning number.
 - f. A winning odd or even bet is determined by a winning number of only the designated colored circle. However, a player loses all odd and even bets if the pointer stops on a designated house number. This must be posted if an odd or even bet is accepted.
 - g. A player may not take a betting chip away from the table and must be at the table to win. Otherwise, the player shall forfeit the betting chip.
 - h. If a player stops playing and has an unused betting chip, the player must exchange the betting chip for a payout chip through the wheel operator before the player leaves the table.
2. Prize payoff information must be posted or stated on a table playing surface. The information must reference each differently colored number or symbol, including an optional odd or even bet, and state each prize payoff. The payoff is the relationship of the prize to a winning betting chip. The payoff must be stated as " to " or " for ". For example, for a red-colored number or symbol which pays forty dollars for a winning betting chip, the information must reference the red-colored number or symbol and state the payoff as "EXACT NUMBER RED 40 to 1".

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1; 53-06.1-07.4

99-01.3-11-07. Recordkeeping. Records must include:

1. For each day's activity, records must include:
 - a. The starting and ending cash banks and IOU records according to section 99-01.3-03-06;
 - b. For each ticket card of each series of paddlewheel ticket cards described by subsection 1 of section 99-01.3-11-01:
 - (1) Date conducted, card number, cash prize amount or cost and description of a merchandise prize; and
 - (2) The flare with all winning tickets and unsold ticket cards which must be retained for one year from the end of the quarter in which the activity was reported on a tax return;
 - c. For paddlewheel activity described by subsection 2 of section 99-01.3-11-01:
 - (1) Drop box cash, and starting and ending value of ~~color-coded sets of~~ betting chips and payout chips; and
 - (2) For a video surveillance system, wheel operator percent-of-hold information, videotape inventory log, and videotape review record. These records must be retained for one year from the end of the quarter in which the activity was reported on a tax return; however, a videotape review record can be disposed of after thirty days unless it references criminal activity; and
 - d. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all paddlewheel activity for a quarter must reconcile to the tax return.
2. Series of paddlewheel ticket cards inventory records according to subsection 1 of section 99-01.3-03-09.
3. The cash profit (see subdivisions k and l of subsection 6 of section 99-01.3-02-01) must be deposited intact according to section 99-01.3-03-10.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-12

~~99-01.3-12-01. Use. An organization may operate a pull tab dispensing device when the organization's employee is on duty, and may have a bar employee redeem a winning pull tab when the organization's employee is or is not on duty. Repealed effective July 1, 2000.~~

~~History: Effective May 1, 1998.~~

~~General Authority: NDEC-53-06-1-01-1~~

~~Law Implemented: NDEC-53-06-1-01-1; 53-06-1-06~~

99-01.3-12-02. Requirements Use and requirements of an organization.

1. An organization may operate a pull tab dispensing device when the organization's employee is on duty and may have a bar employee redeem a winning pull tab when the organization's employee is or is not on duty.
2. If a distributor's or manufacturer's security seal is broken on a deal's container before the deal is used, an organization shall return the deal to the distributor.
2. 3. An organization shall post a notice on a site containing these rules:
 - a. Restricting access to or delaying using credits on a device is prohibited;
 - b. A winning pull tab must be redeemed within fifteen minutes;
 - c. A pull tab cannot be redeemed if it has been taken from the gaming area;
 - d. If a person solicits, provides, or receives any inside information, by any person, by any means, or uses a fraudulent scheme or technique to cheat or skim involving pull tabs, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail or both; and
 - e. If a player attempts to falsify or falsifies a record of win, the prize is forfeited.
3. 4. An organization shall maintain custody of all keys to a device. However, an organization may provide an authorized employee of a bar with a key to the cash compartment to withdraw currency or a drop box if:

- a. A device's cash compartment is separate from its pull tab and accounting meter compartments. However, if access to a device's accounting meters is controlled by a security code, the cash and accounting meters may be in the same compartment;
 - b. The organization authorizes a specific employee of a bar to withdraw cash and complies with section 99-01.3-02-02 regarding a record check on the employee; and
 - c. If a drop box is not used, an authorized employee of a bar shall count the cash, record the amount, sign and date the record, and secure the cash and record in a keyless locking bank bag. If a drop box is used, an organization may not provide the authorized employee of a bar the key to access the contents of the drop box.
4. 5. An organization shall withdraw currency from a device within a seven-calendar-day interim period.
 5. 6. An organization shall use the current recordkeeping system prescribed by the attorney general.
 6. ~~An organization shall provide a bar employee a copy of subsection 10 of section 99-01.3-02-03, and sections 99-01.3-02-05, 99-01.3-02-09, 99-01.3-03-08, 99-01.3-12-03, and 99-01.3-12-04 regarding the bar employee's duties and restrictions.~~
 7. An organization shall have a rental agreement conforming to section 99-01.3-02-06.
 8. An organization shall maintain an access log prescribed by the attorney general. A person who accesses a device for any reason shall record the access and initial the log. When a person does a test vend or a test validation of currency, the person shall record the value of pull tabs and currency validated. An organization shall retain the log in a device during the quarter of activity.
 9. An organization may provide a bar with a temporary loan to enable a bar employee to redeem a winning pull tab. A loan and any increase in the loan must be made by check payable to the bar and be interest free. An organization may not access, count, or take custody of the loaned money. The duration of the loan must be until an organization discontinues conducting pull tabs at a site through a device. When the bar repays the loan, the organization shall deposit the funds in its gaming account and the deposit slip or receipt must reference the site, source of funds, and amount. The amount reimbursed to a bar must equal the value of redeemed winning pull tabs which the bar provides an organization. An organization employee

- may not use a bar's cash on hand for redeeming a winning pull tab.
10. An organization may not provide an independent service technician a key to access a device regardless if the device is leased.
 11. If a theft of currency occurs, an organization shall record the currency and pull tab or bingo card accounting meter meters or print a cash withdrawal report for and audit the game. The organization shall provide a copy of all of this information to a local law enforcement purposes agency and the attorney general.
 12. When a game is closed:
 - a. The game must be reported on a tax return for the site at which it was closed;
 - b. An employee shall buy back all remaining redeemed winning pull tabs from a bar; and
 - c. If the game has unsold pull tabs, these cannot be put back into play.
 13. An organization or employee may not:
 - a. Modify the assembly or operational functions of a device;
 - b. Remove or transfer a device from a site without notifying the attorney general within fourteen days of removing or transferring the device;
 - c. Use or continue to conduct a deal of pull tabs after being notified by a distributor of a ban or recall of the deal;
 - d. Designate a pull tab to entitle a player who buys it with a prize provided by a bar or distributor; or
 - e. Intentionally test vend currency or pull tabs to synchronize nonresettable accounting meters.
 14. A game must be conducted and played through a device as follows:
 - a. Except for a game serial number and color of the pull tabs, the deals must be identical;
 - b. An employee shall place at least one and one-half deals in a device at the same time at the start of a game. Pull Any remaining pull tabs must be placed in the device first when additional pull tabs are added. If a device has column outlet slots, rather than a tray, pull tabs from

both deals must be randomly placed in the stacking columns until full. ~~Any remaining pull tabs from one of the two deals must be placed in a device first when pull tabs are added to the device~~ Otherwise, pull tabs from one deal must be placed in two of the stacking columns and at least one-half of the pull tabs from a second deal must be placed in two other stacking columns until full. Next, any leftover pull tabs from the first deal must be placed in any remaining empty column. Then, the pull tabs in the columns must be evened out;

- c. An employee shall securely attach a master flare to the interior or exterior of a device, or on an adjacent wall, so the flare's information is visible to players. When a deal is added, the deal's flare may be retained in a device or at an organization's office;
- d. An If a device has column outlet slots, rather than a tray, an employee shall add any remaining pull tabs of a deal previously partially placed in a device or pull tabs of a new deal by randomly mixing these pull tabs with the unsold pull tabs of previous deals that are in the device. Otherwise, an employee shall add a new or partial deal of pull tabs to a device by taking the unsold pull tabs of previous deals from all, except two, of the columns and placing those pull tabs on top of the unsold pull tabs of those two columns. Next, the employee shall place any overflow pull tabs and the new or partial deal's pull tabs in the empty columns until full and then place the deal's pull tabs in those two other columns. Then, the pull tabs in the columns must be evened out. If a partial deal is added to a game, the remaining pull tabs of that deal must be added to the game next and before the game is closed;
- e. If a deal is to be added to a game and an organization does not have a proper deal to add, the organization shall temporarily suspend the game until it procures a proper deal. ~~If twenty-five consecutive calendar days elapse since a game was placed in play, a proper deal has not yet been procured, and all top tier winning pull tabs have been redeemed, an organization may close the game. Otherwise, the organization shall reactivate the game until all top tier winning pull tabs are redeemed or it is the end of a quarter, whichever occurs first~~ However, if the organization is unable to procure a deal from the distributors and all the top tier winning pull tabs have been redeemed, it may close the game;
- f. If a site's total gross proceeds of pull tabs averages twelve thousand five hundred dollars or less per quarter or if a site has not previously had gaming, a game may be closed anytime if all top tier winning pull tabs have been redeemed;

- g. Except as provided by subdivision h, if a site's total gross proceeds of pull tabs averages more than twelve thousand five hundred dollars per quarter, no game may be closed unless an organization discontinues gaming at the site, or all the top tier winning pull tabs have been redeemed and:
- (1) Fifty deals have been added to a game;
 - (2) A game's actual gross proceeds ~~is~~ are twenty-five thousand dollars; or
 - (3) A game has been in play for twenty-five consecutive calendar days;
- h. An organization shall close a game by the end of a quarter. If all top tier winning pull tabs have been redeemed or low-level switches in all but two columns of a device have been triggered, an organization may close a game for the quarter within fourteen calendar days before the end of that quarter. An organization may start a new game for the next quarter within fourteen calendar days before the next quarter begins. However, an organization may not start a new game and end that game within this fourteen-calendar-day period. When a game is being closed, an employee shall post a sign stating that the game is being sold out;
- i. If the percent-of-accuracy of all the games involving a device for a site for the previous quarter was less than ninety-eight and one-half percent, an employee who did not conduct the game shall do a weekly interim audit of the games at the site for twelve continuous weeks. An organization shall start the weekly audits no later than the date on which its tax return for the quarter was filed with the attorney general. However, if games involving a device ~~are not conducted with the assistance of~~ without a bar employee redeeming a winning pull tab, pull tab games not involving a device are also conducted, and the combined percent-of-accuracy of all pull tab games at the site for the previous quarter was ninety-eight and one-half percent or greater, no weekly interim audit is required. This rule does not apply if the percent-of-accuracy was less than ninety-eight and one-half percent as a direct result of a documented identified mechanical problem or theft; and
- j. An organization may transfer a device from a site to another site; or rotate a device among sites. If an organization discontinues gaming at a site; it may close a game or transfer the game to a device at another site. If a game is in the process of being conducted through a

device, an organization may not transfer the game to a jar bar.

15. Two or more organizations may use devices at the same site on different days of the week provided the organizations use different names of games in the devices and the bar uses separate cash banks.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06

99-01.3-12-03. Requirements of a bar.

1. A bar shall:
 - a. Place a device in a location where alcoholic beverages are dispensed and consumed and where a bar employee will regularly observe the device;
 - b. Prohibit a person from tampering or interfering with the operation or play of a device;
 - c. Have the electrical current to a device turned off unless alcoholic beverages may be dispensed, a bar employee or an employee is available to redeem a winning pull tab and a bar has cash on hand to redeem a winning pull tab;
 - d. Absorb a loss related to a counterfeited or lost pull tab, redeemed pull tab that was not bought at the site, and loss or theft of the temporary loan of funds;
 - e. Repay an organization's temporary loan of funds within fourteen days of when the organization discontinues conducting pull tabs through a device at a site; and
 - f. If a malfunction of a device is known by the bar or its employee, turn the device off and promptly notify the organization. Otherwise, the bar or its employee is responsible for any cash shortage.
2. Except to withdraw currency or a drop box according to subsection 3 4 of section 99-01.3-12-02, a bar employee may not access, attempt to access, or permit a person, other than an employee of an organization, to access the interior of a device for any reason.
3. If a bar employee believes that a deal is defective or there is a problem with a redeemed pull tab, the bar employee shall contact an organization and may turn a device off.
4. A bar may accept or not accept a gaming-related check from a player. A player's check must be payable to a bar. A bar is

responsible for a player's check returned by a financial institution as uncollectible. A bar may allow a player to buy back the player's check with cash and may return a player's check to the player as part of a prize payout.

5. Only a bar employee who is authorized by a bar may redeem a winning pull tab.
6. A bar employee may not summarize or audit a game of pull tabs for an organization.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06

99-01.3-12-04. Requirements of a bar and an organization.

1. A bar employee or an employee shall deface a winning number or symbol of a pull tab when it is redeemed. If a pull tab has two or more winning prize patterns, a winning number or symbol of at least one pattern must be defaced.
2. A bar employee or an employee may not:
 - a. Assist a player in opening a pull tab except to assist a disabled player;
 - b. Knowingly pay a prize to a player who is redeeming a pull tab that has been defaced, tampered with, counterfeited, or has a game serial number different from the serial numbers of the deals in the game;
 - c. Knowingly pay a prize to a player who is redeeming a pull tab when the player with the pull tab has left the gaming area of a site;
 - d. Publicly display a redeemed pull tab;
 - e. Knowingly pay a prize for a pull tab after fifteen minutes has elapsed since it was bought. If a player attempts to redeem a pull tab after the allowed time limit, a bar employee or an employee shall, if possible, retain and void the pull tab; or
 - f. Pay, from gaming funds or any other source, a prize to a player unless the player redeems an actual winning pull tab from a game conducted at the site.
3. A prize must be cash.
4. If a device malfunctions, is inoperable, and a player has a credit, a bar employee or an employee shall pay the player for

the player's unplayed credits and record the refund on a credit redemption register. A bar shall provide this form to an organization to claim a reimbursement. If a player's currency jams in a currency validator and a device does not show a credit, a bar employee may not reimburse a player, and shall record the jam on a credit redemption register and notify an organization. If an organization determines that a device is cash long, the organization shall reimburse a player by cash or check.

5. A bar employee and an organization shall document the number and value of redeemed winning pull tabs, by value, that are exchanged for cash or check. These pull tabs must be segregated by interim period.
6. An organization shall provide a bar employee and a bar shall maintain a current copy of subsection 9 of section 99-01.3-02-03 and sections 99-01.3-02-05, 99-01.3-02-09, 99-01.3-03-08, 99-01.3-12-03, and 99-01.3-12-04 regarding the bar employee's and bar's duties and restrictions.
7. A bar employee or an employee may post the information referenced by subdivision a or b, or both, provided that an organization does not have a partial deal that is to be added to a device. An organization shall post a statement that the information is correct to the best of the organization's knowledge and that the information is not guaranteed to be accurate. If an organization does not have a policy on when to stop posting this information when a game is being closed, it shall stop posting the information when there are less than six winning pull tabs, through a level of prize value determined by the organization, that remain unredeemed. Posted information may be the information described in subdivision a or ~~subdivision~~ b, or both:
 - a. The minimum number of unredeemed winning pull tabs or a range of numbers of unredeemed winning pull tabs, through a level of prize value determined by an organization, that will always be in a game unless the game is being closed. This information may be for each prize value or the total of several prize values. The level of prize value must be posted. If a pull tab has two or more winning prize patterns, the information must be based on the value of each prize pattern.
 - b. The number or unredeemed winning pull tabs, through a level of prize value determined by an organization, that remain in a game. This information may be for each prize value or the total of several prize values. The level of prize value must be posted. If a pull tab has two or more winning prize patterns, the information must be based on the value of each prize pattern. The information must be continually updated.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06

99-01.3-12-05. Recordkeeping.

1. For each game, records must include:
 - a. ~~A--flare-for-each-deal-of-a-game-~~ All redeemed and unsold pull tabs for a game must be retained as documentation for gross proceeds and prizes for one year from the end of the quarter in which the activity was reported on a tax return;
 - b. The deal's game information sheet for-each-deal and flare with the state gaming stamp affixed must be retained for three years from the end of the quarter in which the game was reported on a tax return;
 - c. A record of game serial numbers for each game;
 - d. Record of win according to section 99-01.3-03-08;
 - e. Credit redemption register;
 - f. If an employee redeems winning pull tabs at a site, a daily employee report documenting the starting and ending cash on hand and IOU records according to section 99-01.3-03-06 and prizes redeemed;
 - g. Interim period site summary, including meter readings, deal's gaming stamp number and game serial number of a deal added to a device, currency withdrawn, redeemed prizes by denomination obtained from a bar, total prizes, credit redemption register refunds, cash profit or loss, and bank deposit;
 - h. Summary, including cumulative prizes, cash profit, bank deposits, and redeemed top tier pull tabs by game serial number;
 - i. Inventory records according to subsection 1 of section 99-01.3-03-09; and
 - j. Access log.
2. A summary of ideal gross proceeds, value of unsold pull tabs, gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all games for a quarter must reconcile to the tax return.

3. The cash profit (see subdivision d of subsection 6 of section 99-01.3-02-01) for an interim period must be deposited intact according to section 99-01.3-03-10.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-13

~~99-01.3-13-01. Use. An organization may operate a bingo card dispensing device the same as a pull tab device according to section 99-01.3-12-01.~~ Repealed effective July 1, 2000.

~~History: Effective May 1, 1998.~~

~~General Authority: NDEC-53-06-1-01-1~~

~~Law Implemented: NDEC-53-06-1-01-1; 53-06-1-06~~

99-01.3-13-02. Requirements Use and requirements of an organization.

1. An organization may operate a bingo card dispensing device the same as a pull tab device according to section 99-01.3-12-02. An organization shall comply with subsections 1 through 13 of section 99-01.3-12-02 in respect to bingo cards, rather than pull tabs.
2. Bingo must be conducted and played as follows:
 - a. An employee shall ensure that all the bingo balls are present and draw or predraw numbers for the pattern related to a prize flare. An employee shall record a control number (sequential number used to track sets of called bingo numbers), device serial number, winning pattern, and prize on a prize flare that may or may not have a state gaming stamp affixed. The called numbers must be recorded on a two-part record of called bingo numbers form. A set of called bingo numbers may be used to complete more than one record of called bingo numbers form for use at more than one site if the forms are used at the same time for the same winning pattern. The original of the form must be forwarded to a bookkeeper;
 - b. A different prize flare must be used for each deal of bingo cards;
 - c. If a prize flare is not scheduled to be posted immediately:
 - (1) The copy of the record of called bingo numbers form must be placed in an envelope attached to the prize flare. The envelope must reference the site, control number, and dates and times when the prize flare is scheduled to be posted. An organization shall safeguard the envelope and prize flare until they are used; and

- (2) When a prize flare is scheduled to be posted, an employee shall forward the copy of the record of called bingo numbers form to a bar employee or an employee who will redeem a winning card. A new prize flare may be posted at any time;
- d. If a prize flare is scheduled to be posted immediately:
 - (1) A bingo caller shall announce to players that the bingo numbers to be called relate to the prize flare involving a device; and
 - (2) A bingo caller shall forward the copy of the record of called bingo numbers form to a bar employee or an employee who will redeem a winning bingo card;
 - e. A prize flare must be securely posted on or adjacent to a device. The numbers on a record of called bingo numbers form must be posted on a device's flashboard. Two employees or one employee and any neutral person shall verify that the bingo numbers are correctly displayed. This verification must be acknowledged by both persons who shall, in the presence of each other, initial and date a prize flare. One of these persons shall write the time and date when the prize flare is posted;
 - f. If there is a difference in the numbers posted in relation to the record of called bingo numbers form, the numbers on the form are ~~controlling~~ official;
 - g. An organization shall post one of these statements:
 - (1) "If a bingo card contains multiple winning patterns, only the pattern related to the largest prize amount will be paid";
 - (2) "A bingo card may contain multiple winning patterns if the patterns do not overlap"; or
 - (3) "A bingo card may contain multiple winning patterns and the patterns may overlap";
 - h. Except for a distributor, a person may not adjust a device's internal clock;
 - i. Bingo gross receipts ~~includes~~ include sales tax;
 - j. An employee may not modify a prize flare, use a prize flare that is altered, or modify a game serial number written on a gaming stamp;
 - k. An organization shall close the bingo activity when the deal is sold out or when a new prize flare is posted;

- l. An organization shall provide a bar employee and an employee with a bingo card master checkbook;
- m. When a prize flare is discontinued, an employee shall write the time and date on the prize flare and initial it; and
- n. If an organization replaces a prize flare during a day, an employee shall, fifteen minutes before the scheduled posting, turn a device off and verbally announce that players must redeem winning cards by the posting time.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06

99-01.3-13-03. Requirements of a bar. ~~A bar shall comply with section 99-01.3-12-03 in respect to bingo cards; rather than pull tabs.~~
 Repealed effective July 1, 2000.

History: Effective May 1, 1998.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06

99-01.3-13-04. Requirements of a bar and an organization.

1. A bar shall comply with section 99-01.3-12-03 in respect to bingo cards, rather than pull tabs. A bar employee or an employee shall comply with subsections 1 through 5 6 of section 99-01.3-12-04 in respect to bingo cards, rather than pull tabs.
2. A player shall use an ink dauber or a broad tip colored transparent highlighter to mark numbers. ~~If a pen, permanent marker, or any other writing tool is used,~~ a bar employee and an employee may not redeem the bingo card; but shall return the card to the player so the player may, if possible and within the time limitation, properly mark the numbers.
3. A bar employee or an employee may not knowingly pay a prize to a player who is redeeming a bingo card that does not contain a validated control code, month and day, and time of the transaction. A bar employee or an employee shall compare the daubed or marked numbers of a redeemed bingo card to the record of called bingo numbers form and compare the validated time of a redeemed card to the time limitation. For a cash ~~or merchandise~~ prize of two hundred dollars or more, a bar employee and an employee shall also verify a redeemed card by using a master checkbook. For a redeemed card, a bar employee or an employee shall write the amount of the cash prize,

excluding cents, ~~or description of the merchandise prize~~ in the prize line on the game information side of the card, and initial beside the line.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06

99-01.3-13-05. Recordkeeping.

1. For each interim period, records must include:
 - a. A prize flare for each deal of a game. All test vended bingo cards and redeemed and unsold cards must be retained for one year from the end of the quarter in which the activity was reported on a tax return;
 - b. Record of win according to section 99-01.3-03-08;
 - c. Record of called bingo numbers;
 - d. Credit redemption register;
 - e. If an employee redeems winning bingo cards at a site, a daily employee report documenting the daily starting and ending cash on hand and IOU records according to section 99-01.3-03-06 and prizes redeemed;
 - f. Interim period site summary, including meter readings, deals-added gaming stamp number and game serial number of a deal added to a device, currency withdrawn, redeemed prizes by denomination obtained from a bar, total prizes, credit redemption register refunds, cash profit or loss, and bank deposit;
 - g. Summary, including cumulative prizes, cash profit, and bank deposits;
 - h. Inventory records according to subsection 1 of section 99-01.3-03-09; and
 - i. Access log.
2. A summary of ideal gross proceeds, value of unsold bingo cards, gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all interim periods for a quarter must reconcile to the tax return.
3. The cash profit (see subdivision d of subsection 6 of section 99-01.3-02-01) for an interim period must be deposited intact according to section 99-01.3-03-10.

History: Effective May 1, 1998; amended effective July 1, 2000.
General Authority: NDCC 53-06.1-01.1
Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-14

99-01.3-14-01. Restrictions and requirements.

1. An organization may not accept, and a recipient or potential recipient of net proceeds may not give or offer to give, a payment, gift, service, loan, personal or real property, or other thing of material value, ~~before-or-after~~ for disbursing or receiving net proceeds ~~are disbursed~~. However, a recipient or potential recipient of net proceeds that is an organization or group of people may initiate and transact a formal agreement with a donor organization to voluntarily provide a gaming or nongaming related service to the donor organization in exchange for receiving net proceeds; provided, the agreement is first approved by the attorney general or complies with guidelines prescribed by the attorney general. If the attorney general approves the service, the donor organization shall document the service by recording the location, names of volunteers, description of service, number of hours volunteered, and value of the service based on a reasonable hourly rate. The donor organization shall offset the value of these services against the amount of net proceeds disbursed to the recipient during a quarter by reporting the value of these services as an adjustment on a tax return.
2. A disbursement of net proceeds must be ~~a-current-remittance not-contingent-upon-future-occurrences,~~ and specific as to recipient and use. After an organization disburses net proceeds, it may not interfere with a recipient's control of the funds or attempt to own or influence the use or sale of personal or real property bought by or for a recipient of the funds.
3. Use of net proceeds for economic development or tourism programs may not directly benefit a member, employee, or board of directors' member of a donor or donee organization nor may this person have a financial interest in a funded economic development or tourism program.
4. No private athletic, social, hobby, trade, business, professional, or similar clubs or associations may receive net proceeds, unless the use of the funds complies with subsection 2 of North Dakota Century Code section 53-06.1-11.1 or section 99-01.3-14-02. An expense related directly or indirectly with gaming is not an eligible use.
5. ~~An-organization-may-not-use-net-proceeds-for-fundraising activity-that-is,-directly-or-indirectly,-associated-with gaming,-including-purchase-of-equipment-and-consumable products-for-a-cafe-at-a-site.-If-an-organization-uses-net proceeds-for-fundraising-activity-not-associated-with-gaming,~~

only the net income of that activity may be applied to an imbalance of its gaming or trust fund accounts. No net proceeds may be disbursed for fundraising activity involving a retail business. Restrictions on fundraising activities are:

- a. An organization or recipient may not use net proceeds for a fundraising activity that relates directly to the conduct of gaming, including purchase of equipment or consumable goods for a cafe for a site or for a retail business involving material unrelated business income;
 - b. A charitable, educational, religious, or public safety organization may use net proceeds for expenses for any fundraising activity and only the net income of that activity may be applied to an imbalance of its gaming or trust account. If a public-spirited organization uses net proceeds for a fundraising activity related to its primary purpose, only the net income of that activity may be applied to an imbalance of its gaming or trust account. If a public-spirited organization uses net proceeds for a fundraising activity that is not directly related to its primary purpose, it shall reimburse the trust account for the cost of the fundraising activity; and
 - c. A civic and service, fraternal, or veterans' organization may use net proceeds for expenses for a fundraising activity that it conducts only if the activity is for a specific recipient or purpose that qualifies as an eligible use. If the organization conducts a qualifying fundraising event and deposits the event's gross receipts in or pays the expenses from other than its trust account, it may not disburse net proceeds to the recipient or use unless it transfers the net income from the event to its trust account and makes a proper adjustment on a tax return.
6. The attorney general may require a recipient of net proceeds to document the use of the funds and reimburse a donor organization if the funds were used for an ineligible use.
 7. Unless an organization has first received approval from the attorney general, it may not sell a gift certificate or other thing of value to a recipient of its net proceeds.
 8. If a check for a disbursement of net proceeds is not cashed by a recipient within six months of the date of the check, an organization shall contact the recipient to cancel or cash the check. If a check is voided, an organization shall make a proper adjustment on a tax return. If a recipient of net proceeds cashes a check related to a disbursement of net proceeds but has not applied the amount toward the intended eligible use within six months of the date of the check, the

organization may request the recipient to return the net proceeds.

9. An organization may only disburse net proceeds to a recipient provided the recipient first requests a donation in writing and provides a description of the intended use, and amount requested; and the request is signed and dated. Also, if the recipient is a charitable organization, professional fundraiser, or professional solicitor, the recipient shall provide the organization with evidence that it has a charitable solicitations license or is exempt from a charitable solicitations license required by North Dakota Century Code chapter 50-22. This rule does not apply to an unsolicited donation of net proceeds or a disbursement of net proceeds by an organization to a program or service that qualifies as an eligible use and which is supported directly by the organization.
- ~~10. A--civic-and-service,-fraternal,-or-veterans'-organization-may not use net proceeds for expenses for a--fundraising--activity unless the activity is for a specific recipient that qualifies as an eligible use.--The gross receipts of that activity--must be--deposited--in a trust account and immediately disbursed to the recipient;--and a proper adjustment made on a tax return.~~
- ~~11.~~ If an organization conducts or enables a nonprofit corporation, community or school club, or other similar entity to conduct a fundraising event at the organization's facility, the organization may not exchange the gross or net receipts of the fundraising event for a disbursement of net proceeds.
- ~~12.~~ 11. An organization may not disburse net proceeds to a recipient on the condition that the recipient hold a meal or banquet at the donor's facility.
- ~~13.~~ 12. No disbursement of net proceeds can be used partly for services or fees that do not qualify as an eligible use. No disbursement of net proceeds to a recipient can be designed to circumvent the allowable expense limits.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-11

99-01.3-14-02. Eligible uses.

1. A use of net proceeds for erecting, acquiring, improving, maintaining, or repairing real or personal qualifying property owned by an organization is an eligible use provided the organization agrees that, upon abandoning the exclusive use of the property for an eligible use, it will transfer the property to a governmental unit or to an organization that

will use it for an eligible use. However, if an organization sells the property, the portion of net receipts from the sale related to the original net proceeds must be deposited in the trust account and disbursed to an eligible use.

2. In applying subdivision a of subsection 2 of North Dakota Century Code section 53-06.1-11.1, net proceeds must be disbursed to or by a recognized nonprofit city or county job development authority (see North Dakota Century Code chapters 11-11.1 and 40-57.4) or certified or noncertified local development corporation (see North Dakota Century Code section 10-24-40).
3. In applying subdivision b of subsection 2 of North Dakota Century Code section 53-06.1-11.1, net proceeds must be used to attract in-state and out-of-state visitors by publicizing attractions, promoting, planning, conducting, and sponsoring market research, trade shows, meetings, conventions, seminars, sporting events, and festivals, and by developing and promoting the state's attractions, recreational opportunities, shopping malls, and other tourism-related activities. Uses may not directly benefit a for-profit enterprise business.
Uses include:
 - a. Media advertising, promotional items, and printed information;
 - b. Cooperative promotions with tourism attractions and associations;
 - c. Market information systems;
 - d. Promoting the state to the film and entertainment industry and foreign markets;
 - e. Developing slides, logos, and artwork;
 - f. Providing hosting fees, monetary bids, loans, advances, financial guarantees, support services, education programs, and entertainment, including food and drink;
 - g. Pooling and matching of funds, grants, and subsidies; and
 - h. Hosting and supporting trade shows, booths, tours, and visitor information centers.
4. In applying subdivision c of subsection 2 of North Dakota Century Code section 53-06.1-11.1, eligible uses include:
 - a. A scholarship for a student. A scholarship may be based on criteria, including community service, patriotism, leadership, education, talent, athletic ability, course of study, or special disability. No scholarship award may be

decided by a donor organization, unless the organization administers an education program for special students or students inflicted with disease. Net proceeds may be disbursed to a scholarship board or to an educational institution. A majority of the members of a scholarship board may not be members of a donor organization. A disbursement must be payable to an educational institution and a recipient, scholarship board and a recipient, or to an educational institution or scholarship board. A student receiving a scholarship may apply it at a nonprofit public, or for-profit or nonprofit private, educational institution registered with or accredited by any state. A scholarship may be for housing, books, tuition, and meals that relate to a student's educational need. A scholarship may be awarded through a pageant, contest, or tournament; however, associated administrative and operating expenses do not qualify. No scholarship may be based on criteria that includes a person's physical appearance;

- b. Supplemental assistance to a primary, secondary, or postsecondary nonprofit educational institution, including affiliated alumni associations, booster clubs, parent-teacher councils, and college sororities and fraternities. Net proceeds may be used for youth activities, educational equipment, musical instruments, playground equipment, extracurricular activities, sporting events, field trips, cultural exchanges, maintenance of buildings, remodeling, fixed assets, administrative and operating expenses, and supplies;
- c. Assistance to a library for maintenance of buildings, remodeling, fixed assets, administrative and operating expenses, supplies, program services, special events, promotions, educational material, books, computer systems, information services, exhibits, story hours, film showings, and discussion groups. A disbursement to a museum may be for maintaining buildings, remodeling, fixed assets, administrative and operating expenses, and assembly of exhibits for preservation, collection, education, and interpretation;
- d. Assistance to a nonprofit performing arts and humanities organization for studio and auditorium rental, speaker fees, equipment, travel, administrative and operating expenses, and uniforms. Functions may include children's theater, summer camps, and developing art parks;
- e. Preservation of cultural heritage, including restoring, reconstructing, improving, or preserving public buildings in North Dakota which are listed in the state historic sites registry or the national registry of historic places. Net proceeds may be used for programs of

nonprofit organizations that provide historical information or tell a story about a local region, North Dakota, or the nation and which primarily educate and inspire the public, elderly, disabled, schoolchildren, teachers, and foreign visitors. Qualifying programs include the lifestyles and human experiences of homesteaders, immigrants, Indian culture, frontier army, and fur trade. Net proceeds may be used for interpretive programming including exhibits, publications, simulations of life, classroom outreach services, audiovisual presentations, special events, and tours. Special events such as chautauquas and community celebrations of Norskfest, threshing bees, and Oktoberfest qualify for expenses of parades, displays, equipment, educational materials, and awards. School reunion expenses do not qualify;

- f. Youth community and athletic activities open to all youth, less than eighteen years of age. An organization shall disburse, to the extent possible, equal amounts to activities for each gender. Net proceeds may be used for uniforms, equipment, tournament fees, private and public ground transportation, coaches' salaries, judges, field trips, speaker fees, for father-son and mother-daughter banquets provided that the meals for these banquets are provided free or at actual cost to the participants, meals, and lodging. Business-sponsored appreciation luncheons and banquets, advertising, and the purchase of a transportation vehicle do not qualify;
 - g. Adult amateur athletic activities within North Dakota. Net proceeds may be used for sponsorship fees, uniforms, umpire fees, construction, use and maintenance of a sports complex, and team equipment. Uniforms and team equipment must be owned by the team or league association. Tournament fees, food and drink, lodging, trophies, prizes, yearbook, and private or public transportation expenses do not qualify, except transportation expenses for a disabled player. A race car and similar activity does do not qualify;
 - h. Maintenance of religious buildings, remodeling, fixed assets, administrative and operating expenses, gospel outreach programs, youth church activities, uniforms for a choir, furnishings, and supplies for church groups and services; and
 - i. Scientific research for a cure to relieve human beings of disease and suffering.
5. In applying subdivision d of subsection 2 of North Dakota Century Code section 53-06.1-11.1, eligible uses include:

- a. Food, temporary housing, clothing, utilities, medical services, and fuel for private and public transportation for an individual or family suffering from poverty or homelessness, or financial distress due to a medical problem;
- b. Purchase and maintenance of a ground transportation vehicle for the elderly;
- c. Services for abused persons, including to:
 - (1) Provide emotional support, guidance, and counseling to victims of crimes of rape and sexual assault and encourage prosecution of perpetrators;
 - (2) Establish educational programs about rape, sexual assault and incest, the dramatic effects it has on victims and their families, and the cost to society;
 - (3) Establish and direct services for abused spouses and their children in the community, including advocacy, emergency shelter and food, information services, referrals, and peer support; and
 - (4) Develop and coordinate programs to encourage and assist development of a strong volunteer advocate network.
- d. Support for youth centers and halfway houses;
- e. Recognize an individual or group of people who volunteer their time to community services, nursing homes, or hospitals if a gift, prize, or other gratuity does not exceed one hundred dollars per person per calendar year;
- f. Net proceeds may be used for public or private nonprofit nursing homes, day care centers, and ~~other--nonprofit~~ medical facilities for maintaining buildings, remodeling, fixed assets, administrative and operating services, supplies, reading programs, and craft activities for patients;
- g. Complying with the Americans With Disabilities Act of 1990 by remodeling a publicly owned facility; and
- h. To remodel or improve a fraternal or veterans' organization's owned facility or a nonprofit community facility to make it accessible or usable to youth, senior citizens, people with disabilities, and nonmembers of the organization, for community programs, services, or functions. ~~A-building-must-be-used-by-the~~ The community must use a building for free or a reasonable fee. To make a building accessible, net proceeds may be used to widen

doorways and hallways, remodel bathroom fixtures and facilities, install chair lifts, wheelchair ramps, elevators, handrails, and automatic door openers. To make a building usable, net proceeds may be used to repair a building to meet a building code or make it structurally fit for use, to enlarge a facility, replace a furnace, water heater, and air-conditioner, and to make it safe. The cost must be prorated to the benefit the community receives in relation to the total usage of the facility as determined by the attorney general.

6. In applying subdivision e of subsection 2 of North Dakota Century Code section 53-06.1-11.1, eligible uses include ~~promotion of cultural, educational, charitable, and welfare activities sponsored by an organization. Qualifying uses include~~ burial expenses and flowers provided an organization does not discriminate between members and nonmembers. State and national convention expenses; ~~recognition nights that may include a banquet, program, and dance for past commanders or past members; ceremonial and ritual activities; and purchase of a transportation vehicle do not qualify.~~
7. In applying subdivision f of subsection 2 of North Dakota Century Code section 53-06.1-11.1, eligible uses include promotion and celebration of civil rights, nondiscrimination, patriotism, and freedom. ~~Administrative, operating, and a participant's expenses for a pageant do not qualify.~~ State and national convention expenses; recognition nights that may include a banquet, program, and dance for past commanders or past members; ceremonial and ritual activities; and purchase of a transportation vehicle do not qualify.
8. In applying subdivision j of subsection 2 of North Dakota Century Code section 53-06.1-11.1, net proceeds may be used for subsistence for a family member traveling with an ill family member to an out-of-town medical facility.
9. In applying subdivision l of subsection 2 of North Dakota Century Code section 53-06.1-11.1, eligible uses include:
 - a. Adult and city bands, choirs, including drum and bugle corps, color and honor guards, parade floats, director fees, rent of storage, postage, insurance, laundry, utilities, uniforms, sheet music, audio system, instruments, transportation vehicle, and private and public ground transportation for performances at community concerts, homecomings, open houses, parades, festivals, funerals, nursing homes, hospitals, and special events. For only a color or honor guard, net proceeds may be used to pay a member a maximum per diem of fifteen dollars for each day of actual service. An audio system and instruments must be owned by a band, choir, or organization. A vehicle must be owned by an organization;

- b. Educational agricultural trade shows and conventions held in North Dakota. Meals and entertainment do not qualify;
 - c. Nonprofit organizations that protect animals. Uses include:
 - (1) Hatcheries and wildlife preserves and sanctuaries;
 - (2) Teaching and promoting ecology, game and wildlife management, and outdoor interests involving animals, fish, and birds; and
 - (3) Spay and neuter programs, pet placement, lost and found pet services, educational programs, investigations of animal abuse, and information services; and
 - d. Preserving and cleaning up the environment, including air quality, water quality, and waste programs, and conservation of natural resources.
10. In applying subdivision m of subsection 2 of North Dakota Century Code section 53-06.1-11.1, a special trust fund:
- a. Must be managed and controlled by trustees, who may be board members, appointed by an organization. However, if an organization dissolves, it must establish a nonprofit corporation limited to the primary purpose stated in its declaration of trust. A trust may be revocable or irrevocable; and
 - b. Must be comprised only of net proceeds which can be disbursed to the trust periodically or in a lump sum. Net proceeds must be invested only in marketable securities. A trust's principal, interest, dividends, and gains on sales of investments must be applied toward the trust's primary purpose. No trust's principal can be disbursed until a donor organization has permanently discontinued conducting games or dissolved.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01, 53-06.1-01.1

CHAPTER 99-01.3-15

99-01.3-15-02. Restrictions and requirements --Distributor.

1. A licensed organization, organization that has a local permit, or licensed manufacturer may not be a distributor. A person who is an officer, manager, gaming manager, or member of a governing board of a licensed organization or organization that has a local permit may not be an officer, director, shareholder, proprietor, consultant, or employee of a distributor, nor have a financial interest in that distributor. A person having a financial interest in a distributor may not be a lessor of a site to an organization that is an active customer of that distributor. A change in ownership of a distributor must be immediately reported to the attorney general.
2. A distributor shall have an office in North Dakota at which records must be kept.
3. An officer, director, shareholder, agent, or employee of a distributor may not:
 - a. Directly or indirectly play a game of pull tabs, club special, tip board, coin board, seal board, sports-pool board, or punchboard at any site, or provide bookkeeping services, including summarizing or auditing games, to an organization; or
 - b. Interfere with or attempt to influence a lessor's relationship with an organization involving a lease agreement, interfere with or attempt to influence an organization's management, employment practices, policy, gaming operation, or disbursement of net proceeds, attempt to influence a bar to enter into or cancel a lease agreement with an organization, or procure a site for an organization. A distributor may notify an organization of an available site.
4. A distributor may not have an expressed or implied agreement with another distributor to restrict the sales of either of them to a specific geographic area or organization.
5. A distributor may not sell or provide a drop box unless it is a double-locking or triple-locking removable metal container and has:
 - a. One lock that secures a drop box to the underside of a table, and one or two separate locks that secure the contents placed into the drop box. The key to each of the locks must be different; and

- b. A slot opening through which currency and forms can be inserted into a drop box. The slot of a drop box may not exceed three and one-half inches [88.90 millimeters] in length and one-half inch [38.10 millimeters] in width. Inside a drop box there must be a spring-loaded mechanism that automatically closes and locks the slot opening when the drop box is removed from a table.
6. A distributor may not sell or provide twenty-one and paddlewheel (betting and payout) chips to an organization if those chips are identical in physical characteristic to chips previously sold or provided by that distributor to a different organization.
7. A distributor may not, directly or indirectly, give a gift, trip, prize, or other gratuity valued singly or in the aggregate in excess of one hundred dollars per employee per calendar year related to a licensed organization or organization that has a local permit. A distributor may not, directly or indirectly, loan money (excluding credit) to a licensed organization or organization that has a local permit, or to an employee of such an organization.
8. A An employee of a distributor who is an owner or salesperson shall, within ninety thirty days of starting business or employment, request orientation training from the attorney general. The orientation training must include the gaming law, rules, and recordkeeping. An employee shall read and acknowledge in writing, within thirty days of employment and the effective date of new gaming laws or rules, that the person has read and understands the provisions of the gaming law and rules which relate to the person's job duties. The attorney general shall designate the provisions to be read. The acknowledgment must be dated, reference the provisions, and be part of the person's personnel file.
9. A distributor may not share an office or warehouse facility with an organization.
10. A distributor shall file a copy of each sales invoice, gaming stamp log, and record of voided gaming stamps by the fifth business day following the month of the transaction.
11. A distributor may not buy or be provided gaming equipment from an affiliated company unless the company is a wholly owned subsidiary of the distributor. An affiliated company must have originally bought the equipment directly from a licensed manufacturer.
12. A distributor may not buy or be provided gaming equipment from an out-of-state distributor unless the out-of-state distributor has the manufacturer ship the equipment directly to the licensed distributor and the manufacturer is licensed.

13. A distributor may not knowingly possess, display, sell, or provide an organization a deal of pull tabs or bingo cards, club special, tip board, coin board, or punchboard that:
 - a. Does not conform to the quality standards of section 99-01.3-16-04, 99-01.3-16-05, or 99-01.3-16-06;
 - b. Has a manufacturer's or distributor's seal broken on the manufacturer's container or has been prohibited by the attorney general from sale or play within North Dakota; or
 - c. Contains pull tabs or punches that have winner protection features although they are not winning pull tabs or punches.
14. A distributor may not temporarily store any game that has a state gaming stamp affixed to its flare which has been sold. A sale occurs when a distributor issues a sales invoice. If a distributor sells or provides gaming equipment to another distributor, the distributor shall ship the equipment directly to the other distributor's address in North Dakota.
15. A distributor shall direct a manufacturer to ship gaming equipment directly to the distributor and the distributor shall have it unloaded at its warehouse. However, if a distributor buys equipment from a manufacturer for sale to another distributor or buys a flashboard, blower, jar bar, paddlewheel, or twenty-one, poker, or paddlewheel table for sale to an organization, the distributor may direct the manufacturer to ship the equipment directly to the other distributor or organization, including the organization's site.
16. A distributor may not separate a paper card when there are two or more faces on a sheet.
17. A distributor may not:
 - a. Sell or provide a dispensing device or bingo card marking device to an organization unless a model of the device has first been approved by the attorney general;
 - b. Modify an approved dispensing device model or electronic currency validator unless authorized by the attorney general; or
 - c. Rent a dispensing device to an organization unless the rent is for a fixed dollar rate per month or other duration. For a bingo card making device, a distributor may rent a bingo card marking device to an organization for a fixed dollar rate per month or other duration, or for a percentage or fixed dollar amount of rental income derived from a player who uses the device. Rent may not

be based on gross proceeds of bingo. If a distributor rents a bingo card marking device to an organization, the distributor may have a manufacturer, on behalf of the distributor, issue an invoice to an organization; however, the organization shall remit all rent payments directly to the distributor.

18. A distributor may arrange for an organization to acquire a dispensing device through a financing lease purchase agreement with a finance or lease company. Although an organization is deemed to own a device, a finance or lease company may have a security interest or ownership right in the device until the organization satisfies the lease.
19. If a distributor is an agent for another distributor in marketing a dispensing device, the agent is not required to complete a sales invoice. A distributor is an agent if it receives a commission and does not finance or take temporary possession or title to the device.
20. A distributor that sells or provides a new or used dispensing device to an organization or distributor, other than as an agent, or merely transacts a transfer of a device, for or without a fee, between two organizations, shall do the following unless that distributor contracts with another distributor to comply with this rule on its behalf:
 - a. Maintain an adequate inventory of electronic and mechanical parts in North Dakota, provide maintenance service, and provide technical assistance and training in the service and repair of a device;
 - b. Make available, upon request, electrical and mechanical parts to all other licensed distributors at the usual price for such parts; and
 - c. Notify the attorney general of any recurring electronic or mechanical malfunction of a device model.
21. A distributor that resells, transacts a transfer, rents, or provides a used dispensing device to an organization shall change or arrange to have changed all the keyed locks on the device.
22. A distributor that sells or provides a dispensing device to an organization shall record this information on a sales invoice:
 - a. Name, address, and license number of an organization and name and location, if known, of the site where the device will be placed; and
 - b. Name of device and its serial number.

23. A distributor shall initially set up a dispensing device at a site and conduct and document one training session on the operation and service of the device for an employee of an organization that buys a device for the first time.
24. A service technician may not access a dispensing device unless accompanied by an organization employee.
25. A distributor may not possess, in inventory, a processing chip encoded with proprietary software that was duplicated by the distributor for a dispensing device usable in North Dakota.
26. A distributor may not sell or provide new video surveillance equipment or install video surveillance equipment for an organization unless the distributor is a regular vendor of this equipment and is approved by the attorney general.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-14

99-01.3-15-04. Purchase and sales restrictions.

1. ~~A distributor may not buy or be provided gaming equipment from an affiliated company unless the company is a wholly owned subsidiary of the distributor. An affiliated company must have originally bought the equipment directly from a licensed manufacturer.~~
2. ~~A distributor may not buy or be provided gaming equipment from an out-of-state distributor unless the out-of-state distributor has the manufacturer ship the equipment directly to the licensed distributor and the manufacturer is licensed.~~
3. ~~A distributor may not possess, display, sell, or provide an organization a deal of pull tabs or bingo cards, club special, tip board, coin board, or punchboard that:

 - a. ~~Does not conform to the quality standards of section 99-01.3-16-04, 99-01.3-16-05, or 99-01.3-16-06;~~
 - b. ~~Has a manufacturer's or distributor's seal broken on the manufacturer's container or has been prohibited by the attorney general from sale or play within North Dakota; or~~
 - c. ~~Contains pull tabs or punches that have winner protection features although they are not winning pull tabs or punches.~~~~
4. ~~A distributor may not temporarily store any game that has a state gaming stamp affixed to its flare which has been sold. A sale occurs when a distributor issues a sales invoice. If a~~

distributor sells or provides gaming equipment to another distributor, the distributor shall ship the equipment directly to the other distributor's address in North Dakota.

5. A distributor shall direct a manufacturer to ship gaming equipment directly to the distributor and the distributor shall have it unloaded at its warehouse. However, if a distributor buys equipment from a manufacturer for sale to another distributor or buys a flashboard, blower, jar bar, paddlewheel, or twenty-one, poker, or paddlewheel table for sale to an organization, the distributor may direct the manufacturer to ship the equipment directly to the other distributor or the organization.

6. A distributor may not separate a paper card when there are two or more faces on a sheet. Repealed effective July 1, 2000.

History: Effective May 1, 1998.

General Authority: NDEC-53-06.1-01.1

Law Implemented: NDEC-53-06.1-01.1; 53-06.1-14

99-01.3-15-05. Restrictions and requirements - Dispensing devices.

1. A distributor may not:

a. Sell or provide a dispensing device to an organization unless a model of the device has first been approved by the attorney general;

b. Modify an approved device model or electronic currency validator unless authorized by the attorney general; or

c. Rent a device to an organization unless the rent is for a fixed dollar rate per month or other duration.

2. A distributor may arrange for an organization to acquire a device through a financing lease purchase agreement with a finance or lease company. Although an organization is deemed to own a device, a finance or lease company may have a security interest or ownership right in the device until the organization satisfies the lease.

3. If a distributor is an agent for another distributor in marketing a device, the agent is not required to complete a sales invoice. A distributor is an agent if it receives a commission and does not finance or take temporary possession or title to the device.

4. A distributor that sells or provides a new or used device to an organization or distributor, other than as an agent, or merely transacts a transfer of a device, for or without a fee,

between two organizations, shall do the following unless that distributor contracts with another distributor to comply with this rule on its behalf:

a. Maintain an adequate inventory of electrical and mechanical parts in North Dakota; provide a maintenance service agreement; and provide technical assistance and training in the service and repair of a device;

b. Make available, upon request, electrical and mechanical parts to all other licensed distributors at the usual price for such parts; and

c. Notify the attorney general of any recurring electronic or mechanical malfunction of a device model.

5. A distributor that resells, transacts a transfer, rents, or provides a used device to an organization shall change all the keyed locks on the device.

6. A distributor that sells or provides a device to an organization shall record this information on a sales invoice:

a. Name, address, and license number of an organization and name and location, if known, of the site where the device will be placed; and

b. Name of device and its serial number.

7. A distributor shall initially set up a device at a site and conduct and document one training session on the operation and service of the device for an employee of an organization that buys a device for the first time.

8. A service technician may not access a device unless accompanied by an organization employee. Repealed effective July 1, 2000.

History: Effective May 1, 1998.

General Authority: NDCC-53-06.1-01.1

Law Implemented: NDCC-53-06.1-01.1

99-01.3-15-06. Distribution of gaming equipment.

1. A manufacturer's game serial number must be on a paddlewheel ticket described by subsection 1 of section 99-01.3-11-01, seal board, tip board, sports-pool board, and calcutta board. No game serial number may be special ordered. If a game serial number is not preprinted on a seal board, sports-pool board, or calcutta board, a distributor shall assign and electronically or mechanically imprint it on the board. No serial number may be repeated within three years.

2. For a deal of pull tabs (two-ply card with break-open tabs), deal of bingo cards used in a dispensing device, and a specialty jar ticket game, a distributor may open a manufacturer's cellophane shrink wrap to access a flare. A distributor shall affix a state gaming stamp on the front of the original flare of a deal of pull tabs and bingo cards, club special, tip board, series of paddlewheel ticket cards, and on a punchboard, sports-pool board, seal board, coin board, and calcutta board that is sold or provided to a customer. If a case of bingo cards that is used in a dispensing device consists of two or more containers, each container is a separate deal, regardless of whether the game serial number is the same. A gaming stamp must be affixed in North Dakota. A distributor shall legibly write a manufacturer's game serial number in ink on the stamp. If the written number is incorrect, the number cannot be changed or erased and the stamp must be voided. For a series of paddlewheel ticket cards, the game serial number written must be the lowest numbered paddlewheel ticket card. Then, a distributor shall replace, if applicable, a flare inside the cellophane shrink wrap and seal the opening. This rule does not apply to gaming equipment provided directly to an Indian tribe, United States military, or out-of-state purchaser, or another licensed distributor.

3. ~~A distributor may not break a deal's permanent adhesive security seal or access the pull tabs or bingo cards inside a deal's container, except to determine a deal's game serial number, the primary color of a pull tab, or to count the pull tabs or bingo cards.~~ If a manufacturer's security seal on a container is inadvertently broken but the integrity of a deal remains intact, a distributor may reseal the deal with a distributor permanent adhesive security seal. The seal must be applied to all accessible sides of a container and ensure that a deal's pull tabs or bingo cards are not accessible from outside the container. A distributor shall indicate on a sales invoice that the deal was resealed by the distributor and the reason.

4. A distributor shall provide a flare with a deal of pull tabs or jar tickets and series of paddlewheel ticket cards. The master flare for a game involving deals of jar tickets that contain winning tickets of the same prize value printed in differently colored numbers or symbols must have the flare's numbers and symbols printed in matching colors. A flare, including a master flare, must indicate the name of the game, manufacturer's form number (excluding a flare for a deal of jar tickets), cost per play, and value and number of winning prizes. The front of a flare for a deal of jar tickets ~~or a coin board~~ must indicate the number of jar tickets in the deal. The number of prizes may be designated by a number or by a quantity of symbols that represent the number of winning prizes, and winning number or symbol. A symbol must be

pictured on a flare, not described. A last sale prize must be printed on a flare or be indicated by a permanently affixed sticker. The flare or sticker must contain the last sale feature, prize value, and distributor's name or license number. Except to add a last sale feature to a manufacturer's flare for a deal of pull tabs (two-ply or three-ply card), a distributor may not alter a flare. A distributor may make a flare for a deal of jar tickets. This information must be mechanically or electronically printed on a flare.

5. A distributor shall provide an organization with an adequate supply of bingo prize flares for use with a bingo card dispensing device.
6. A distributor may not sell or provide a ten or twelve line or twenty-five or one hundred square sports-pool board to a customer unless a special opaque tape covers the numbers on the board. If a tape is disturbed, any recovering of the numbers must be detectable. A tape must prevent the concealed numbers from being viewed from outside when using a high-intensity lamp of up to five hundred watts.
7. For a deal of jar tickets, club special, tip board, and coin board, a distributor shall provide a game information sheet containing cost per play, ideal gross proceeds, ideal prizes, including any last sale prize, if known, and ideal adjusted gross proceeds or, in place of a separate sheet, the information may be printed on the front or back of the deal's flare.
8. A distributor shall print these phrases on a sports-pool board:
 - a. Professional sports pool;
 - b. Cost per play \$_____;
 - c. Date of sports event _____;
 - d. Ideal prizes \$_____; and
 - e. Method of prize payout _____.
9. A distributor shall indicate this information on the flare of a series of paddlewheel ticket cards:
 - a. Game serial numbers of the lowest and highest numbered paddlewheel ticket cards;
 - b. Quantity of cards; and
 - c. Type of paddlewheel ticket (for example, 40 x 3 x 120), if applicable.

10. A distributor shall print the phrases "merchandise prize _____" and "retail value \$ _____" on a flare and for each seal for a game that has a merchandise prize.
11. A distributor shall sell a calcutta board that is cardboard or similar material on which is printed a matrix of horizontal lines and vertical columns sufficient to accommodate the information required by subsections 8, 10, and 12 of section 99-01.3-10-01. A distributor shall print "calcutta" at the top of a board and print the phrases "sporting event _____", "method of prize payout _____", and "date of sports event _____" on the board.
12. A distributor shall print the phrases "cost per play \$ _____" and "retail value \$ _____" on a seal board.
13. A distributor shall print "cost per play \$ _____" or similar phrase on a coin board.
14. If a distributor is notified by an organization that the game serial number of a deal of pull tabs or bingo cards, club special, tip board, seal board, punchboard, series of paddlewheel ticket cards, calcutta board, coin board, or sports-pool board is different from the number written on a state gaming stamp, the distributor shall take immediate action to correct the gaming stamp and sign a correction form and follow procedures prescribed by the attorney general.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1.-01.1, 53-06.1-14

99-01.3-15-07. Sales to an Indian tribe, United States military, or out-of-state purchaser, or organization that conducts games on tribal land. A distributor may not sell gaming equipment to any individual. Gaming equipment sold or provided to an Indian tribe, United States military, out-of-state purchaser, organization that is not licensed that conducts games on tribal land, or a person authorized by the attorney general must be shipped directly to the buyer or the distributor shall verify that the buyer represents that customer. This verification must include:

1. If a person represents an Indian tribe, United States military, or has been authorized by the attorney general, the person's name, address, and, if applicable, title or rank;
2. If a person represents an organization that conducts games on tribal land, the person's name and address; and
3. A driver's license number and state of registration recorded from a person's pictured driver's license or the person's full

name and address recorded from two other forms of pictured identification.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-15-08. Promotional and sample bingo cards and pull tabs.

A distributor may not sell or provide promotional paper bingo cards, bingo cards used in a dispensing device, jar tickets, or pull tabs to an organization or any person unless the face of each paper bingo card, the outside of a jar ticket, or the game information side of each pull tab or bingo card contains the phrase "promotional use only", "happy hour", "no purchase necessary", or similar phrase. A distributor may not sell or provide sample paper bingo cards, bingo cards used in a device, jar tickets, or pull tabs to an organization or any person unless the word "void" is on the face of each paper bingo card and jar ticket and on the game information side of each pull tab or bingo card. ~~Also, no number, symbol, or set of symbols of any nonpromotional jar tickets or pull tabs of that manufacturer may be printed on any promotional jar tickets or pull tabs.~~

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-15-09. State gaming stamp and return of gaming equipment.

1. A distributor shall ~~buy state gaming stamps for twenty-five cents each from the attorney general and~~ maintain the gaming stamps at its North Dakota office. A distributor may not ~~transfer or~~ provide a stamp to another distributor. If a distributor voids or does not use a stamp, ~~the distributor~~ it shall return ~~it~~ the stamp to the attorney general. There is no credit for a voided or unused gaming stamp. If a distributor discontinues business ~~for any reason~~, it shall return all voided and unused ~~state gaming~~ stamps to the attorney general within fourteen days after discontinuance of business.
2. If an organization returns an unplayed deal, game, or series containing a state gaming stamp, a distributor shall void the stamp and complete a form prescribed by the attorney general. A distributor may not take back an unplayed deal or game containing a stamp from an organization unless the distributor originally sold it or is authorized by the attorney general. If a distributor resells or reissues a deal, game, or series, the distributor shall affix a new stamp on the flare.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-14

99-01.3-15-10. Recordkeeping. A distributor shall maintain complete, accurate, and legible accounting records in North Dakota. The records must be retained for three years and include, by month:

1. Purchase invoices for gaming equipment.
2. Sales invoices for gaming equipment, supplies, and services sold or provided. ~~Except for a sales invoice related to a dispensing device, the~~ A sales invoice must be prepared on a form prescribed by the attorney general and include:
 - a. License number of the distributor;
 - b. Business name and address of the buyer and business name and address where the gaming equipment or supplies were shipped to or where the service was performed;
 - c. License or local permit number of the buyer, if applicable;
 - d. Invoice number and date;
 - e. Date shipped;
 - f. Indication for a credit memo;
 - g. Quantity, price, and description of each item of gaming equipment, supplies, and services. This includes the name of game and indication of the item as a deal of pull tabs or bingo cards, club special, coin board, tip board, seal board, punchboard, sports-pool board, calcutta board, or series of paddlewheel ticket cards. For a deal of pull tabs (excluding jar tickets) and bingo cards, it must include a manufacturer's form number. For a series of paddlewheel ticket cards, it must include the number of paddlewheel ticket cards and number of tickets on each card. For a coin board, it must include separate costs, including sales tax, for a merchandise prize (if any), coins, and board and pull tabs. For paper bingo cards, it must include the quantity; primary color of a single card or primary color of the top card of a collated booklet; type (number of faces on a sheet) of collated booklets or single cards, number of cards in a collated booklet, and serial number; and size of series; and number of faces on a sheet;
 - h. Gaming stamp number;

- i. Ideal gross proceeds, ideal adjusted gross proceeds, price of a merchandise prize, and value of a last sale prize, ~~if applicable~~; and
 - j. An indication that a deal was resealed and the reason, if applicable.
3. A sales invoice must be:
 - a. Prenumbered consecutively with a preprinted number of at least four characters;
 - b. Prepared in three parts and issued as follows:
 - (1) One part to the customer;
 - (2) One part retained in an invoice file by customer name; and
 - (3) One part to the attorney general. Every invoice, including voids, must be numerically accounted for; and
 - c. A credit memo for a returned item must be prepared and issued like a sales invoice. A credit memo must represent only a returned item.
 4. A sales journal must include the sales invoice date, number, total amount, and name of customer.
 5. A cash receipts journal must include cash sales, cash received from all sources, name of customer, date a payment is received, and amount.
 6. A cash payments journal must include checks issued, cash payments, date of check or payment, check number, name of payee, and type of expense.
 7. Gaming stamp log on which gaming stamp and game serial numbers are recorded and a record of voided gaming stamps on a form prescribed by the attorney general.
 8. Inventory records and reconciliation of inventories.
 9. A repair report for each service call on a dispensing device.
 10. Documentation of a training session conducted according to subsection 7 23 of section 99-01.3-15-05 99-01.3-15-02.
 11. A manufacturer's invoice that references a rental fee charged an organization for a bingo card marking device.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1
Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-16

99-01.3-16-01. License. A manufacturer of deals of pull tabs or bingo cards, paper bingo cards, bingo card marking device, or a pull tab dispensing device, or any other person may not sell, lease, solicit business, or provide these items to a distributor without a license. If two or more manufacturers are affiliated, each manufacturer shall apply for a license. A license is not transferable. The annual licensing period is April first through March thirty-first. An application must include information prescribed by the attorney general. The license fee is four thousand dollars. If a person manufactures pull tabs and paper bingo cards, or, pull tab dispensing devices and either pull tabs or paper bingo cards, or both, only one license fee is required.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-14

99-01.3-16-03. Restrictions and requirements.

1. A manufacturer that sells, or provides, paper bingo cards to a distributor shall print its name or distinctive logo and the assigned serial number and series number (card number) on each card. A manufacturer shall have available for sale or provide to a distributor a master checkbook covering all card serial numbers ~~for paper bingo cards~~. A manufacturer may not ship paper bingo cards directly to a licensed organization or organization that has a local permit.
2. A manufacturer may only sell or provide ~~deals of pull tabs or bingo cards, punchboards, paper bingo cards, or a pull tab or bingo card dispensing device~~ gaming equipment to a licensed distributor. A manufacturer shall maintain ~~complete, accurate, and legible~~ accounting records regarding of all transactions on the sale sales of gaming equipment and retain them for three years. The records may be in electronic form.
3. A manufacturer may not modify the assembly or operational functions of an approved pull tab or bingo card dispensing device model unless requested by the attorney general or a written request is approved by the attorney general. ~~However, if a modification is necessary to prevent cheating or malfunction, temporary approval may be verbally requested from the attorney general before submitting a written request.~~ The attorney general may apply section 99-01.3-16-10 for approving a modification to a device model.
4. A manufacturer may service a bingo card marking device used by an organization.

History: Effective May 1, 1998; amended effective July 1, 2000.
General Authority: NDCC 53-06.1-01.1
Law Implemented: NDCC 53-06.1-01.1

99-01.3-16-04. Quality standards for pull tabs. A manufacturer shall manufacture pull tabs according to these standards:

1. Construction.
 - a. A deal must be designed, constructed, glued, and assembled to prevent the determination of a winning pull tab or numbers or symbols without first removing the tabs or other covering.
 - b. All the pull tabs of a deal must have the same game serial number which cannot be repeated on the same form number for three years.
 - c. When a tab or other covering is removed, the numbers or symbols must be fully visible in the window and must be placed so that no part of a symbol or number remains covered. The numbers or symbols can be displaced to the left or right in a window for increased security.
 - d. The window slits on a pull tab must be perforated on three sides. A pull tab must be glued on all four edges and between each window. The glue must be of sufficient strength and type to prevent the separation or delamination of a pull tab.
2. Opacity. Concealed numbers, symbols, or winner protection features cannot be viewed or determined from the outside of a pull tab using a high-intensity lamp of five hundred watts.
3. Color. It must not be possible to detect or pick out winning from losing pull tabs through a variation in printing graphics or colors, especially those involving different printing plates.
4. Printed information. The minimum information printed on a pull tab must be as follows, except that subdivisions b, c, and d are not required for a folded or banded jar ticket or to a two-ply or three-ply card with only one perforated break-open tab which measures one and one-quarter ~~inches~~ inches [31.7 millimeters] by two and one-quarter ~~inches~~ inches [57.1 millimeters] or less in size, and subdivisions b ~~and~~, c, and e are not required for a pull tab used with a coin board:
 - a. Name of manufacturer or its logo;
 - b. Name of game;

- c. Cost per pull tab;
 - d. Manufacturer's form number;
 - e. Number of winning pull tabs and winning numbers or symbols, and prize amounts, or a flare must be included with the game providing that information; and
 - f. Unique minimum five-character game serial number, printed on the game information side of the pull tab.
5. Winner protection. A unique symbol or printed security device, such as a specific number keyed to a particular winning pull tab, or the name of the symbol or some of the symbol colors changed for a winning pull tab, or other similar protection must be placed in the winning windows of winning pull tabs. Also, a winning pull tab that has a prize greater than twenty dollars must have a secondary form of winner verification.
6. Randomization. The winning pull tabs must be intermixed among all other pull tabs in a deal to eliminate any pattern between deals, or portions of deals, from which the location or approximate location of any winning pull tab may be determined. A deal must be assembled so that no placement of winning or losing pull tabs exists that allows prize manipulation or pick out. Banded jar tickets packaged in a bag must be randomized.
7. Guillotine cutting. It must not be possible to isolate winning or potential winning pull tabs of a deal by variations in size or the appearance of a cut edge of the pull tabs.
8. Packaging.
- a. A deal's container must be sealed with a seal that warns the purchaser (end user) that the deal may have been tampered with if the container was received with the seal broken. A seal must ensure that a deal's pull tabs are not accessible from outside the container when sealed. A manufacturer shall seal or tape every entry point into the container. The seal or tape must be tamper-resistant and be designed so that should a container be opened or tampered with, it would be easily noticed. For jar tickets packaged in a bag, the glue used to seal the flap of the bag must be permanent adhesive glue. The required seal cannot be a manufacturer's cellophane shrink wrap.
 - b. A manufacturer shall print, in bold letters, "Pull tabs must be removed from this packaging container and thoroughly mixed before sale to the public" or similar language on the outside of a container.

- c. A deal's game serial number must be legibly placed on or be able to be viewed from the outside of the deal's container.
 - d. For a deal shipped to North Dakota, a flare for a deal of pull tabs (two-ply or three-ply card) or a specialty jar ticket deal must be located on the outside of the deal's sealed container so that the seal will not be broken to access the flare.
9. Number of top tier winners. A deal must have at least two top tier winning pull tabs.
 10. A manufacturer may not exactly duplicate (print) a winning number, symbol, or set of symbols of any nonpromotional jar ticket or pull tab on any promotional jar ticket or pull tab.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-16-07. Ban or recall of defective pull tabs or bingo cards.

1. If the attorney general determines that deals of pull tabs, bingo cards, or punchboards for sale in North Dakota do not meet the quality standards, the attorney general may order all defective deals and all similarly constructed or printed deals in North Dakota to be immediately recalled by the manufacturer or banned; or prohibit a manufacturer from transacting business in North Dakota. If the attorney general orders such a ban or recall, the manufacturer of the deal must first be notified of the reason, effective date, and any specific requirements. Upon notification, a manufacturer shall cease sale of that deal and initiate compliance with a ban or recall. A manufacturer shall notify, in writing, all distributors within seventy-two hours of the notice, the effective date, and arrange for the prompt return of all the defective deals.
2. A distributor, when notified by a manufacturer or attorney general, shall immediately stop sales or delivery of the deals. Within seventy-two hours, a distributor shall notify the organizations that have bought the deal during the last ninety days, the effective date, and arrange for the prompt return of all the defective deals.
3. Before any reintroduction in North Dakota of a banned or recalled deal, a manufacturer shall ~~first~~ submit the revised deal to the attorney general for approval. The attorney general shall notify the manufacturer of the approval or disapproval and the manufacturer shall send a copy of an

approving letter ~~must be sent by the manufacturer~~ to the distributor with the next shipment of the revised deal.

4. If a manufacturer initiates a recall of deals of pull tabs, bingo cards, or punchboards in any state, it shall immediately notify the attorney general and comply with this section.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-16-09.1. Manufacturing specifications - Bingo card marking devices. A site system, and bingo card marking device which displays a facsimile of a bingo card and allows a player to electronically mark the card, must meet these specifications:

1. A site system is computer hardware and software used at a site by an organization which generates and downloads electronic bingo card images to devices, accounts for gross proceeds, and provides accounting information on all activity for one year from the end of the quarter in which the activity occurred. It must:
 - a. Record a nonresettable electronic consecutive six-digit receipt number for each transaction;
 - b. Issue a receipt for each transaction containing:
 - (1) Name of a site or organization;
 - (2) Date and time of the transaction;
 - (3) Number of electronic bingo card images downloaded;
 - (4) Selling price of a card or package, rental fee, gross proceeds, and receipt number; and
 - (5) Serial number of device issued to a player;
 - c. Print a summary report for each session containing the date and time of the report, name of site, date of the session, sequential session number, number of transactions, number of voided transactions, number of electronic bingo card images downloaded, number of devices used, total gross proceeds, and, for each transaction, list:
 - (1) Sequential transaction number;
 - (2) Device serial number;
 - (3) Type of transaction (sale or void);

- (4) Time of transaction;
 - (5) Number of electronic bingo card images downloaded;
 - (6) Selling price of a card or package; and
 - (7) Receipt number;
 - d. Must be remote-accessible by the manufacturer of the device and attorney general for monitoring the system operation and accounting information in real time; and
 - e. Must be capable of printing an electronic card image of any downloaded card;
2. A device must be a portable hand-held unit and cannot be wired directly to a site system;
 3. A device must be programmed for use at only the site where the site system is located;
 4. A device must have a unique serial number permanently encoded in the software;
 5. No device can allow more than seventy-two cards to be played per game;
 6. A device must require a player to manually enter each bingo number by using an input function key;
 7. A device can display a player's best card or a winning card and alert only that player through an audio or video method, or both, that the player has a winning card;
 8. A device must automatically erase all stored cards at the end of the last game of a session or when the device is turned off; and
 9. A device must be downloaded with new cards at the beginning of each session.

History: Effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-16-10. Testing and approval --Dispensing-devicee.

1. A manufacturer of a pull tab or bingo card dispensing device or bingo card marking device may not sell or provide a device to a distributor unless a model of the device has been approved by the attorney general.

2. A manufacturer of a dispensing device shall provide a device model, a copy of its construction blueprint, wiring schematics, circuit analysis, technical and operation manuals, random number generator or player button sequencing concept source and object code computer programs, proprietary operating software source and object code computer programs, and other information requested by the attorney general. A manufacturer of a bingo card marking device shall provide a device model site system, technical and operations manual, proprietary operating software source and object code computer programs, and other information requested by the attorney general. A manufacturer of a currency validator shall provide a copy of the source and object code computer programs and other information requested by the attorney general. A manufacturer may provide a copy of letters of approval and test reports of the dispensing device, bingo card marking device, or currency validator from other states, federal jurisdictions, or independent testing laboratories.
3. The attorney general may require a manufacturer of a dispensing device, bingo card marking device, or currency validator to transport a working model, and the information required by subsection 2 to the attorney general or designee for analysis, testing, and evaluation. A manufacturer shall pay all the costs and provide special equipment for the testing. The attorney general may require a manufacturer to pay the estimated costs, in advance. After the analysis, testing, and evaluation is done, the designee shall provide the results to the attorney general. An overpayment of costs must be refunded to a manufacturer or the manufacturer shall pay any underpayment of costs. The attorney general shall provide the manufacturer with the results. Before approving a device's model, the attorney general may require a trial period.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-16-11. Sales invoice. A manufacturer may not sell or provide to or accept from a distributor deals of pull tabs or bingo cards, punchboards, ~~or~~ paper bingo cards, or bingo card marking devices, without recording the transaction on a sales or credit invoice. The invoice must include:

1. License number, business name, and address of the distributor;
2. Business name and address to which the gaming equipment is shipped;
3. Invoice number and date;

4. Date shipped;
5. Indication for a credit invoice;
6. Quantity of deals of pull tabs and bingo cards, and punchboards;
7. Description of each deal of pull tabs and bingo cards, and punchboards sold, including the name of the game and game serial number which may be listed on an addendum to a sales invoice. For a deal of pull tabs and bingo cards involving two-ply or three-ply cards with perforated break-open tabs, the description must include the manufacturer's form number;
8. For paper bingo cards, quantity, primary color, type of collated booklet, serial number, size of series, and number of faces on a card; and
9. Name, model, and serial number of a dispensing device.

History: Effective May 1, 1998; amended effective July 1, 2000.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

