

NORTH DAKOTA ADMINISTRATIVE CODE

Supplements 278 - 281

August 2002
September 2002
October 2002
November 2002

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

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TITLE 7
AGRICULTURE COMMISSIONER

SEPTEMBER 2002

CHAPTER 7-06-01

7-06-01-02. Noxious weeds listed. Weeds declared noxious shall be confined to weeds that are difficult to control, easily spread, and injurious to public health, crops, livestock, land, or other property. The following weeds have been declared noxious for the purpose of North Dakota Century Code chapter 63-01.1:

1. Absinth wormwood (*artemisia absinthium L.*).
2. Canada thistle (*cirsium arvense (L.) scop.*).
3. Dalmatian toadflax (*Linaria genistifolia ssp. dalmatica*).
- ~~4.~~ 4. Diffuse knapweed (*centaurea diffusa lam.*).
- ~~4:~~ 5. Field bindweed (*convolvulus arvensis L.*).
- ~~5:~~ 6. Leafy spurge (*euphorbia esula L.*).
- ~~6:~~ 7. Musk thistle (*carduus nutans L.*).
- ~~7:~~ 8. Purple loosestrife (*lythrum salicaria L., lythrum virgatum L.,* and all cultivars).
- ~~8:~~ 9. Russian knapweed (~~*centaurea*~~ *Acroptilon repens (L.) DC.*).
- ~~9:~~ 10. Saltcedar (*Tamarix ramosissima Ledeb.,* including *T. chinensis* and *T. parviflora DC.*).
11. Spotted knapweed (*centaurea maculosa lam.*).
- ~~10:~~ 12. Yellow starthistle (*centaurea solstitialis L.*).

History: Amended effective June 1, 1985; February 1, 2000; September 1, 2002.

General Authority: NDCC 28-32-02, 63-01.1-03

Law Implemented: NDCC 63-01.1-03

TITLE 28

**BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND
SURVEYORS**

NOVEMBER 2002

CHAPTER 28-02.1-11
EMERGENCY AND REMOTE PRACTICE BY FOREIGN PRACTITIONERS

Section

28-02.1-11-01

Definitions

28-02.1-11-02

Indirect Practice Without a License

28-02.1-11-03

Emergency Practice Without a License

28-02.1-11-04

Direct Practice Without a License

28-02.1-11-01. Definitions. These definitions shall apply to this chapter only:

1. "Board" means the state board of registration for professional engineers and land surveyors provided for by North Dakota Century Code chapter 43-19.1.
2. "Foreign practitioner" means an individual who currently holds and maintains a license in good standing to engage in engineering or land surveying in a state or jurisdiction other than North Dakota and who is not the subject of a pending disciplinary action in any state or jurisdiction.
3. "Good standing" means a foreign practitioner holds a current license to practice engineering or land surveying that is not issued on a temporary or restricted basis and is not encumbered or on probation and is not suspended or revoked.
4. "License" means a license, certificate, permit, or similar authorization to practice engineering or land surveying, which is issued by a government agency in another state or jurisdiction that imposes requirements for obtaining and maintaining a license, which are at least as stringent as

the requirements imposed in North Dakota to obtain and maintain a license to practice engineering or land surveying.

History: Effective November 1, 2002.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-51-03

28-02.1-11-02. Indirect practice without a license. ~~Notwithstanding the provisions of subsection 2 of North Dakota Century Code section 43-51-03, or any successor statute,~~ a foreign practitioner shall not provide services in this state without obtaining a license from the board unless such services are provided pursuant to subsection 1 of North Dakota Century Code section 43-51-03, North Dakota Century Code section 43-51-04, ~~or the successor statutes thereto,~~ or any other statutes or an administrative rule adopted by the board.

History: Effective November 1, 2002.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-51-03

28-02.1-11-03. Emergency practice without a license. A foreign practitioner offering land surveying services under North Dakota Century Code section 43-51-04, ~~or its successor statute,~~ shall be limited to services comprising the determination of incidental topography within the meaning of subsection 4 of North Dakota Century Code section 43-19.1-02, ~~or its successor statute.~~

History: Effective November 1, 2002.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-51-04

28-02.1-11-04. Direct practice without a license. Notwithstanding the provisions of North Dakota Century Code section 43-51-05, ~~or its successor statute,~~ no foreign practitioner may provide services in this state without obtaining a license from the board unless allowed to do so by some other statute or an administrative rule adopted by the board.

History: Effective November 1, 2002.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-51-05

TITLE 33
STATE DEPARTMENT OF HEALTH

AUGUST 2002

CHAPTER 33-06-01

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

1. Anthrax*.
2. Botulism*.
3. Brucellosis*.
4. Campylobacter enteritis*.
5. Cancer, all invasive and in situ carcinomas (except basal and squamous cell skin carcinomas or carcinoma in situ of the cervix uteri).
6. Chickenpox (varicella).
7. Chlamydial infections.
8. Cholera*.
9. Cryptosporidiosis.
10. Diphtheria*.
11. Encephalitis (arboviral encephalitides only).
12. Enteric E. coli infection (includes E. coli 0157:H7 and infections caused by other enterohemorrhagic, enteropathogenic, or enteroinvasive E. coli)*.

13. Enterococcus, vancomycin resistant (VRE)*.
14. Foodborne or waterborne outbreaks.
15. Giardiasis.
16. Gonorrhoea.
17. Hantavirus*.
18. Haemophilus influenzae infection (invasive infection with haemophilus influenzae isolated from blood, cerebral spinal fluid, or other normal sterile site)*.
19. Hemolytic uremic syndrome.
20. Hepatitis (specify type).
21. Human immunodeficiency virus (HIV) infection, including acquired immunodeficiency syndrome (AIDS)*. (Any positive HIV test result.)
22. Human immunodeficiency virus (HIV) nucleic acid test result (detectable or nondetectable).
23. Influenza.
- ~~23:~~ 24. Lead blood level greater than or equal to 10 ug/dl.
- ~~24:~~ 25. Legionellosis.
- ~~25:~~ 26. Listeriosis*.
- ~~26:~~ 27. Lyme disease.
- ~~27:~~ 28. Malaria*.
- ~~28:~~ 29. Measles (rubeola)*.
- ~~29:~~ 30. Meningitis, bacterial (all bacterial species isolated from cerebrospinal fluid)*.
- ~~30:~~ 31. Meningococcal disease (invasive infection with neisseria meningitidis isolated from blood, cerebral spinal fluid, or other normal sterile site)*.
- ~~31:~~ 32. Mumps.
- ~~32:~~ 33. Nosocomial outbreaks in institutions.
- ~~33:~~ 34. Pertussis*.

- 34: 35. Plague*.
- 35: 36. Poliomyelitis*.
- 36: 37. Q fever*.
- 37: 38. Rabies (animal or human*).
- 38: 39. Rocky Mountain spotted fever.
- 39: 40. Rubella*.
- 40: 41. Salmonellosis*.
- 41: 42. Scabies outbreaks in institutions.
- 42: 43. Shigellosis*.
- 43: 44. Staphylococcus aureus, methicillin resistant (MRSA) (~~invasive infection with staphylococcus aureus isolated from blood, cerebral spinal fluid, or other normal sterile site demonstrating methicillin resistance~~)*, all sites. All isolates from blood, cerebral spinal fluid, or other normal sterile site must be forwarded to the North Dakota public health laboratory.
- 44: 45. Staphylococcus aureus, vancomycin resistant (VRSA) (any staphylococcus aureus isolate demonstrating intermediate or greater resistance to vancomycin of MIC greater than or equal to 8 ug/ml)*.
- 45: 46. Streptococcal infections (invasive infection of streptococcus group A or B or streptococcus pneumoniae isolated from blood, cerebral spinal fluid, or other normal sterile site)*.
- 46: 47. Syphilis.
- 47: 48. Tetanus.
- 48: 49. Toxic-shock syndrome*.
- 49: 50. Trichinosis.
- 50: 51. Tuberculosis (tuberculosis disease caused by mycobacterium tuberculosis or mycobacterium bovis)*.
- 51: 52. Tularemia*.
- 52: 53. Tumors of the central nervous system.
- 53: 54. Typhoid fever*.

55. Unexplained critical illness or death in an otherwise healthy person.

54: 56. Unusual disease cluster or outbreak of severe or unexplained illnesses or deaths.

55: 57. Weapons of mass destruction suspected event.

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

General Authority: NDCC 23-07-01

Law Implemented: NDCC 23-07-01

SEPTEMBER 2002

CHAPTER 33-15-13

33-15-13-01.1. Scope. The subparts and appendices of title 40, Code of Federal Regulations, part 61, as they exist on ~~July 1, 1997~~ January 31, 2002, which are listed under section 33-15-13-01.2 are incorporated into this chapter by reference. Any changes to the emission standard are listed below the title of the standard.

History: Effective June 1, 1992; amended effective March 1, 1994; December 1, 1994; August 1, 1995; January 1, 1996; September 1, 1997; April 1, 1998; September 1, 2002.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

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

1. **Applicability.** The provisions of this section are applicable to those sources specified in subsections 3 through 17.
2. **Definitions.** All terms that are used in this section and are not defined below are given the same meaning as in North Dakota Century Code chapter 23-25 and in section 33-15-13-01.2.
 - a. "Active waste disposal site" means any disposal site other than an inactive site.
 - b. "Adequately wet" means to sufficiently mix or penetrate with liquid to prevent the release of particulates. If visible emissions are observed coming from asbestos-containing material, then that material has not been adequately wetted; however, the absence of visible emissions is not sufficient evidence of being adequately wet.
 - c. "Asbestos" means the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, and actinolite-tremolite.

- d. "Asbestos abatement" means any demolition, renovation, salvage, repair, or construction activity which involves the repair, enclosure, encapsulation, removal, operation and maintenance, handling, or disposal of more than three square feet [0.28 square meters] or three linear feet [0.91 meters] of friable asbestos material. Asbestos abatement also means any inspections, preparation of management plans, and abatement project design for both friable and nonfriable asbestos material.
- e. "Asbestos abatement project designer" means any person who develops the plans, specifications, and designs for an asbestos abatement project.
- f. "Asbestos abatement project monitor" means any person, employed to monitor an asbestos removal project to ensure any of the following:
 - (1) The removal is conducted in accordance with state and federal regulations.
 - (2) State-of-the-art work practices are employed.
 - (3) The abatement is conducted as designed.
 - (4) Personal and ambient air samples are collected properly.

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

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

- i. "Asbestos contractor" means any partnership, firm, association, operation, or sole proprietorship that contracts to perform asbestos abatement for another.
- j. "Asbestos inspector" means any person who inspects facilities for asbestos-containing materials.
- k. "Asbestos management planner" means any person who develops facility plans for the management of asbestos-containing materials.
- l. "Asbestos mill" means any facility engaged in converting, or in any intermediate step in converting, asbestos ore into commercial asbestos. Outside storage of asbestos materials is not considered a part of the asbestos mill.
- m. "Asbestos tailings" means any solid waste that contains asbestos and is a product of asbestos mining or milling operations.
- n. "Asbestos waste from control devices" means any waste material that contains asbestos and is collected by a pollution control device.
- o. "Asbestos worker" means an employee or agent of an asbestos contractor, or a public employee engaged in the abatement of more than three square feet [0.28 square meters] or three linear feet [0.91 meters] of friable asbestos material, except for individuals engaged in abatement at their private residence.
- p. "Category I nonfriable asbestos-containing material" means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than one percent asbestos as determined using the methods specified in appendix A, subpart F, title 40, Code of Federal Regulations, part 763, section 1, polarized light microscopy.
- q. "Category II nonfriable asbestos-containing material" means any material, excluding category I nonfriable asbestos-containing material, containing more than one percent asbestos as determined using the methods specified in appendix A, subpart F, title 40, Code of Federal Regulations, part 763, section 1, polarized light microscopy that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure or by mechanical forces expected to act on the material.
- r. "Commercial asbestos" means any material containing asbestos that is extracted from ore and has value because of its asbestos content.

- s. "Cutting" means to penetrate with a sharp-edged instrument and includes sawing, but does not include shearing, slicing, or punching.
- t. "Demolition" means the wrecking or taking out of any load-supporting structural member of a facility, together with any related handling operations or the intentional burning of any facility.
- u. "Emergency renovation operation" means a renovation operation that was not planned but results from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, is necessary to protect equipment from damage, or is necessary to avoid imposing an unreasonable financial burden. This term includes operations necessitated by nonroutine failures of equipment.
- v. "Encapsulation" means a method of asbestos abatement that includes the treatment of asbestos-containing materials with a sealant material that completely surrounds or embeds asbestos fibers in an adhesive matrix to prevent the release of fibers. A bridging encapsulant creates a membrane over the surface while a penetrating encapsulant penetrates the material and binds the material's components together.
- w. "Enclosure" means a method of asbestos abatement that includes the construction of a permanent, airtight, impermeable barrier around asbestos-containing material to prevent the release of asbestos fibers into the air.
- x. "Fabricating" means any processing (e.g., cutting, sawing, drilling) of a manufactured product that contains commercial asbestos, with the exception of processing at temporary sites (field fabricating) for the construction or restoration of facilities. In the case of friction products, fabricating includes bonding, debonding, grinding, sawing, drilling, or other similar operations performed as part of fabricating.
- y. "Facility" means any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure,

installation, or building that was previously subject to this section is not excluded, regardless of its current use or function.

- z. "Facility component" means any part of a facility including equipment.
- aa. "Friable asbestos-containing material" means any material containing more than one percent asbestos that hand pressure or mechanical forces expected to act on the material can crumble, pulverize, or reduce to powder when dry. The term includes nonfriable asbestos-containing material after such previously nonfriable material becomes damaged to the extent that when dry, it may be crumbled, pulverized, or reduced to powder by hand pressure. The percentage of asbestos is determined using the method specified in appendix A, subpart F, title 40, Code of Federal Regulations, part 763, section 1, polarized light microscopy. If the asbestos content is greater than zero percent, assume the material contains greater than one percent asbestos or verify the asbestos content by point counting using polarized light microscopy. If a result obtained by point count is different from a result obtained by visual estimation, the point count result will be used.
- bb. "Fugitive source" means any source of emissions not controlled by an air pollution control device.
- cc. "Glove-bag" means a sealed compartment with attached inner gloves used for the handling of asbestos-containing materials. Properly installed and used, glove-bags provide a small work area enclosure typically used for small-scale asbestos stripping operations. Information on glove-bag installation, equipment and supplies, and work practices is contained in the occupational safety and health administration's (OSHA's) final rule on occupational exposure to asbestos, appendix G, title 29, Code of Federal Regulations, 1926.58.
- dd. "Grinding" means to reduce to powder or small fragments and includes mechanical chipping or drilling.
- ee. "In poor condition" means the binding of the material is losing its integrity as indicated by peeling, cracking, or crumbling of the material.
- ff. "Inactive waste disposal site" means any disposal site or portion of it where additional asbestos-containing waste material has not been deposited within the past year.
- gg. "Inspection" means any activity undertaken in a school building, or a public or commercial building, to determine the presence or location, or to assess the condition of, friable or nonfriable

asbestos-containing material or suspected asbestos-containing material, whether by visual or physical examination, or by collecting samples of such material. This term includes reinspections of friable and nonfriable, known or assumed asbestos-containing material which has been previously identified. The term does not include the following:

- (1) Periodic surveillance of the type described in title 40, Code of Federal Regulations, 763.92(b), solely for the purpose of recording or reporting a change in the condition of known or assumed asbestos-containing material;
 - (2) Inspections performed by employees or agents of federal, state, or local governments solely for the purpose of determining compliance with applicable statutes or regulations; or
 - (3) Visual inspections of the types described in title 40, Code of Federal Regulations, 763.90(l), solely for the purpose of determining completion of response actions.
- hh. "Installation" means any building or structure or any group of buildings or structures at a single demolition or renovation site that are under the control of the same owner or operator (or owner or operator under common control).
- ii. "Leaktight" means that solids or liquids cannot escape or spill out. It also means dusttight.
- jj. "Malfunction" means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner so that emissions of asbestos are increased. Failures of equipment shall not be considered malfunctions if they are caused in any way by poor maintenance, careless operations, or any other preventable upset conditions, equipment breakdown, or process failure.
- kk. "Manufacturing" means the combining of commercial asbestos, or in the case of woven friction products, the combining of textiles containing commercial asbestos, with any other materials, including commercial asbestos, and the processing of this combination into a product. Chlorine production is considered a part of manufacturing.
- ll. "Natural barrier" means a natural object that effectively precludes or deters access. Natural barriers include physical obstacles such as cliffs, lakes, or other large bodies of water, deep and wide ravines, and mountains. Remoteness by itself is not a natural barrier.

- mm. "Nonfriable asbestos-containing material" means any material containing more than one percent asbestos as determined using the method specified in appendix A, subpart F, title 40, Code of Federal Regulations, part 763, section 1, polarized light microscopy, that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure or mechanical forces expected to act on the material.
- nn. "Nonscheduled renovation operation" means a renovation operation necessitated by the routine failure of equipment, which is expected to occur within a given period based on past operating experience, but for which an exact date cannot be predicted.
- oo. "Outside air" means the air outside buildings and structures, including, but not limited to, the air under a bridge or in an open ferry dock.
- pp. "Owner or operator of a demolition or renovation activity" means any person who owns, leases, operates, controls, or supervises a facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operations, or both.
- qq. "Particulate asbestos material" means finely divided particles of asbestos or material containing asbestos.
- rr. "Planned renovation operations" means a renovation operation, or a number of such operations, in which some regulated asbestos-containing material will be removed or stripped within a given period of time and that can be predicted. Individual nonscheduled operations are included if a number of such operations can be predicted to occur during a given period of time based on operating experience.
- ss. "Public and commercial building" means the interior space of any building which is not a school building, except that the term does not include any residential apartment building of fewer than ten units or detached single-family homes. The term includes, industrial and office buildings, residential apartment buildings and condominiums of ten or more dwelling units, government-owned buildings, colleges, museums, airports, hospitals, churches, preschools, stores, warehouses, and factories. Interior space includes exterior hallways connecting buildings, porticos, and mechanical systems used to condition interior space.
- tt. "Public employee" for the purpose of this chapter means any person employed by the United States government or the state of North Dakota or any of its political subdivisions who provides

service for which compensation is paid. This includes employment by appointment or election.

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

- vv. "Remove" means to take out regulated asbestos-containing material or facility components that contain or are covered with regulated asbestos-containing material from any facility.

- ww. "Renovation" means altering in any way a facility or facility components, including the stripping or removal of regulated asbestos-containing material from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions.

- xx. "Repair" means returning damaged asbestos-containing materials to an undamaged condition or to an intact state so as to prevent asbestos fiber release.

- yy. "Resilient floor covering" means asbestos-containing floor tile, including asphalt and vinyl floor tiles and sheet vinyl floor covering containing more than one percent asbestos as determined using polarized light microscopy according to the methods specified in appendix A, subpart F, title 40, Code of Federal Regulations, part 763, section 1, polarized light microscopy.

- zz. "Roadways" means surfaces on which motor vehicles travel. This term includes public and private highways, roads, streets, parking areas, and driveways.

- aaa. "Strip" means to take off regulated asbestos-containing material from any part of any facility or facility components.

- bbb. "Structural member" means any member of a facility, such as beams, walls, ceilings, floors, etc.
- ccc. "Visible emissions" means any emissions which are visually detectable without the aid of instruments, coming from regulated asbestos-containing material or asbestos-containing waste material, or from any asbestos milling, manufacturing, or fabricating operations. This does not include condensed uncombined water vapor.
- ddd. "Waste generator" means any owner or operator of a source covered by this section whose act or process produces asbestos-containing waste material.
- eee. "Waste shipment record" means the shipping document, required to be originated and signed by the waste generator and is used to track and substantiate the disposition of asbestos-containing waste material.
- fff. "Working day" means any day Monday through Friday and includes holidays that fall on any day Monday through Friday.

3. Standard for asbestos mills.

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

according to this paragraph, submit to the department, and revise as necessary, a written maintenance plan to include, at a minimum, the following:

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

- (2) The manufacture of cement products.
 - (3) The manufacture of fireproofing and insulating materials.
 - (4) The manufacture of friction products.
 - (5) The manufacture of paper, millboard, and felt.
 - (6) The manufacture of resilient floor covering.
 - (7) The manufacture of paints, coatings, caulks, adhesives, and sealants.
 - (8) The manufacture of plastics and rubber materials.
 - (9) The manufacture of chlorine utilizing asbestos diaphragm technology.
 - (10) The manufacture of shotgun shell wads.
 - (11) The manufacture of asphalt concrete.
- b. Standard. Each owner or operator of any of the manufacturing operations to which this section applies shall either:
- (1) Discharge no visible emissions to the outside air from these operations or from any building or structure in which they are conducted or from any other fugitive sources; or
 - (2) Use the methods specified by subsection 13 to clean emissions containing asbestos material from these operations before they escape to, or are vented to, the outside air.
 - (3) Monitor each potential source of asbestos emissions from any part of the manufacturing facility, including air-cleaning devices, process equipment, and buildings housing material processing and handling equipment, at least once each day during daylight hours for visible emission to the outside air during periods of operation. The monitoring must be by visual observation of at least fifteen seconds duration per source of emissions.
 - (4) Inspect each air-cleaning device at least once each week for proper operation and for changes that signal the potential for malfunctions, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air-cleaning

devices that cannot be inspected on a weekly basis according to this paragraph, submit to the department, and revise as necessary, a written maintenance plan to include, at a minimum, the following:

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

6. Standard for demolition and renovation.

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

to each owner or operator of an asbestos demolition or renovation operation, including the removal of regulated asbestos-containing material, as follows:

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

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

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

cause equipment damage or an unreasonable financial burden.

- (m) Description of procedures to be followed in the event that unexpected regulated asbestos-containing material is found or category II nonfriable asbestos-containing material becomes crumbled, pulverized, or reduced to powder during the operation.
 - (n) For facilities described in paragraph 4 of subdivision a, the name, title, and authority of the state or local governmental representative who has ordered the demolition, the date that the order was issued, and the date on which the demolition was ordered to begin. A copy of the order must be attached to the notification.
 - (o) A signed statement by the contractor that all asbestos abatement supervisors and asbestos workers assigned to this project are certified by the department, in accordance with subsection 16.
- C. Procedures for asbestos emission control. Each owner or asbestos contractor to whom this subsection applies shall comply with the following procedures:
- (1) Remove all regulated asbestos-containing material from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the materials or preclude access to the materials for subsequent removal. Asbestos-containing material need not be removed before demolition if:
 - (a) It is category I nonfriable asbestos-containing material that is not in poor condition and is not friable.
 - (b) It is on a facility component that is encased in concrete or other similarly hard material and adequately wetted whenever exposed during demolition and maintained wet until it is disposed of in accordance with subsection 11.
 - (c) It was not accessible for testing and therefore was not discovered before demolition began and the material cannot be safely removed. If not removed for safety reasons, these materials must be adequately wetted when exposed during demolition and maintained wet until they are disposed of in accordance with subsection 11.

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

in accordance with the requirements in subsection 13.

[b] A glove-bag system designed and operated to contain the particulate asbestos material produced by the stripping of the asbestos materials.

[c] Leaktight wrapping to contain all regulated asbestos-containing material prior to dismantlement.

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

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

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

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

must record the temperature in the area containing the facility components at the beginning, middle, and end of each workday and keep daily temperature records. These records must be available for inspection by the department during normal business hours at the demolition or renovation site. The owner or operator shall retain the temperature records for at least two years.

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

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

- (b) Presence or absence of visible emissions.
 - (c) Condition of fabric filters, including the presence of any tears, holes, and abrasions.
 - (d) Presence of dust deposits on clean side of fabric filters.
 - (e) Brief description of corrective actions taken, including date and time.
 - (f) Daily hours of operation for each air-cleaning device.
- (6) Furnish upon request and make available at the affected facility during normal business hours, for inspection by the department, all records required under this section.
- (7) Retain a copy of all monitoring and inspection records for at least two years.
- (8) Submit quarterly a copy of the visible emission monitoring record to the department if visible emissions occurred during the report period. Quarterly reports must be postmarked by the thirtieth day following the end of the calendar quarter.
9. **Standard for insulating materials.** No owner or operator of a facility may install or reinstall on a facility component any insulating materials that contain commercial asbestos if the materials are either molded and friable or wet-applied and friable after drying. The provisions of this subsection do not apply to spray-applied insulating materials regulated under subsection 7.
10. **Standard for waste disposal for asbestos mills.** Each owner or operator of any source covered under the provisions of subsection 3 shall:
- a. Deposit all asbestos-containing waste material at department-approved waste disposal sites operated in accordance with the provisions of subsection 15.
 - b. Discharge no visible emissions to the outside air from the transfer of asbestos waste from control devices to the tailings conveyor, or use the methods specified by subsection 13 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air. Dispose of the asbestos waste from control devices in accordance with subdivision b of subsection 11 or subdivision c of this subsection.
 - c. Discharge no visible emissions to the outside air during the collection, processing, packaging, transporting, or deposition of

any asbestos-containing waste material, or use one of the disposal methods as follows:

- (1) Use a wetting agent as follows:
 - (a) Adequately mix all asbestos-containing waste material with a wetting agent recommended by the manufacturer of the agent to effectively wet dust and tailings, before depositing the material at a waste disposal site. Use the agent as recommended for the particular dust by the manufacturer of the agent.
 - (b) Discharge no visible emissions to the outside air from the wetting operation or use the methods specified by subsection 13 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.
 - (c) Wetting may be suspended when the ambient temperature at the waste disposal site is less than fifteen degrees Fahrenheit [-9.44 degrees Celsius] as determined by an appropriate measurement method with an accuracy of plus or minus two degrees Fahrenheit [1.11 degrees Celsius]. During periods when wetting operations are suspended, the temperature must be recorded at least at hourly intervals, and records must be retained for at least two years in a form suitable for inspection.
- (2) Use an alternative emission control and treatment method that has received prior written approval by the department and administrator. To obtain approval for an alternative method, a written application must be submitted to the department and the administrator of the United States environmental protection agency demonstrating that the following criteria are met:
 - (a) The alternative method will control asbestos emissions equivalent to currently required methods.
 - (b) That the alternative method is suitable for the intended application.
 - (c) The alternative method will not violate other regulations.
 - (d) The alternative method will not result in increased water pollution, land pollution, or occupational hazards.

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

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

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

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

- (a) Mix asbestos waste from control devices with water to form a slurry; adequately wet other asbestos-containing waste material;
- (b) Discharge no visible emissions to the outside air from collection, mixing, and wetting operations, or use the methods specified by subsection 13 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air;
- (c) After wetting, seal all asbestos-containing waste material in leaktight containers while wet. For materials that will not fit into containers without additional breaking, put materials into leaktight wrapping;
- (d) Label the containers or wrapped materials specified above as follows:

**DANGER
CONTAINS ASBESTOS FIBERS
AVOID CREATING DUST
CANCER AND LUNG DISEASE HAZARD**

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

- (e) For asbestos-containing waste material to be transported off the facility site, label containers or wrapped materials with the name of the waste generator and the location at which the waste was generated.
 - (2) Process asbestos-containing waste material into nonfriable forms as follows:
 - (a) Form all asbestos-containing waste material into nonfriable pellets or other shapes.
 - (b) Discharge no visible emissions to the outside air from the collection and processing operations, including incineration, or use the methods specified by subsection 13 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.
 - (3) For facilities demolished where the regulated asbestos-containing material is not removed prior to demolition according to paragraph 4 of subdivision a and subparagraphs a, b, c, and d of paragraph 1 of subdivision c of subsection 6 adequately wet asbestos-containing waste material at all times during and after demolition and keep wet during handling and loading for transport to a disposal site. Asbestos-containing waste materials covered by this paragraph do not have to be sealed in leaktight containers or wrapping but may be transported by covered hauling and disposed of in bulk.
 - (4) Use an alternative disposal method that has received prior approval by the department and administrator of the United States environmental protection agency.
 - (5) As applied to demolition and renovation, the requirements of subdivision a of this subsection do not apply to category I or category II nonfriable asbestos-containing material waste that is not or will not become crumbled, pulverized, or reduced to powder.
- b. Deposit all asbestos-containing waste material as soon as practical at:
- (1) Department-approved waste disposal sites operated in accordance with the provisions of subsection 15.
 - (2) A United States environmental protection agency-approved site that converts regulated asbestos-containing material

and asbestos-containing waste material into nonasbestos (asbestos free) material according to the provisions of subsection 17.

- (3) The requirements of this subdivision do not apply to category I nonfriable asbestos-containing material that is not or will not become regulated asbestos-containing material.
- c. All facilities used for the temporary storage of asbestos-containing waste material must be controlled and the material must be stored in leaktight containers.
- (1) Post a warning sign at the entrances to the temporary storage facility with a label as follows:

DANGER
ASBESTOS
CANCER AND LUNG DISEASE HAZARD
AUTHORIZED PERSONNEL ONLY

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

- (2) Take necessary precautions to prevent or restrict access to the temporary storage facility.
 - (3) The temporary storage facility must be inspected at least once per week to ensure that good structural integrity of the storage facility is maintained and that the facility remains secure.
 - (4) The maximum length of time allowed for temporary storage of an asbestos-containing waste material may not exceed one hundred eighty days.
- d. Mark vehicles used to transport asbestos-containing waste material during the loading and unloading of waste so that the signs are visible. The markings must:
- (1) Be displayed in such a manner and location that a person can easily read the legend.
 - (2) Conform to the requirements for twenty-inch by fourteen-inch [50.8-centimeter by 35.56-centimeter] upright format signs specified in title 29, Code of Federal Regulations, 1910.145(d)(4) and this paragraph; and

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

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

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

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

- (g) The date transported.
 - (h) The name, address, and telephone number of the transporters.
 - (i) A certification that the contents of this consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.
- (2) Provide a copy of the waste shipment record to the disposal site owner or operator at the same time as the asbestos-containing waste material is delivered to the disposal site.
 - (3) For waste shipments where a copy of the waste shipment record signed by the owner or operator of the designated disposal site is not received by the waste generator within thirty-five days of the date the waste was accepted by the initial transporter, contact the transporter or the owner or operator, or both, of the designated disposal site to determine the status of the waste shipment.
 - (4) Report in writing to this department if a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site is not received by the waste generator within forty-five days of the date the waste was accepted by the initial transporter. Include in the report the following information:
 - (a) A copy of the waste shipment record for which a confirmation of delivery was not received; and
 - (b) A cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the result of those efforts.
 - (5) Retain a copy of all waste shipment records, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site for at least two years.
 - (6) A copy of the completed waste shipment record must be submitted to the department by the owner or operator of the facility no later than ten days after the owner or operator of the facility receives the completed waste shipment record from the landfill operator.

- f. Furnish upon request, and make available for inspection by the department, all records required under this section.
 - g. If an acceptable disposal site, as determined by subsection 15, is located on the same property as the facility where asbestos-containing waste materials were generated, then the recordkeeping requirements of subdivision e of this subsection do not apply. The owner shall maintain records which include information on the quantity, location, and date of asbestos-containing waste disposal activities.
12. **Standard for inactive waste disposal sites for asbestos mills and manufacturing and fabricating operations.** Each owner or operator of any inactive waste disposal site that received deposits of asbestos-containing waste material generated by sources covered under subsection 3, 5, 8, or 10, shall:
- a. Comply with one of the following:
 - (1) Discharge no visible emissions to the outside air from an inactive waste disposal site subject to this subsection;
 - (2) Cover the asbestos-containing waste material with at least fifteen centimeters [6 inches] of compacted non-asbestos-containing material, and grow and maintain a cover of vegetation on the area adequate to prevent exposure of the asbestos-containing waste material;
 - (3) In areas where vegetation would be difficult to maintain, cover the asbestos-containing waste material with at least sixty centimeters [2 feet] of compacted non-asbestos-containing material, and maintain it to prevent exposure of the asbestos-containing waste or cover with at least six inches [15.24 centimeters] of compacted non-asbestos-containing material and at least an additional three inches [7.62 centimeters] of a nonasbestos crushed rock cover in place of the vegetation; or
 - (4) For inactive waste disposal sites for asbestos tailings, apply a resinous-based or petroleum-based dust suppression agent that effectively binds dust to control surface air emissions. Use the agent in the manner and frequency recommended for the particular asbestos tailings by the manufacturer of the dust suppression agent. Obtain prior approval of the department to use other equally effective dust suppression agents. For purposes of this paragraph, used, spent, or other wasteoil is not considered a dust suppression agent.

- b. Unless a natural barrier adequately deters access by the general public, install and maintain warning signs and fencing as follows, or comply with paragraph 2 or 3 of subdivision a of this subsection.
 - (1) Display warning signs at all entrances and at intervals of three hundred twenty-eight feet [100 meters] or less along the property line of the site or along the perimeter of the sections of the site where asbestos-containing waste material was deposited. The warning signs must:
 - (a) Be posted in such a manner and location that a person can easily read the legend.
 - (b) Conform to the requirements for fifty-one-centimeter by thirty-six-centimeter [20-inch by 14-inch] upright format signs specified in title 29, Code of Federal Regulations, 1910.145(d)(4) and this subdivision.
 - (c) Display the following legend in the lower panel with letter sizes and styles of a visibility at least equal to those specified in this paragraph.

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

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

- (2) Fence the perimeter of the site in a manner adequate to deter access by the general public.
 - (3) Upon request and supply of appropriate information, the department will determine whether a fence or a natural barrier adequately deters access by the general public.
- c. The owner or operator may use an alternative control method that has received prior approval of the department and administrator of the United States environmental protection agency rather than comply with the requirements of subdivision a or b of this subsection.

d. Notify the department, in writing, at least forty-five days prior to excavating or otherwise disturbing any asbestos-containing waste material that has been deposited at a waste disposal site under this section and follow the procedures specified in the notification. If the excavation will begin on a date other than the one contained in the original notice, notice of a new start date must be provided to the department at least ten days before excavation begins and in no event shall excavation begin earlier than the date specified in the original notification. Include the following information in the notice:

- (1) Scheduled starting and completion dates.
- (2) Reason for disturbing the waste.
- (3) Procedures to be used to control emissions during the excavation, storage, transport, and ultimate disposal of the excavated asbestos-containing waste material. If deemed necessary, the department may require changes in the emission control procedures to be used.
- (4) Location of any temporary storage site and the final disposal site.

e. Within sixty days of a site becoming inactive, record in accordance with state law a notation on the deed to the facility property and on any instrument that would normally be examined during a title search. This notation will in perpetuity notify any potential purchaser of the property that:

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

13. **Air-cleaning.**

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

- (1) Use fabric filter collection devices except as noted in subdivision b of this subsection, doing all of the following:
 - (a) Ensuring that the airflow permeability, as determined by A.S.T.M. method D737-75, does not exceed nine

$m^3/\text{min}/m^2$ [30 $\text{ft}^3/\text{min}/\text{ft}^2$] for woven fabrics or eleven $m^3/\text{min}/m^2$ [35 $\text{ft}^3/\text{min}/\text{ft}^2$] for felted fabrics, except that twelve $m^3/\text{min}/m^2$ [40 $\text{ft}^3/\text{min}/\text{ft}^2$] for woven and fourteen $m^3/\text{min}/m^2$ [45 $\text{ft}^3/\text{min}/\text{ft}^2$] for felted fabrics is allowed for filtering air from asbestos ore dryers.

- (b) Ensuring that felted fabric weighs at least four hundred seventy-five grams per square meter [14 ounces per square yard] and is at least one and six-tenths millimeters [1/16 inch] thick throughout.
 - (c) Avoiding the use of synthetic fabrics that contain fill yarn other than that which is spun.
- (2) Properly install, use, operate, and maintain all air-cleaning equipment authorized by this subsection. Bypass devices may be used only during upset or emergency conditions and then only for so long as it takes to shut down the operation generating the asbestos material.
 - (3) For fabric filters installed after January 10, 1989, provide for easy inspection for faulty bags.
- b. There are the following exceptions to paragraph 1 of subdivision a:
- (1) If the use of fabric creates a fire or explosion hazard or the department determines that a fabric filter is not feasible, the department may authorize as a substitute the use of wet collectors designed to operate with a unit contacting energy of at least 9.95 kilopascals [40 inches water gauge pressure].
 - (2) Use a high-efficiency particulate air filter that is certified to be at least ninety-nine and ninety-seven hundredths percent efficient for particles with a diameter size of three-tenths microns and greater.
 - (3) The department and administrator of the United States environmental protection agency may authorize the use of filtering equipment other than that described in subdivisions a and b of this subsection if the owner or operator demonstrates to the administrator and the department's satisfaction that it is equivalent to the described equipment in filtering asbestos material.

14. Reporting.

- a. Any existing source to which this section applies (with the exception of sources subject to subsections 4, 7, and 9) which has not previously supplied a notice to this department or the

administrator, shall provide such notice within ninety days of the effective date of this regulation. Any new source to which this section applies shall provide notice to this department within ninety days of the effective startup date of the source. Changes to the information provided in a notice must be submitted to this department within thirty days of the change taking place. The notice shall provide the following information to the department:

- (1) A description of the emission control equipment used for each process; and
 - (2) If a fabric filter device is used to control emissions;
 - (a) The airflow permeability in $\text{m}^3/\text{min}/\text{m}^2$ if the fabric filter device uses a woven fabric and; if the fabric is synthetic, whether the fill yarn is spun or not spun.
 - (b) If the fabric filter device uses a felted fabric, the density in g/m^2 , the minimum thickness in millimeters, and the airflow permeability in $\text{m}^3/\text{min}/\text{m}^2$.
 - (3) If a high-efficiency particulate air filter is used to control emissions, the certified efficiency.
 - (4) For sources subject to subsections 10 and 11:
 - (a) A brief description of each process that generates asbestos-containing waste material;
 - (b) The average volume of asbestos-containing waste material disposed of in cubic yards per day;
 - (c) The emission control methods used in all stages of waste disposal; and
 - (d) The type of disposal site used for ultimate disposal, the name of the site operator, and the name and location of the disposal site.
 - (5) For sources subject to subsections 12 and 15:
 - (a) A brief description of the site; and
 - (b) The method or methods used to comply with the standard, or alternative procedures to be used.
- b. The information required by subdivision a of this subsection must accompany the information required by subsection 8 of section 33-15-13-01. Active waste disposal sites subject to subsection 15

shall also comply with this provision. Roadways, demolition and renovations, spraying, and insulating materials are exempted from the requirements of section 33-15-13-01.1.

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

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

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

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

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

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

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

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

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

- (2) The perimeter of the disposal site must be fenced in order to adequately deter access to by the general public.
 - (3) Upon request and supply of appropriate information, the department will determine whether a fence or a natural barrier adequately deters access by the general public.
- c. Rather than meet the no visible emission requirements of subdivision a of this subsection, an active waste disposal site would be an acceptable site if at the end of each operating day, or at least once every twenty-four-hour period while the site is in continuous operation, the asbestos-containing waste material which was deposited at the site during the operating day or previous twenty-four-hour period is covered with either:
- (1) At least fifteen centimeters [6 inches] of compacted non-asbestos-containing material; or
 - (2) A resinous-based or petroleum-based dust suppression agent that effectively binds dust and controls wind erosion. This agent must be used in the manner and frequency recommended for the particular dust by the manufacturer of the dust suppression agent. Other equally effective dust suppression agents may be used upon prior approval by the department. For purposes of this paragraph, used, spent, or other waste oil is not considered a dust suppression agent.
- d. Rather than meet the no visible emission requirements of subdivision a of this subsection, use an alternative emission control method that has received prior approval by the department and administrator of the United States environmental protection agency.
- e. For all asbestos-containing waste material received, the owner or operator of the active waste disposal site shall:
- (1) Maintain waste shipment records which include the following information:
 - (a) The name, address, and telephone number of the waste generator.
 - (b) The name, address, and telephone number of the transporters.
 - (c) The quantity of the asbestos-containing material in cubic yards.

- (d) The presence of improperly enclosed or uncovered wastes or any asbestos-containing waste material not sealed in leaktight containers. Report in writing to this department by the following working day, the presence of a significant amount of improperly enclosed or uncovered waste. Submit a copy of the waste shipment record along with the report.
 - (e) The date of the receipt.
 - (2) As soon as possible and no longer than thirty days after receipt of the waste send a copy of the signed waste shipment record to the waste generator.
 - (3) Upon discovering a discrepancy between the quantity of waste designated on the waste shipment records and the quantity actually received, attempt to reconcile the discrepancy with the waste generator. If the discrepancy is not resolved within fifteen days after receiving the waste, immediately report in writing to this department. Describe the discrepancy and attempts to reconcile it, and submit a copy of the waste shipment record along with the report.
 - (4) Retain a copy of all records and reports required by this subdivision for at least two years.
 - f. Maintain until closure, records of the location, depth and area and quantity in cubic yards of asbestos-containing waste material within the disposal site on a map or diagram of the disposal area.
 - 9. Upon closure, comply with all the provisions of subsection 12.
 - h. Submit to this department, upon closure of the facility, a copy of records of asbestos waste disposal locations and quantities.
 - i. Furnish upon request and make available during normal business for inspection by this department, all records required under this section.
 - j. Comply with subdivision d of subsection 12 if it becomes necessary to excavate or otherwise disturb asbestos-containing waste material that has been previously covered.
16. **Asbestos abatement licensing and certification.** No public employees or employees of asbestos contractors shall engage in any asbestos abatement activity or provide asbestos abatement project monitoring unless they are certified with the department as provided in this subsection. No person shall engage in any asbestos abatement activity in a public or commercial building unless the person is certified

with the department as provided in this subsection. Certification will be for a period of one year from the completion date of the initial training course or the last refresher course in the appropriate discipline. All asbestos contractors and firms who provide asbestos abatement or asbestos abatement project monitoring services, must be licensed with this department, as provided in this subsection, prior to beginning asbestos abatement or asbestos abatement project monitoring activities. At least one person having completed the requirements for supervisor certification of subdivision b of this subsection is required to be at the worksite at all times while work is in progress, if the work involves repair, removal, encapsulation, enclosure, or handling of regulated asbestos-containing material if the work is being conducted by an asbestos contractor or public employees. At least one onsite individual having completed the supervisor training requirement of subdivision b of this subsection is required to be present if the activity is regulated by subsection 6 and the work is being conducted by employees of the owner.

- a. Asbestos workers. All asbestos workers employed by asbestos abatement contractors and all public employees and all other asbestos workers in public and commercial buildings engaged in the repair, removal, enclosure, encapsulation, or handling of regulated asbestos-containing material, must obtain certification as outlined in all paragraphs of this subdivision except as provided in subdivision h.
 - (1) Application. Any applicant desiring certification as an asbestos worker shall make an application to the department on forms supplied by the department. Each application shall be accompanied by a nonrefundable fee of ~~twenty-five~~ fifty dollars except as provided in subdivision g. This fee includes the processing of the initial examination specified in paragraph 3 of this subdivision.
 - (2) Initial training. Any applicant desiring certification as an asbestos worker shall complete the initial training requirements for asbestos worker accreditation under title 40, Code of Federal Regulations, part 763, appendix C to subpart E - environmental protection agency model contractor accreditation plan as amended February 3, 1994, by attending and successfully completing a training course designed for asbestos workers. The training course must have received approval from the environmental protection agency or the department.
 - (3) Examination. Any applicant for certification shall pass a written examination administered by the department. The department may accept proof of successful completion of an examination administered by an environmental protection

agency or department approved training course provider. The examination and the results of the examination must be available to the department upon request. Any applicant who fails to obtain a minimum seventy percent passing score on the examination shall be eligible to take a subsequent examination no earlier than one week following the previous examination. A twenty-five dollar fee is required for each examination. No more than three examinations may be given before requiring attendance of another initial training course. Information concerning the testing arrangements can be obtained from the department.

- (4) Refresher training. Any asbestos worker who has received initial training and has established full certification with the department, and who wishes to maintain continuous certification, shall complete a refresher training course as required by the model contractor accreditation plan as amended February 3, 1994, within one year of completing the initial training course. The course content must include a review of the changes in federal and state regulations, a discussion of the developments in state-of-the-art procedures and equipment as well as an overview of key aspects of the initial training course. Thereafter, the asbestos worker shall complete a refresher course within one year of the last refresher course.
 - (5) Certification renewal. Any asbestos worker who desires to renew their certification must have attended a refresher training course within twelve months prior to submittal of the renewal application. The renewal application shall include proof of attendance at such course and a recertification fee of ~~twenty-five~~ fifty dollars. Certification is current for a period of twelve months from the date of the training course. If an asbestos worker does not satisfy the refresher training requirements of this subdivision within two years of the date of the initial training course or of the last refresher training course, then the individual shall complete the initial training requirements provided in paragraph 2 of this subdivision to reestablish full certification.
 - (6) The certification card issued by the department must be available at the worksite for each asbestos worker.
- b. Other asbestos disciplines. Any individual, except asbestos workers, acting as or acting on behalf of an asbestos contractor or as a public employee who performs an asbestos abatement service or any individual who performs asbestos abatement project monitoring on behalf of a contracting firm or as a public employee or any other individual who performs asbestos abatement in a

public or commercial building must obtain certification as outlined in all paragraphs of this subdivision. This certification requirement applies to asbestos abatement supervisors, asbestos inspectors, asbestos management planners, asbestos abatement project designers, and asbestos abatement project monitors except as provided in subdivision h.

- (1) Application. Any person desiring certification in the disciplines of asbestos inspector, asbestos management planner, asbestos abatement project designer, asbestos abatement project monitor, and asbestos abatement supervisor shall make an application to the department on forms supplied by the department. Each application shall be accompanied by a nonrefundable fee of ~~twenty-five~~ fifty dollars for each discipline within which the applicant is seeking certification except as provided in subdivision g. This fee includes the processing of the initial examination specified in paragraph 3 of this subdivision.
- (2) The initial training requirements are as follows:
 - (a) Any applicant desiring certification as an asbestos inspector, asbestos management planner, asbestos abatement project designer, or asbestos abatement supervisor or any individual required to meet the training requirements of paragraph 8 of subdivision c of subsection 6 shall complete the initial training requirements set forth in title 40, Code of Federal Regulations, part 763, appendix C to subpart E - environmental protection agency model contractor accreditation plan as amended February 3, 1994, by attending and successfully completing a training course in the appropriate discipline. The training course must have received approval in the respective discipline from the environmental protection agency or the department.
 - (b) Asbestos abatement project monitors must have a valid state certification as asbestos abatement supervisor or asbestos abatement project designer and shall have completed a NIOSH 582 or equivalent air sampling course of not less than four days in length.
- (3) Examination. Any applicant for certification in a specific discipline except asbestos abatement project monitor shall pass a written examination administered by the department for that discipline. The department may accept proof of successful completion of an examination administered by an environmental protection agency or department approved

training course provider. The examination and the results of the examination must be available to the department upon request. Any applicant who fails to obtain a minimum seventy percent passing score on the examination shall be eligible to take a subsequent examination no earlier than one week following the previous examination. A twenty-five dollar fee is required for each examination. No more than three examinations shall be given before requiring attendance of another initial training course.

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

- c. Asbestos contractor license. Each contractor who performs asbestos abatement services or performs asbestos abatement project monitoring services in the state shall obtain an asbestos contractor license except as provided in subdivision h.
- (1) Submit an application to the department on forms supplied by the department. An application shall be accompanied by a nonrefundable fee of one hundred fifty dollars.
 - (2) The license fee will cover the period from January first through December thirty-first of each year unless the license is suspended, revoked, or denied as specified in subdivision f. The fee shall be one hundred fifty dollars regardless of the application date. Following the initial submittal, the renewal fee shall be due and payable by January thirtieth of the following year.
 - (3) A contractor seeking an asbestos contractor license must have completed the appropriate training and certification requirements in subdivision b of this subsection. The contractor may designate an employee who has completed this requirement to serve as the contractor's agent for the purposes of obtaining an asbestos contractor license.
 - (4) Asbestos contractors who provide multiple services are not required to pay additional license fees.
 - (5) All certifiable services offered by an asbestos contractor must be performed by persons certified in accordance with subdivisions a and b of this subsection.
 - (6) A copy of the asbestos contractor license shall be made available at the worksite.
 - (7) This license does not exempt, supersede, or replace any other state or local licensing or permitting requirements.
- d. Approved initial and refresher training courses. The department will maintain and provide a listing of approved initial and refresher training courses. Applicants seeking approval of courses, other than those present on the department list, must submit information on the course content to the department. The course content must satisfy the minimum requirements of the model contractor accreditation plan as amended February 3, 1994. The department will advise the applicant whether the course is approved within thirty days of receipt of the necessary information. Training course providers will be required to meet all applicable requirements contained in title 40, Code of Federal Regulations, part 763, appendix C to subpart E as amended February 3, 1994.

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

subpart E, model contractor accreditation plan as amended February 3, 1994.

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

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

- a. Obtain the prior written approval of this department and the administrator of the United States environmental protection agency to construct the facility. To obtain approval, the owner or operator shall provide the department and the administrator of the United States environmental protection agency with the following information:
 - (1) Application to construct pursuant to chapter 33-15-14.
 - (2) In addition to the information requirements of chapter 33-15-14, provide a:
 - (a) Description of the waste feed handling and temporary storage.
 - (b) Description of process operating conditions.

- (c) Description of the handling and temporary storage of the end products.
 - (d) Description of the protocol to be followed when analyzing output materials by transmission electron microscopy.
 - (3) Performance test protocol, including provisions for obtaining information required under subdivision b of this subsection.
 - (4) The department may require that a demonstration of the process be performed prior to approval of the application to construct.
- b. Conduct a startup performance test. Test results must include:
- (1) A detailed description of the types and quantities of nonasbestos material, regulated asbestos-containing material, and asbestos-containing waste material processed (e.g., asbestos cement products, friable asbestos insulation, plaster, wood, plastic, wire, etc.). Test feed is to include the full range of materials that will be encountered in actual operation of the process.
 - (2) Results of analyses, using polarized light microscopy, that document the asbestos content of the wastes processed.
 - (3) Results of analyses using transmission electron microscopy, that document that the output materials are free of asbestos. Samples for analysis are to be collected as eight-hour composite samples (one 200-gram [seven-ounce] sample per hour), beginning with the initial introduction of regulated asbestos-containing material or asbestos-containing waste material and continuing until the end of the performance test.
 - (4) A description of operating parameters, such as temperature and residence times, defining the full range over which the process is expected to operate to produce nonasbestos (asbestos-free) materials. Specify the limits for each operating parameter within which the process will produce nonasbestos (asbestos-free) materials.
 - (5) The length of the test.
- c. During the initial ninety days of operation:
- (1) Continuously monitor and log the operating parameters identified during startup performance tests that are intended

to ensure the production of nonasbestos (asbestos-free) output material.

- (2) Monitor input materials to ensure that they are consistent with the test feed materials described during startup performance tests in paragraph 1 of this subdivision.
 - (3) Collect and analyze samples taken as ten-day composite samples (one 200-gram [seven-ounce] sample collected every eight hours of operation) of all output materials for the presence of asbestos. Composite samples may be for fewer than ten days. Transmission electron microscopy must be used to analyze the output materials for the presence of asbestos. During the initial ninety-day period, all output materials must be stored onsite until analysis shows the material to be asbestos-free or be disposed of as asbestos-containing waste material according to subsection 11.
- d. After the initial ninety days of operation:
- (1) Continuously monitor and record the operating parameters identified during startup performance testing and any subsequent performance testing. Any output produced during a period of deviation from the range of operating conditions established to ensure the production of nonasbestos (asbestos-free) output material shall be:
 - (a) Disposed of as asbestos-containing waste material according to subsection 11;
 - (b) Recycled as waste feed during process operations within the established range of operating conditions; or
 - (c) Stored temporarily onsite in a leaktight container until analyzed for asbestos content. Any product material that is not asbestos-free shall either be disposed of as asbestos-containing waste material or recycled as waste feed to the process.
 - (2) Collect and analyze monthly composite samples (one 200-gram [seven-ounce] sample collected every eight hours of operation) of the output material. Transmission electron microscopy must be used to analyze the output material for the presence of asbestos.
- e. Discharge no visible emissions to the outside air from any part of the operation or use the methods specified by subsection 13

to clean emissions containing particulate asbestos material before they escape to or are vented to the outside air.

- f. Maintain records onsite and include the following information:
 - (1) Results of startup performance testing and all subsequent performance testing, including operating parameters, feed characteristics, and analyses of output materials.
 - (2) Results of the composite analysis required during the initial ninety days of operation under subdivision c of this subsection.
 - (3) Results of the monthly composite analysis required under subdivision d of this subsection.
 - (4) Results of continuous monitoring and logs of process operating parameters required under subdivisions c and d of this subsection.
 - (5) Information on waste shipments received as required in subdivision e of subsection 15.
 - (6) For output materials ~~where~~ when no analyses were performed to determine the presence of asbestos, record the name and location of the purchaser or disposal site to which output materials were sold or deposited and the date of sale or disposal.
 - (7) Retain records required by this subdivision for at least two years.
9. Submit the following reports to the department:
 - (1) A report for each analysis of product composite samples performed during the initial ninety days of operation.
 - (2) A quarterly report, including the following information concerning activities during each consecutive three-month period:
 - (a) Results of analyses of monthly product composite samples.
 - (b) A description of any deviation from the operating parameters established during performance testing, the duration of the deviation, and steps taken to correct the deviation.

- (c) Disposition of any product produced during a period of deviation, including whether it was recycled, disposed of as asbestos-containing waste material, or stored temporarily onsite until analyzed for asbestos content.
 - (d) The information on waste disposal activities as required in subdivision f of subsection 15.
- h. Nonasbestos (asbestos-free) output material is not subject to any of the provisions of this section. Output material in which asbestos is detected, or output materials produced when the operating parameters deviated from those established during the startup performance testing, unless shown by transmission electron microscopy analysis to be asbestos-free shall be considered to be asbestos-containing waste and must be handled and disposed of in accordance with subsections 11 and 15 or reprocessed while all of the established operating parameters are being met.

History: Amended effective October 1, 1987; January 1, 1989; June 1, 1990; June 1, 1992; March 1, 1994; December 1, 1994; January 1, 1996; September 1, 2002.

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

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

CHAPTER 33-15-24
STANDARDS FOR LEAD-BASED PAINT ACTIVITIES

Section

33-15-24-01

Scope

33-15-24-02

Standards for Activities

33-15-24-03

Notification Requirements

33-15-24-04

Lead-Based Paint Abatement Licensing, Certification, and
Course Approval Fees

33-15-24-01. Scope. The sections of title 40, Code of Federal Regulations, part 745, as they exist on January 31, 2002, which are listed under section 33-15-24-02 are incorporated into this chapter by reference. Any changes to the standards are listed below the title of the section.

History: Effective September 1, 2002.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-24-02. Standards for activities.

745.220 Scope and applicability is amended as follows:

- (a) This subpart contains procedures and requirements for the accreditation of lead-based paint activities training programs, procedures, and requirements for the certification of individuals and the licensing of firms engaged in lead-based paint activities and work practice standards for performing such activities. This subpart also requires that, except as discussed below, all lead-based paint activities, as defined in this subpart, be performed by certified individuals and licensed firms.
- (b) This subpart applies to all individuals and firms who are engaged in lead-based paint activities as defined in subpart 745.223, except persons who conduct these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level.
- (c) Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the federal government having jurisdiction over any property or facility, or engaged in any activity resulting, or which may result, in a lead-based paint hazard, and each officer, agent, or employee thereof shall be subject to, and comply with, all federal, state, interstate, and local requirements, both substantive and procedural, including the requirements of this subpart regarding lead-based paint, lead-based paint activities, and lead-based paint hazards.

- (d) While this subpart establishes specific requirements for performing lead-based paint activities should they be undertaken, nothing in this subpart requires that the owner or occupant undertake any particular lead-based paint activity.

745.223 Definitions

The terms United States environmental protection agency administrator and agency are deleted and replaced with department, except for those duties that cannot be delegated by the United States environmental protection agency. For those duties that cannot be delegated, environmental protection agency means the United States environmental protection agency and administrator means the administrator of the United States environmental protection agency.

"Authorized state" is added and means a state that has been authorized in accordance with title 40, Code of Federal Regulations, part 745, subpart Q, to administer and enforce sections 745.225, 745.226, and 745.227.

The acronym "EPA" is added and means the United States environmental protection agency or authorized state when used in the phrases "accredited by EPA" and "certified by EPA" or when referring to EPA accreditation of a training course or referring to EPA certification of an individual.

Certified firm is amended as follows: delete the words certified and certificate and replace with licensed and license.

"Child-occupied facility" means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, six years of age or under, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least three hours and the combined weekly visit lasts at least six hours, and the combined annual visits last at least sixty hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools, and kindergarten classrooms.

"Elevated blood lead level" is changed from twenty micrograms of lead per deciliter of whole blood for a single venous test to ten micrograms of lead per deciliter of whole blood for a single venous test. The remainder of the definition is deleted.

"Lead-based paint activities" means in the case of target housing and child-occupied facilities, inspection, risk assessment, and abatement, as defined in this subpart.

"Lead-based paint hazard" is amended as defined in 40 CFR 745.223 and as defined in 40 CFR 745.63 and means hazardous lead-based paint, dust-lead hazard or soil-lead hazard or any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated

paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as identified by the administrator pursuant to TSCA section 403.

"Licensed firm" is added and means a company, partnership, corporation, sole proprietorship, association, or other business entity that performs lead-based paint activities to which the department has issued a license approval pursuant to North Dakota Administrative Code chapter 33-15-24.

"Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any one or more children age six years or under resides or is expected to reside in such housing for the elderly or persons with disabilities) or any zero-bedroom dwelling.

The following definitions are incorporated into section 745.223:

"Chewable surface" as defined in 40 CFR 745.63.

"Concentration" as defined in 40 CFR 745.63.

"Dripline" as defined in 40 CFR 745.63.

"Dust-lead hazard" as defined in 40 CFR 745.65(b).

"Friction surface" as defined in 40 CFR 745.63.

"Impact surface" as defined in 40 CFR 745.63.

"Paint-lead hazard" as defined in 40 CFR 745.65(a).

"Play area" as defined in 40 CFR 745.63.

"Renovation" as defined in 40 CFR 745.83.

"Soil-lead hazard" as defined in 40 CFR 745.65(c).

"Soil sample" as defined in 40 CFR 745.63.

"Wipe sample" as defined in 40 CFR 745.63.

"Work practice requirements" as defined in 40 CFR 745.65(d).

745.225 Accreditation of training programs: Target housing and child-occupied facilities.

745.225(a)(2) is deleted.

In 745.225(b)(4), the reference to section 745.238 is deleted and replaced with North Dakota Administrative Code section 33-15-24-04.

In 745.225(f)(3)(v), the reference to section 745.238 is deleted and replaced with North Dakota Administrative Code section 33-15-24-04.

In 745.225(h)(4)(iv), the number fifteen is deleted and replaced with ten.

In 745.225(h)(5), the references to section 14 of TSCA or by part 2 of this title is deleted and replaced with North Dakota Administrative Code section 33-15-01-16.

745.226 Certification of individuals and firms engaged in lead-based paint activities: target housing and child-occupied facilities.

745.226(a)(2) is deleted.

In 745.226(a)(6), the reference to section 745.238 is deleted and replaced with North Dakota Administrative Code section 33-15-24-04.

In 745.226(b)(1)(ii) after EPA add: or an authorized state.

745.226(d) is deleted and replaced with: Certification based on prior training or prior certification with the United States environmental protection agency or an authorized state.

- (1) Anyone who has completed an approved lead training course within nine months of the effective date of this rule and has not completed a certification examination will have six months from the effective date of this rule to complete a certification examination and make application to the state.
- (2) Anyone who is certified by the United States environmental protection agency or an authorized state prior to the effective date of this rule will have six months from the effective date of this rule to apply for reciprocal lead-based paint certification and license in North Dakota. Reciprocity applicants should submit an application, proof of training and certification, and the appropriate fee in accordance with North Dakota Administrative Code section 33-15-24-04. Certification will be for a period of three years from the date of the last training course attended.

In 745.226(e)(3), the reference to section 745.238 is deleted and replaced with North Dakota Administrative Code section 33-15-24-04.

In 745.226(f), delete the words certification and certified and replace with licensing and licensed.

745.226(f)(5) is deleted.

In 745.226(f)(6), the reference to section 745.238 is deleted and replaced with North Dakota Administrative Code section 33-15-24-04.

In 745.226(f)(7), the reference to section 745.238 is deleted and replaced with North Dakota Administrative Code section 33-15-24-04.

In 745.226(h), delete the word certification and replace with license.

In 745.226(i), delete the words certification and certified and replace with license and licensed when referring to a firm.

In 745.226(i)(4)(iv), the number fifteen is deleted and replaced with ten.

In 745.226(i)(5), the references to TSCA section 14 or by part 2 of this title is deleted and replaced with North Dakota Administrative Code section 33-15-01-16.

745.227 Work practice standards for conducting lead-based paint activities: target housing and child-occupied facilities.

In 745.227(e)(3), certified firm is deleted and replaced with licensed firm.

745.227(e)(4) is deleted in its entirety and replaced with North Dakota Administrative Code section 33-15-24-03.

745.227(i) is added as follows:

- (i) Recordkeeping. All reports or plans required in this section shall be maintained by the licensed firm or individual who prepared the report for no fewer than three years. The licensed firm or individual shall also provide copies of these reports to the building owner who contracted for its services.

745.233 Lead-based paint activities requirements.

History: Effective September 1, 2002.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-24-03. Notification requirements.

1. Notification.

- a. Notification of commencement of lead-based paint abatement activities in a residential dwelling or child-occupied facility or as a result of a federal, state, or local order shall be given to the department ten days prior to the commencement of the abatement

activities. The notification shall be provided on a form provided by the department.

b. Notification of all lead-based paint accredited training courses offered in North Dakota shall be provided to the department at least ten days prior to the commencement of the course. Notification of completion of the course shall be provided to the department within ten days after the course has been completed. Both notifications shall be provided on a form provided by the department.

2. Notification requirements. Each owner or operator to which this chapter applies shall:

a. Provide the department with written notice of intent to abate lead-based paint.

b. Indicate whether the notice is original or a revised notification and update the notice as necessary, including but not limited to:

(1) Update notification for new start dates.

(2) Update notification for change in job location.

(3) Update notification for cancellations.

c. Postmark or deliver the notice as follows:

(1) At least ten working days before abatement begins.

(2) As early as possible before, but not later than, the following working day after abatement begins if the abatement is the result of an order from a federal, state, or local government.

3. Required information. Each owner or operator to which this chapter applies shall include the following information in the notification required by subsection 1:

a. The name, address, and telephone number of the owner of the facility.

b. The name, address, and telephone number of the abatement company.

c. A description of the facility or the affected part of the facility being abated, including the size, age, and present use of the facility.

d. An estimate of the amount of lead-based paint to be abated from the facility in terms of square feet.

- e. The location of the facility being abated, including the street address, city, county, and state if different from that required by subdivision a.
- f. The scheduled starting date and completion date of the abatement work.
- g. A description of the abatement work to be performed, including the abatement techniques and methods to be employed during the activities and a description of the affected facility components.
- h. The name and location of the waste disposal site where the lead-based paint containing waste material will be deposited.
- i. The name, address, and telephone number of the waste transporter.
- j. A signed statement by the lead-based paint contractor that all lead-based paint abatement supervisors and lead-based paint workers assigned to this project are certified by the department, in accordance with section 33-15-24-04.

History: Effective September 1, 2002.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-24-04. Lead-based paint abatement licensing, certification, and course approval fees.

1. **Purpose.** This section establishes fees charged for the issuance of licenses and certificates by the department for lead-based paint activities. This section also establishes fees charged to recover costs associated with regulatory activities involving lead-based paint.
2. **Scope.** This section applies to a person or company who is an applicant for a lead-based paint certificate, license, or course approval issued by the department.
3. **Exemptions.**
 - a. No application fees, license fees, amendment fees, or renewal fees shall be required for:
 - (1) Nonprofit educational institutions are exempt from the fees prescribed in this section. This exemption does not apply to institutions which perform any of the following:
 - (a) Remunerated services to other persons.

- (b) Activities performed under a government contract.
 - (2) Public employees.
 - (3) Firms which perform only in-house lead-based paint activities.
 - b. The department may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of this section as it determines are authorized by law and are otherwise in the public interest.
4. **Payment of fees.** Any fees required by this subsection are not refundable.
- a. License, certification, and course approval fees. The appropriate licensing, certification, or course approval fee shall accompany the application when filed with the department.
 - b. Renewal fees. The appropriate renewal fee shall accompany the renewal application when filed with the department.
 - c. Special project fees. Special project means those projects submitted to the department for review and for which specific fees are not prescribed in this chapter. Special project fees will be based upon the current professional staff hourly rate. Fees for special projects are payable upon notification by the department that review of the project is completed.
 - d. Method of payment. Fee payments shall be made by check, draft, or money order made payable to the North Dakota department of health.
 - e. Submittal of application and fee payment. The application for licensure or certification shall be submitted to:

North Dakota State Department of Health
Division of Air Quality
1200 Missouri Avenue, Room 304
P.O. Box 5520
Bismarck, ND 58506-5520
5. **Failure by applicant or licensee to pay prescribed fees.** If the department finds that an applicant or a licensee has failed to pay a prescribed fee required in this section, the department will not process any application and may suspend or revoke any certification, license, or course approval involved or may issue an order with respect to licensed activities as the department determines to be appropriate or

necessary in order to carry out the provisions of this chapter and of the North Dakota Century Code.

6. Schedule of fees for lead-based paint activities.

a. Applicants for lead-based paint licenses, certifications, and course approvals shall pay the following fees:

| <u>Fee Category</u> | <u>Term</u> | <u>Fee (in dollars)</u> |
|----------------------------------|----------------|--|
| <u>Contractor license</u> | <u>3 years</u> | <u>\$450.00</u> |
| <u>Individual certifications</u> | <u>3 years</u> | <u>\$150.00</u> <u>(per discipline)</u> |

b. Training course approvals. Any training provider requesting a review of the provider's course for approval by the department shall submit a filing fee of one hundred fifty dollars and pay an application processing fee. The application processing fee will be based on the actual processing costs, including time spent by the department to conduct the course review and course audit, and any travel and lodging expenses the department incurs conducting these activities. Following the course review and audit, and after making a determination on the accreditation status of the course, a statement will be sent to the applicant listing the remaining application processing costs. The course provider must conduct a course in North Dakota for audit purposes within fifteen months of the submittal of the initial filing fee or the initial filing fee and any application processing fees paid will be forfeited.

History: Effective September 1, 2002.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

OCTOBER 2002

CHAPTER 33-16-01

33-16-01-01. General.

1. **Authority.** The authority for this chapter relating to the control, prevention, and abatement of pollution of natural surface and underground waters is provided by North Dakota Century Code section 61-28-04.
2. **Scope and purpose.** This chapter establishes procedures governing the application for, and the issuance, denial, modification, and revocation of, permits for the discharge of pollutants into the waters of the state, as defined by subsection 6 of North Dakota Century Code section 61-28-02. The establishment of such procedures is required as a condition precedent to participation by North Dakota in the national pollutant discharge elimination system, pursuant to the provisions of section 402(b) of the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.].
3. **Definitions.** As used in this chapter, unless the context otherwise indicates:
 - a. "Administrator" means the administrator of the United States environmental protection agency.
 - b. "Applicable water quality standards" means all water quality standards to which a discharge is subject under the Federal Water Pollution Control Act and which have been:
 - (1) Approved or permitted to remain in effect by the administrator following submission to the administrator pursuant to section 303(a) of the Federal Water Pollution Control Act; or
 - (2) Promulgated by the administrator pursuant to section 303(b) or (c) of the Federal Water Pollution Control Act.

- c. "Biological monitoring" means the determination of the effects on aquatic life, including accumulation of pollutants in tissue, in receiving waters due to the discharge of pollutants:
 - (1) By techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain appropriate to the volume and the physical, chemical, and biological characteristics of the effluent; and
 - (2) At appropriate frequencies and locations.
- d. "Department" means the North Dakota state department of health ~~and consolidated laboratories.~~
- e. "Discharge" when used without qualification includes a discharge of a pollutant, and a discharge of pollutants.
- f. "Discharge of a pollutant" and "discharge of pollutants" each means any addition of any pollutant to the waters of the state from any source, including the disposal of pollutants into wells.
- g. "Effluent standard" or "effluent limitation" means any restriction established by the department on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into the waters of the state. Such restrictions shall be at least as stringent as standards adopted by the administrator pursuant to the provisions of the Federal Water Pollution Control Act. Such restrictions shall include, but not be limited to, effluent limitations and applicable compliance schedules, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards adopted by the administrator pursuant to the aforesaid Act.
- h. "EPA" means the United States environmental protection agency.
- i. ~~"Industrial user" means those industries identified in the Standard Industrial Classification Manual, Bureau of the Budget, 1967, as amended and supplemented, under the category "Division D - Manufacturing" and such other classes of significant waste producers as, by regulation, the administrator deems appropriate a source of indirect discharge as defined in section 33-16-01.1-01.~~
- j. "Major facility" means any facility or activity subject to regulation under the national pollutant discharge elimination system which has been identified as a major facility by the regional administrator in conjunction with the department.

- ~~k.~~ k. "Minor discharge" means any discharge from a facility or activity which (1) ~~has a total volume of less than fifty thousand gallons [189,250 liters] on every day of the year,~~ (2) ~~does not affect the waters of more than one state,~~ and (3) ~~is not identified by the department, the administrator, or by the regional administrator in regulations issued pursuant to section 307(a) of the Federal Water Pollution Control Act as a discharge which is not a minor discharge. If there is more than one discharge from a facility and the sum of the volumes of all discharges from the facility exceeds fifty thousand gallons [189,250 liters] on any day of the year, then no discharge from the facility is a "minor discharge" as defined herein~~ has not been identified as a major facility.
- ~~k.~~ l. "Municipality" means a city, county, district, association, or other public body created by or pursuant to state law and having jurisdiction over disposal of wastes, as the term is defined by subsection 2 of North Dakota Century Code section 61-28-02, or a designated and approved management agency under section 209 of the Federal Water Pollution Control Act.
- ~~l.~~ m. "National data bank" means a facility or system established or to be established by the administrator for the purposes of assembling, organizing, and analyzing data pertaining to water quality and the discharge of pollutants.
- ~~m.~~ n. "National pollutant discharge elimination system (NPDES)" means the national system for the issuance of permits under section 402 of the Federal Water Pollution Control Act of 1972 and includes any state or interstate program which has been approved by the administrator pursuant to section 402 of the Federal Water Pollution Control Act.
- ~~n.~~ o. "National pollutant discharge elimination system application" or "application" means the uniform national forms ~~{~~ including subsequent additions, revisions, or modifications duly promulgated by the administrator pursuant to the Federal Water Pollution Control Act~~}~~, for application for a national pollutant discharge elimination system permit and any state form that has been approved for use by the administrator.
- ~~o.~~ p. "National pollutant discharge elimination system form" means any issued national pollutant discharge elimination system permit and any uniform national form developed for use in the national pollutant discharge elimination system and prescribed in regulations promulgated by the administrator and any state form that has been approved for use by the administrator.
- ~~p.~~ q. "National pollutant discharge elimination system permit" means any permit issued by the department pursuant to its authority under

North Dakota Century Code section 61-28-04, and subsequent to approval by the administrator as described in subsection 5 of section 33-16-01-04.

- q: l. "National pollutant discharge elimination system reporting form" means the uniform national forms ~~{~~ including subsequent additions, revisions, or modifications duly promulgated by the administrator pursuant to the Federal Water Pollution Control Act~~}~~, for reporting data and information pursuant to monitoring and other conditions of national pollutant discharge elimination system permits and any state form that has been approved for use by the administrator.
- r: s. "Person" means the state or any agency or institution thereof, any municipality, political subdivision, public or private corporation, individual partnership, association, any agency or instrumentality of the United States government, or other entity, and includes any officer or governing or managing body of any municipality, political subdivision, or public or private corporation.
- s: t. "Pollutant" means "wastes" as defined in subsection 2 of North Dakota Century Code section 61-28-02; ~~and, including, but not limited to,~~ dredged spoil, solid waste, incinerator residue, garbage, sewage, sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.
- t: u. "Refuse Act application" means the application for a permit under section 13 of the River and Harbor Act of 1899 [33 U.S.C. 407].
- u: v. "Regional administrator" means the regional administrator of region VIII of the environmental protection agency, which includes within its jurisdiction North Dakota.
- v: w. "Schedule of compliance" means a schedule of remedial measures, including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.
- w: x. "Toxic pollutant" means those pollutants, or combinations of pollutants, including, ~~but not limited to,~~ disease-causing agents, which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the administrator, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological

malfunctions, (including malfunctions in reproduction), or physical deformations, in such organisms or their offspring.

* Y. "Waters of the state" means all water included within the definitions given in subsection 6 of North Dakota Century Code section 61-28-02 or North Dakota Century Code section 61-01-01.

4. Effect of a permit.

- a. Except for any toxic effluent standards and prohibitions and standards for sewage sludge use or disposal, compliance with a permit constitutes compliance with sections 301, 302, 307, 318, 403, and 405(a) and (b) of the Clean Water Act.
- b. The issuance of a permit does not convey any property rights of any sort or any exclusive privilege.

History: Amended effective October 1, 1989; October 1, 2002.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

33-16-01-01.1. Additional point sources subject to regulation.

- 1. The 40 Code of Federal Regulations, part 122.23, concentrated animal feeding operations, [40 CFR 122.23] is incorporated into this chapter by reference. The department regulates livestock operations under chapter 33-16-03, including those which are not subject to this subsection.
- 2. The 40 Code of Federal Regulations, part 122.24, concentrated aquatic animal production facilities, [40 CFR 122.24] is incorporated into this chapter by reference.
- 3. The 40 Code of Federal Regulations, part 122.25, aquaculture projects, [40 CFR 122.25] is incorporated into this chapter by reference.
- 4. The 40 Code of Federal Regulations, part 122.26, storm water discharges, [40 CFR 122.26] is incorporated into this chapter by reference.
- 5. The 40 Code of Federal Regulations, part 122.27, silvicultural activities, [40 CFR 122.27] is incorporated into this chapter by reference.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

33-16-01-02. Acquisition of data.

1. ~~Application for a national pollutant discharge elimination system permit. Any person who conducts waste disposal activities within the purview of North Dakota Century Code sections 61-28-04 and 61-28-06 or subsection 3 of section 33-16-01-01 shall comply with the following requirements: discharges any waste through a point source into a surface water or conducts any activity which requires a valid permit under North Dakota Century Code section 61-28-06 must file a completed national pollutant discharge elimination system application.~~
 - ~~a. Such person must have filed a Refuse Act permit application with the appropriate federal agency; or~~
 - ~~b. Such person must have filed a complete national pollutant discharge elimination system application no later than sixty days following receipt by the applicant of notice from the department that the applicant's previously filed Refuse Act application is so deficient as not to have satisfied the filing requirements; or~~
 - ~~c. Such person must have filed a complete national pollutant discharge elimination system application with the environmental protection agency.~~
2. ~~Any person who conducts waste disposal activities within the purview of North Dakota Century Code sections 61-28-04 and 61-28-06 or subsection 3 of section 33-16-01-01 shall comply with the following permit application requirements if such activities will commence after the effective date of this chapter commences discharge of any waste through a point source into a surface water or conduct of any activity which requires a valid permit under North Dakota Century Code section 61-28-06 after the effective date of this chapter shall either:~~
 - a. File a completed national pollutant discharge elimination system application no less than one hundred eighty days prior to the day on which it is desired to commence operation of the waste disposal operation; or
 - b. File a completed national pollutant discharge elimination system application in sufficient time prior to the commencement of waste disposal operations to allow the department to ensure compliance with any applicable water quality standards and effluent standards and the requirements of sections 306 and 208(b) and (c) of the Federal Water Pollution Control Act.
3. Application requirements.
 - a. All applications must comply with 40 Code of Federal Regulations, part 122.21(f), which is incorporated into this chapter by reference.

- b. Applications by manufacturing, commercial, mining, and silvicultural dischargers shall comply with 40 Code of Federal Regulations, part 122.21(g), which is incorporated into this chapter by reference.
 - c. Applications by manufacturing, commercial, mining, and silvicultural facilities that discharge only nonprocess wastewater shall comply with 40 Code of Federal Regulations, part 122.21(h), which is incorporated into this chapter by reference.
 - d. Applications by concentrated animal feeding operations and aquatic animal production facilities shall comply with 40 Code of Federal Regulations, part 122.21(i), which is incorporated into this chapter by reference.
 - e. Applications from publicly owned treatment works shall comply with 40 Code of Federal Regulations, part 122.21(j), which is incorporated into this chapter by reference.
 - f. Applications from new sources shall comply with 40 Code of Federal Regulations, part 122.21(k), which is incorporated into this chapter by reference.
- 4. The department may require whatever additional information is necessary to complete the processing of the application. No application will be processed by the department until all of the requested information is supplied and the application is complete.
 - 5. When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.
 - 6. Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted with an application for a period of at least three years from the date the application is signed.

History: Amended effective October 1, 2002.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

33-16-01-02.1. Requests for variance.

- 1. Applicants for a national pollutant discharge elimination system permit may request a variance from otherwise applicable effluent limitations under the following provisions:
 - a. The 40 Code of Federal Regulations, part 122.21(m), variance requests by nonpublicly owned treatment works, [40 CFR 122.21(m)], which is incorporated into this chapter by reference;

- b. The 40 Code of Federal Regulations, part 122.21(n), variance requests by publicly owned treatment works, [40 CFR 122.21(n)], which is incorporated into this chapter by reference; and
 - c. The 40 Code of Federal Regulations, part 122.21(o), expedited variance procedures and time extensions, [40 CFR 122.21(o)], which is incorporated into this chapter by reference.
2. The public notice for a draft permit for which a variance has been requested under section 316(a) of the Federal Water Pollution Control Act shall comply with the provisions of 40 Code of Federal Regulations, part 124.57(a), [40 CFR 124.57(a)], which is incorporated into this chapter by reference.
 3. The 40 Code of Federal Regulations, part 124.62, decision on variances, [40 CFR 124.62] is incorporated into this chapter by reference.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

33-16-01-05. Identity of signatories to national pollutant discharge elimination system forms.

1. Any national pollutant discharge elimination system application form or other document required to accompany the form when submitted to the department must be signed as follows:
 - ~~1.~~ a. In the case of corporations, by a principal executive officer of at least the level of vice president, or the officer's duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge described in the national pollutant discharge elimination system form originates.
 - ~~2.~~ b. In the case of a partnership, by a general partner.
 - ~~3.~~ c. In the case of sole proprietorship, by the proprietor.
 - ~~4.~~ d. In the case of a municipal, state, federal, or other public facility, by either a principal executive officer; or a ranking elected official; ~~or other duly authorized employee.~~
2. All reports required by permits and other information requested by the department shall be signed by the person described in subsection 1 or that person's duly authorized representative. Authorization for a representative shall be submitted to the department in writing by the person described in subsection 1 and shall specify either an individual

or a position having responsibility for the overall operation of the regulated facility.

3. If an authorization becomes invalid, a new authorization shall be submitted to the department prior to or together with any reports, information, or applications to be signed by an authorized representative.
4. Any person signing application forms, reports, or other information, shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

History: Amended effective October 1, 2002.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

33-16-01-06. Notice and public participation. In the formulation of tentative determinations and draft national pollutant discharge elimination system permit permits, including general permits:

1. The department will prepare a tentative staff determination, with respect to any completed national pollutant discharge elimination system ~~permit based upon that application.~~ Such tentative determinations shall include at least the following:
 - a. A proposed determination to issue or deny a national pollutant discharge elimination system permit for the discharge described in the application.
 - b. If the proposed determination is to issue a national pollutant discharge elimination system permit, the following additional tentative determinations shall be made:
 - (1) Proposed effluent limitations, standards, and prohibitions, identified pursuant to section 33-16-01-13 for those pollutants proposed to be limited.

- (2) A if necessary, a proposed schedule of compliance, including interim dates and requirements, for meeting the proposed effluent limitations.
 - (3) Proposed permit conditions pursuant to sections 33-16-01-12 and 33-16-01-13.
 - (4) Proposed monitoring requirements pursuant to section 33-16-01-12.
 - (5) Proposed variances pursuant to section 33-16-01-02.1.
 - (6) A brief description of any other proposed special condition which will have a significant impact upon the discharge described in the national pollutant discharge elimination system application.
2. The department shall organize the tentative determinations prepared pursuant to subsection 1 into a draft national pollutant discharge elimination system permit for the discharge which is the subject of the application.

History: Amended effective October 1, 2002.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

33-16-01-07. Public notice.

1. Public notice of every ~~complete application for a~~ national pollutant discharge elimination system draft permit shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the proposed determination to issue or deny a national pollutant discharge elimination system permit for the proposed discharge. Procedures for the circulation of public notice shall include at least the following:
 - a. Notice of a major facility permit or general permit shall be published in a daily or weekly newspaper within the area affected by the facility or activity.
 - b. Notice of all other permits shall be circulated within the geographical areas of the proposed discharge; such circulation may include any or all of the following:
 - (1) Posting in the post office and public places of the municipality nearest the premises of the applicant in which the effluent source is located.

- (2) Posting near the entrance to the applicant's premises and in nearby places.
 - (3) Publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation.
 - (4) Any other method, including press releases, which will reasonably provide actual notice of the proposed action to the persons potentially affected.
- b. ~~c.~~ Notice shall be mailed to ~~any person or group upon request.~~ the following persons:
- (1) Any user identified in the permit application of a privately owned treatment works.
 - (2) Persons who are on the mailing list.
 - (3) Local governmental units which have jurisdiction over the area where the facility is proposed to be located and each state agency which has authority with respect to the facility's construction or operation.
- d. Notice, a copy of the permit application, the statement of basis or fact sheet if required by section 33-16-01-08, and the draft permit prepared pursuant to section 33-16-01-06 shall be mailed to the following persons:
- (1) The applicant, except for those national pollutant discharge elimination system general permits for which there is no applicant.
 - (2) Any other agency which is known to have issued or to be required to issue an environmental control permit for the same facility or activity.
 - (3) Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, the advisory council on historic preservation, and the state historic preservation officers, including any affected states or Indian tribes.
 - (4) Any state agency responsible for plan development under sections 208(b)(2), 208(b)(4), and 303(e) of the Clean Water Act, the United States army corps of engineers, the United States fish and wildlife service, and the national marine fisheries service.
- e. ~~e.~~ The department shall add the name of any person or group upon request to ~~a~~ the mailing list ~~to receive copies of notices for all~~

~~national pollutant discharge elimination system applications within the state. The department shall also publish annually an invitation to be added to the mailing list.~~

2. The department shall provide a period of not less than thirty days following the date of the public notice during which time interested persons may submit their written views on the tentative determinations with respect to the national pollutant discharge elimination system application. All written comments submitted during the thirty-day comment period shall be retained by the department and considered in the formulation of its final determinations with respect to the national pollutant discharge elimination system application. The period for comment may be extended at the discretion of the department.
3. The contents of public notice of applications for a national pollutant discharge elimination system permit shall include at least the following:
 - a. Name, address, and ~~phone~~ telephone number of the agency issuing the public notice.
 - b. Name and address of each applicant and facility, except for public notices of general permits.
 - c. Brief description of each applicant's activities or operations which result in the discharge described in the national pollutant discharge elimination system application or draft general permit, e.g., municipal waste treatment plant, steel manufacturing, or drainage for mining activities.
 - d. Name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway indicating whether such discharge is a new or an existing discharge. For general permits, the public notice shall include a description of the permit area.
 - e. A statement of the tentative determination to issue or deny a national pollutant discharge elimination system permit for the discharge described in the national pollutant discharge elimination system application.
 - f. A brief description of the procedures for the formulation of final determinations, including the thirty-day comment period required by subsection 2, the right to request a public hearing, and any other means by which interested persons may influence or comment upon those determinations.
 - g. Address and telephone number of the department, where interested persons may obtain further information or request a copy of the draft permit prepared pursuant to section 33-16-01-06,

request a copy of the fact sheet prepared pursuant to section 33-16-01-08, and inspect and copy national pollutant discharge elimination system forms and related documents.

- h. The date, time, and location of any public hearing or meeting which has been scheduled.

History: Amended effective October 1, 2002.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

33-16-01-07.1. Response to comments. Upon issuance of any final permit, the department shall issue a response to comments which briefly describes and responds to all significant comments received during the public comment period, public hearing, or public meeting. The response shall specify each provision of the draft permit which has been changed and the reasons for each change and shall be available to the public.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

33-16-01-08. Fact sheets.

- ~~1. For every discharge which has a total volume of more than five hundred thousand gallons [1,892,500 liters] on any day of the year, the department shall prepare and, following public notice, shall send, upon request to any person, a fact sheet with respect to the application described in the public notice.~~ The department shall prepare, and following public notice, shall send, upon request to any person, a fact sheet with respect to the application described in the public notice, when a draft permit is prepared in the following circumstances:
 - a. The draft permit is for a major facility or a general permit;
 - b. The draft permit incorporates a variance or requires an explanation pursuant to paragraph 3 of subdivision c of subsection 2; or
 - c. The draft permit is subject to widespread public interest or raises major issues.
2. The contents of such fact sheets shall include at least the following information:
 - a. A brief description of the facility or activity and, when appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the national pollutant discharge elimination system application.

- b. ~~A quantitative description of the discharge described in the national pollutant discharge elimination system application which includes at least the following:~~
- ~~(1) The rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow in gallons [liters] per day or million gallons [liters] per day.~~
 - ~~(2) For thermal discharges subject to limitation under the Federal Water Pollution Control Act, the average summer and winter temperatures in degrees Fahrenheit [Celsius]; and~~
 - ~~(3) The average daily discharge in pounds [kilograms] per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under either North Dakota Century Code chapter 61-28, or the Federal Water Pollution Control Act and regulations promulgated thereunder. The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being discharged.~~
- c. The tentative determinations required under section 33-16-01-06, in addition to the following:
- (1) A brief summary of the basis for the draft permit conditions, including references to applicable statutory or regulatory provisions.
 - (2) Any calculation or explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable effluent limitation guideline or performance standard, and reasons why they are applicable or an explanation of how the alternative effluent limitations were developed.
 - (3) When the draft permit contains limitations to control toxic pollutants, limitations on internal waste streams, limitations on indicator pollutants, or case-by-case limitations derived from technology-based treatment requirements, an explanation of the limitations' applicability.
- d. A brief citation, including a brief identification of the uses for which the receiving waters have been classified, of the water quality standards and effluent standards and limitations applied to the proposed discharge.
- e. Reasons why any requested variances or alternatives to required standards do or do not appear justified.

- f. When applicable, an explanation of the proposed method of regulating users of privately owned treatment works.
 - g. A more detailed description of the procedures for the formulation of final determinations than that given in the public notice, including:
 - (1) The thirty-day comment period required by section 33-16-01-07 and the address where the comments will be received.
 - (2) Any procedures by which the public may participate in the formulation of the final determinations, including procedures for requesting a hearing pursuant to section 33-16-01-11.
 - h. The name and telephone number of a person to contact for additional information.
- 2- 3. The department shall add the name of any person or group upon request to a mailing list to receive copies of fact sheets.

History: Amended effective October 1, 2002.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

33-16-01-09. Notice to government agencies. The state shall notify other appropriate government agencies of each complete application for a national pollutant discharge elimination system permit and shall provide such agencies an opportunity to submit their written views and recommendations.

1. The department shall ensure that a copy of each fact sheet prepared under the provisions of this chapter is mailed to the following parties:
 - a. Any other state whose waters might be affected by the issuance of a national pollutant discharge elimination system permit.
 - b. Any interstate agency having water quality authority over affected waters.
 - c. Any other appropriate federal, state, or local agency, including other appropriate public health agencies.
 - d. The appropriate district engineer of the United States army corps of engineers.
2. Each such governmental body listed in subsection 1 shall be given an opportunity to submit written recommendations concerning the proposed permit to the department.

- a. Whenever a state makes recommendations concerning the proposed permit, and such recommendations are not incorporated into the final version of the permit, the department shall provide the recommending state with a written explanation for the failure to incorporate such recommendations.
 - b. Response to written comments provided by the corps of engineers during the comment period pursuant to section 33-16-01-06 shall conform to the following:
 - (1) If the corps of engineers advises that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant notified.
 - (2) If the corps of engineers advises that imposing specified conditions in the permit is necessary to avoid any substantial impairment of anchorage or navigation, the department shall include the specified conditions in the permit.
 - (3) Review or appeal of a permit denial or of conditions specified by the corps of engineers shall be made through the applicable procedures of the corps of engineers. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the corps of engineers, those conditions shall be considered stayed in the national pollutant discharge elimination system permit for the duration of that stay.
 - c. Whenever the United States fish and wildlife service, the national marine fisheries service, or any other state or federal agency with jurisdiction over fish, wildlife, or public health makes recommendations of specified permit conditions necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the department may include the specified conditions in the permit to the extent necessary to carry out the provisions of 40 Code of Federal Regulations, part 122.49, and of the Clean Water Act.
- 3. In appropriate cases, the department may consult with the United States corps of engineers or the United States fish and wildlife service before issuing a draft permit. The department may reflect these agencies' views in the statement of basis, the fact sheet, or the draft permit.
 - 4. The department may enter into a written agreement with the appropriate district engineer of the United States army corps of engineers to provide for procedures which will ensure the transmission of all forms and information required by the corps, and procedures for the recording of any comment or objections the corps may have on a proposed permit.

A copy of the agreement, if promulgated, shall be forwarded to the regional administrator.

History: Amended effective October 1, 2002.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

33-16-01-10. Public access to information. In addition to the provisions of section 33-16-01-07, the department shall provide the following:

1. Facilities for the public inspection of all information relating to ~~North Dakota~~ national pollutant discharge elimination system forms, including monitoring data, and a machine or device for the copying of those papers and documents at a reasonable fee.
2. A copy of any request for the confidential treatment of any information relating to a North Dakota pollutant discharge elimination system permit application to the regional administrator, together with all information related to such request.
3. If the department determines that certain information should be accorded confidential status for reason of being a trade secret, it shall disclose such information to the administrator upon the latter's request; the administrator shall maintain the disclosed information in confidence, unless the administrator determines that such information, if made public, would not divulge methods of processes entitled to protection as trade secrets.
4. Information required by national pollutant discharge elimination system application forms may not be claimed confidential. This includes information submitted on the forms and any attachments used to supply information required by the form. In no case shall the name and address of any applicant or permittee, permit applications, permits, or effluent data be considered confidential by the department.

History: Amended effective October 1, 2002.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

33-16-01-11. Hearings and notice.

1. A national pollutant discharge elimination system applicant, any affected state, any affected interstate agency, any affected country, the regional administrator, or any interested agency, person, or group of persons may request or petition the department for a public hearing with respect to national pollutant discharge elimination system applications. Any such request or petition for public hearing shall be filed in writing within the thirty-day period prescribed in subsection 2 of

section 33-16-01-07 and shall indicate the interest of the person filing such request and the reasons why a hearing is warranted.

2. The department shall hold a hearing if it determines that there is a significant public interest (including the filing of requests or petitions for such hearing), in holding such a hearing. The department may also hold a hearing at its discretion for any other reason. Any hearing brought pursuant to this subsection shall be held in the geographical area of the proposed discharge or other appropriate area, in the discretion of the department and may, as appropriate, consider related groups of permit applications.
3. Public notice of any hearing held under this section shall be circulated at least as widely as was the notice of the national pollutant discharge elimination system application pursuant to section 33-16-01-07. Procedures for the circulation of public notice for hearings held under this section shall include at least the following:
 - a. Notice shall be published in at least one newspaper of general circulation within the geographical area of the discharge.
 - b. Notice shall be sent to all persons and government agencies which received a copy of the notice or the fact sheet for the national pollutant discharge elimination system application.
 - c. Notice shall be mailed to any person or group upon request.
 - d. Notice shall also be given to all persons who submitted comments on the proposed national pollutant discharge elimination system permit pursuant to section 33-16-01-07.
 - e. Notice shall be effected pursuant to subdivision a at least thirty days in advance of the hearing.
4. The contents of public notice of any hearing held pursuant to this section shall include at least the following:
 - a. Name, address, and telephone number of the agency holding the public hearing.
 - b. Name and address of each applicant whose application will be considered at the hearing, except in the case of draft general permits.
 - c. A brief description of the business conducted at the facility of the activity described in the permit application or draft permit.

- d. Name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway.
- ~~d.~~ e. A brief reference to the public notice issued for each national pollutant discharge elimination system application, including identification number and date of issuance reference to the date of previous public notices relating to the permit.
- ~~e.~~ f. Information regarding the date, time, and location for the hearing.
- ~~f.~~ g. The purpose of the hearing.
- ~~g.~~ h. A concise statement of the issues raised by the persons requesting the hearing.
- ~~h.~~ i. Address and telephone number of the premises at which interested persons may obtain further information, request a copy of each draft national pollutant discharge elimination system permit prepared pursuant to section 33-16-01-06, request a copy of each fact sheet prepared pursuant to section 33-16-01-08, and inspect and copy national pollutant discharge elimination system forms and related documents.
- ~~i.~~ j. A brief description of the nature of the hearing, including the rules and procedures to be followed.

History: Amended effective October 1, 2002.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

33-16-01-12. Terms and conditions of national pollutant discharge elimination system permits.

1. The following discharges into the waters of the state are prohibited:
 - ~~1.~~ a. Any radiological, chemical, or biological warfare agent or high-level radioactive waste.
 - ~~2.~~ b. Any discharge into the navigable waters that the secretary of the army acting through the chief of engineers finds would substantially impair anchorage and navigation.
 - ~~3.~~ c. Any discharge to which the regional administrator has objected in writing.
 - ~~4.~~ d. Any discharge from a point source which is in conflict with a plan or amendment thereto approved pursuant to section 208(b) of the Federal Water Pollution Control Act.

- e. Any discharge requiring certification under section 401 of the Federal Water Pollution Control Act and 40 Code of Federal Regulations, part 124.53, for which the department has neither granted nor waived the certification.
- f. Any discharge from a new source or new discharger which causes or contributes to the violation of applicable water quality standards, unless the owner or operator of the new source or new discharger demonstrates that:
 - (1) The existing dischargers to the stream segment are subject to compliance schedules designed to bring the stream segment into compliance; and
 - (2) Remaining pollutant load allocations are sufficient to allow for the discharge.
- 2. All national pollutant discharge elimination system permits shall contain, either expressly or by reference, the permit conditions listed in 40 Code of Federal Regulations, part 122.41, [40 CFR 122.41], which is incorporated into this chapter by reference.
- 3. National pollutant discharge elimination system permits shall contain all applicable permit conditions listed in 40 Code of Federal Regulations, part 122.42, [40 CFR 122.42], which is incorporated into this chapter by reference.
- 4. National pollutant discharge elimination system permit conditions shall be established in compliance with 40 Code of Federal Regulations, part 122.43, [40 CFR 122.43], which is incorporated into this chapter by reference.
- 5. National pollutant discharge elimination system permits shall include requirements for recording and reporting of monitoring results in compliance with 40 Code of Federal Regulations, part 122.48, [40 CFR 122.48], which is incorporated into this chapter by reference.

History: Amended effective October 1, 2002.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

33-16-01-13. Application of effluent standards and limitations, water quality standards, and other requirements. All of the terms and conditions of any permit issued by the department will comply with the following requirements whenever applicable:

- 1. ~~Effluent limitations established by the administrator pursuant to the authority and guidelines specified in the Federal Water Pollution~~

Control Act and properly transmitted to the department as incorporated by reference in sections 33-16-01-30 and 33-16-01-31.

2. Standards of performance for new sources ~~established by the administrator pursuant to the authority and guidelines specified in the Federal Water Pollution Control Act and properly transmitted to the department~~ as incorporated by reference in section 33-16-01-31.
3. Effluent standards or prohibitions for toxic pollutants ~~established by the administrator pursuant to the authority and guidelines specified in the Federal Water Pollution Control Act and properly transmitted to the department~~ as incorporated by reference in section 33-16-01-29.
4. Pretreatment standards for the introduction of pollutants into treatment works ~~established by the administrator pursuant to the authority and guidelines specified in the Federal Water Pollution Control Act and properly transmitted to the department~~ as incorporated by reference in section 33-16-01-31.
5. Water quality standards, classifications, or effluent requirements established pursuant to North Dakota Century Code sections 61-28-04 and 61-28-05 if such standards and requirements are more stringent than those described in subsections 1 through 4.
6. Water quality standards and total maximum daily loads established pursuant to the authority and guidelines specified in the Federal Water Pollution Control Act and properly transmitted to the department.
7. Prior to the adoption of effluent limitations and standards by the administrator under the Federal Water Pollution Control Act, any such additional conditions as the department determines are necessary to carry out the provisions of that Act.
8. Any applicable regulations promulgated by the secretary of the department in which the coast guard is operating regulating the discharge of pollutants from vessels.
9. Any more stringent legally applicable requirements necessary to comply with a plan approved pursuant to section 208(b) of the Federal Water Pollution Control Act.
10. ~~In any case where~~ When an issued national pollutant discharge elimination system permit applies the effluent standards and limitations described in subsections 1 through 4, the department must state that the discharge authorized by the permit will not violate applicable water quality standards and must have prepared some explicit verification of that statement.

11. ~~In any case where~~ When an issued national pollutant discharge elimination system permit applies any more stringent effluent limitation based upon applicable water quality standards, a waste load allocation must be prepared to ensure that the discharge authorized by the permit is consistent with applicable water quality standards.
12. National pollutant discharge elimination system permits shall include limitations, standards, and other permit conditions in compliance with the requirements of 40 Code of Federal Regulations, part 122.44, [40 CFR 122.44], which is incorporated into this chapter by reference.

History: Amended effective October 1, 2002.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

33-16-01-14. Effluent limitations in issued national pollutant discharge elimination system permits.

1. Any permit issued by the department shall specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weight or some other appropriate measure such as pH, temperature, or radiation. ~~Where~~ When it is at all appropriate the requirement is that the discharge must be expressed in terms of weight. The department may also impose additional quantitative limitations in terms of average or maximum concentration levels.
2. When applicable, permit conditions in national pollutant discharge elimination system permits shall be calculated in compliance with the requirements of 40 Code of Federal Regulations, part 122.45, [40 CFR 122.45], which is incorporated into this chapter by reference.

History: Amended effective October 1, 2002.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

33-16-01-15. Schedules of compliance in issued national pollutant discharge elimination system permits.

1. With respect to any discharge which is not in compliance with applicable effluent standards and limitations, ~~applicable water quality standards, or other legally applicable requirements listed in section 33-16-01-13,~~ the permittee shall be required to take specific steps to achieve compliance with the following such applicable effluent standards and limitations, water quality standards, or other requirements:
 - a. In accordance with any ~~legally~~ applicable schedule of compliance contained in:

- (1) Applicable effluent standards and limitations;
 - (2) If more stringent, water quality standards; or
 - (3) If more stringent, ~~legally applicable~~ requirements listed in section 33-16-01-13; or
- b. In the absence of any ~~legally~~ applicable schedule of compliance, within a reasonable period of time, as provided in subsection 13 of North Dakota Century Code section 61-28-04; provided, that such period shall be consistent with the guidelines and requirements of the Federal Water Pollution Control Act.
2. A permit issued to a new source, new discharger, or recommencing discharger may contain a compliance schedule, but only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before commencement or recommencement of the discharge. For a new source or new discharger, such requirements must also have been issued or revised prior to commencement of construction.
 3. ~~In any case where~~ When the period of time for compliance specified in subsection 1 exceeds nine months, a schedule of compliance shall be specified in the permit which will set forth interim requirements and the dates for their achievement; in no event shall more than nine months elapse between interim dates. If the time necessary for the completion of the interim requirements (such as the construction of a treatment facility) is more than nine months and is not readily divided into stages for completion, interim dates shall be specified for the submission of reports of progress ~~towards~~ toward completion of the interim requirement. For each national pollutant discharge elimination system permit schedule of compliance, interim dates and the final date for compliance shall, to the extent practicable, fall on the last day of the months of March, June, September, and December.
 - 3: 4. Either before or up to fourteen days following each interim date and the final date of compliance, the permittee shall provide the department with written notice of the permittee's compliance; or noncompliance with the interim or final requirement.
 - 4: 5. On the last day of the months of February, May, August, and November, the department shall transmit to the regional administrator a list of all instances, as of thirty days prior to the date of such report, of failure or refusal of a permittee to comply with an interim or final requirement or to notify the department of compliance or noncompliance with each interim or final requirement of this section. Such list shall be available to the public for inspection and copying and shall contain at least the following information with respect to each instance of noncompliance:

- a. Name and address of each noncomplying permittee.
 - b. A short description of each instance of noncompliance.
 - c. A short description of any actions or proposed actions by the permittee or department to comply or enforce compliance with the interim or final requirement.
 - d. Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement.
5. If a permittee fails or refuses to comply with an interim or final requirement in a national pollutant discharge elimination system permit, such noncompliance shall constitute a violation of the permit for which the department may modify, suspend, or revoke the permit or take direct enforcement action.

History: Amended effective October 1, 2002.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

33-16-01-16. Other terms and conditions of issued national pollutant discharge elimination system permits.

1. All discharges authorized by the national pollutant discharge elimination system permit shall be consistent with the terms and conditions of the permit; that facility expansions, production increases, or process modifications which result in new or increased discharge of pollutants must be reported by submission of a new national pollutant discharge elimination system application or, if such discharge does not violate effluent limitations specified in the national pollutant discharge elimination system permit, by submission to the department of notice of such new or increased discharges of pollutants; that the discharges of any pollutant more frequently than or at a level in excess of that identified and authorized by the permit shall constitute a violation of the terms and conditions of the permit.
2. A permit may be transferred by the permittee to a new owner or operator in either of the following ways:
 - a. The current permittee may request that the department modify or revoke and reissue the permit to identify the new permittee, and incorporate any other requirements as may be necessary under the Federal Water Pollution Control Act; or
 - b. The current permittee may notify the department in writing at least thirty days in advance of the proposed transfer date. The notice shall include a written agreement between the current and new permittees containing a specific date of transfer of permit

responsibility, coverage, and liability between them. Unless the department notifies the current permittee that the permit will be transferred by modification or revocation and reissuance, the transfer will be effective on the date specified in the agreement.

3. A permit may be modified, suspended, or revoked in whole or in part during its term, or denied renewal, for cause, including the following:
 - a. Violation of any terms or conditions of the permit.
 - b. Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts.
 - c. A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.
 - d. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification, suspension, or revocation.
 - e. If the department receives notice of a proposed permit transfer, the permit may be modified or revoked and reissued, but may not be suspended or denied renewal unless other cause exists.
- ~~3:~~ 4. The permittee shall permit an authorized representative of the department upon presentation of the representative's credentials:
 - a. To enter upon permittee's premises in which an effluent source is located or in which any records are required to be kept under terms and conditions of the permit.
 - b. To have access to and copy any records required to be kept under terms and conditions of the permit.
 - c. To inspect any monitoring equipment or method required in the permit.
 - d. To sample any discharge of pollutants.
- 4: 5. Publicly owned treatment works shall provide notice to the department in the following situations:
 - a. Any new introduction of pollutants into such treatment works from a new source, if such source would be subject to the provisions of section 306 of the Federal Water Pollution Control Act and if such source was discharging such pollutants.

- b. Except as to such categories and classes of point sources or discharges specified by the department, any new introduction of pollutants into such treatment works from a source which would be subject to the Act if such source were discharging pollutants.
- c. Any substantial change in volume or character of pollutants being introduced into such treatment works by a source introducing pollutants into such works at the time of issuance of the permit.

Such notice shall include information on (a) the quality and quantity of effluent to be introduced into such treatment works and (b) any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works.

- d. If the permit is for a discharge from a publicly owned treatment works, the permittee shall require any industrial user of such treatment works to comply with the requirements of sections 204(b), 307, and 308 of the Federal Water Pollution Control Act. As a means of ensuring such compliance, the permittee shall require of each industrial user subject to the requirements of section 307 of that Act and shall forward a copy to the department periodic notice (over intervals not to exceed nine months) of progress towards toward full compliance with section 307 requirements.
- e. The permittee at all times shall maintain in good working order and operate as efficiently as possible any facilities or systems of control installed by the permittee to achieve compliance with the terms and conditions of the permit.
- f. If a toxic effluent standard or prohibition is established pursuant to section 307 of the Federal Water Pollution Control Act for a toxic pollutant which is present in the permittee's discharge, and if such standard or prohibition is more stringent than any limitation upon such pollutant in the national pollutant discharge elimination system permit, the department shall revise or modify the permit in accordance with such toxic effluent standard or prohibition and so notify the permittee.

History: Amended effective October 1, 2002.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

33-16-01-19. Duration and review of national pollutant discharge elimination system permits. The 40 Code of Federal Regulations, part 122.46, "duration of permits" is incorporated into this chapter by reference.

1. Every permit issued by the department shall have a fixed term not to exceed five years. When the permittee has complied with section 33-16-01-20, but the department, through no fault of the permittee, fails to issue a new permit prior to the expiration of the previous permit, the department may extend the expired permit until the permit is reissued. Permits extended under this section remain fully effective and enforceable.
2. The department may issue any permit for a duration that is less than five years.

History: Amended effective October 1, 2002.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

33-16-01-25. Modification, suspension, and revocation of national pollutant discharge elimination system permits.

1. The department may modify, suspend, or revoke any national pollutant discharge elimination system permit in whole or in part during its term for cause including, but not limited to, the causes listed in subsection 2 of section 33-16-01-16, or for failure or refusal of the permittee to carry out the requirements of subsection 3 of section 33-16-01-16.
2. The 40 Code of Federal Regulations, part 122.62(a), causes for modification, [40 CFR 122.62(a)] is incorporated into this chapter by reference.
3. Any such modification, suspension, or revocation by the department shall be governed by the procedures outlined in North Dakota Century Code section 61-28-07-, and the following procedures:
 - a. Permit actions may be undertaken at the request of any interested person or upon the department's initiative. Permits may be modified, suspended, or revoked and reissued only for the reasons specified in subsections 1, 2, and 4.
 - b. If the department tentatively decides to modify or revoke and reissue a permit, a draft permit incorporating the proposed changes shall be prepared pursuant to section 33-16-01-06. The department may request additional information from the permittee. If the permit is to be modified, the department may require the submission of an updated application. If the permit is to be revoked and reissued, the permittee shall submit a new application.
 - c. In a permit modification, only those conditions to be modified shall be reopened when the draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued, the

entire permit is reopened, but the permittee shall comply with all conditions of the existing permit until a new final permit is issued.

- d. If the department tentatively decides to suspend a permit under subsection 3 of section 33-16-01-16, a notice of intent to terminate, a type of draft permit, shall be issued. The notice of intent to terminate shall be prepared pursuant to section 33-16-01-06.
4. The 40 Code of Federal Regulations, part 122.63, minor modifications of permits, [40 CFR 122.63] is incorporated into this chapter by reference. Such modifications are not subject to subsection 3.
- 3: 5. The department may, upon request of the permittee, revise or modify a schedule of compliance in an issued national pollutant discharge elimination system permit if it determines good and valid cause (, such as an act of God, strike, flood, materials shortage, or other event over which the permittee has little or no control), exists for such revision and if within thirty days following receipt of notice from the department, the regional administrator does not object in writing. All revisions or modifications made pursuant to this section during the period ending thirty days prior to the date of transmission of such list shall be included in the list prepared by the director pursuant to subsection 4 of section 33-16-01-15.

History: Amended effective October 1, 2002.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

33-16-01-26. Disposal of pollutants into wells, into publicly owned treatment works, or by land application.

1. Disposal of pollutants into wells that affect the waters of the state is prohibited, except as provided in ~~the terms and conditions of a national pollutant discharge elimination system permit~~ under an underground injection control authorization pursuant to chapter 33-25-01, or as provided in applicable regulations of the state industrial commission. Any permit issued for the disposal of pollutants into wells shall be issued in accordance with the procedures and requirements specified in these ~~the applicable~~ regulations.
2. When part of a discharger's process wastewater is not subject to a national pollutant discharge elimination system permit because it is being disposed into a well, into a publicly owned treatment works, or by land application, applicable effluent standards and limitations shall be adjusted to reflect the reduced waste load. Permit effluent standards and limitations shall be calculated by one of the following methods:
 - a. If none of the waste from a particular process is discharged into waters of the state, and effluent limitations guidelines provide

separate allocation for wastes from that process, all allocations from that process shall be eliminated from the permit limit calculations.

b. In all other cases, effluent limitations shall be adjusted proportionally to the amount of wastewater to be diverted from discharge into waters of the state. Effluent limitations and standards may be further adjusted under subsection 4 of section 33-13-01-32 if the character or treatability of the pollutants is changed by the alternative disposal method.

c. Subdivisions a and b do not apply to the extent that promulgated effluent limitations guidelines control concentrations of pollutants but not mass or specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into publicly owned treatment works.

3. This section shall not alter a discharger's obligation to comply with any more stringent applicable requirements in this chapter.

History: Amended effective October 1, 2002.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

33-16-01-26.1. General permits.

1. **Coverage.** The department may issue a general permit in accordance with the following:
 - a. **Area.** The general permit will be written to cover a category of discharges described in the permit under subdivision b, except those covered by individual permits, within a designated area. The area will correspond to existing geographic or political boundaries or any other appropriate division or combination of boundaries.
 - b. **Sources.** The general permit may be written to regulate, within the designated area as described in subdivision a, categories of point sources if the sources all:
 - (1) Involve the same or substantially similar types of operations;
 - (2) Discharge the same types of wastes;
 - (3) Require the same effluent limitations or operating conditions;
 - (4) Require the same or similar monitoring; and

(5) In the opinion of the department, are more appropriately controlled under a general permit than under individual permits.

c. Storm water. The general permit may be written to regulate storm water point sources within the designated area as described in subdivision a.

2. Administration.

a. General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of chapter 33-16-01.

b. Requiring an individual permit.

(1) The department may require any person authorized by a general permit to apply for and obtain an individual North Dakota pollutant discharge elimination system permit. Any interested person may petition the director to take action under this paragraph. Cases ~~where~~ when an individual North Dakota pollutant discharge elimination system permit may be required include the following:

(a) The discharge is a significant contributor of pollution as determined by the factors set forth in chapter 33-16-01;

(b) The discharger is not in compliance with the conditions of the general North Dakota pollutant discharge elimination system permit;

(c) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

(d) Effluent limitation guidelines are promulgated for point sources covered by the general North Dakota pollutant discharge elimination system permit;

(e) A North Dakota water quality management plan containing requirements applicable to such point sources is approved; ~~or~~

(f) Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit or either a temporary or permanent reduction or elimination of the authorized discharge is necessary; or

(g) The requirements of subsection 1 are not met.

- (2) Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under section 33-16-01-02; to the department with reasons supporting the request. The request must be submitted no later than ninety days after the notice by the department in accordance with section 33-16-01-07. The request must be processed under chapter 33-16-01. If the reasons cited by the owner or operator are adequate to support the request, the department may issue an individual permit.
- (3) When an individual North Dakota pollutant discharge elimination system permit is issued to an owner or operator otherwise subject to a general North Dakota pollutant discharge elimination system permit, the applicability of the general permit to the individual North Dakota pollutant discharge elimination system permittee is automatically terminated on the effective date of the individual permit.
- (4) A permittee, excluded from a general permit solely because the permittee already has an individual permit, may request that the individual permit be revoked. The permittee shall then request to be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

History: Effective October 1, 1989; amended effective October 1, 2002.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

33-16-01-27. Other requirements - Conflicts of interest.

- ~~1: No employee, member, or representative of the department who has or shares authority to approve permit applications or portions thereof shall receive a significant portion of the employee's, member's, or representative's income, directly or indirectly, from permit holders or applicants for a permit.~~
- ~~2: For the purposes of this section, the term "significant portion of the employee's, member's, or representative's income" means ten percent of gross personal income for a calendar year, except that it shall mean fifty percent of gross personal income for a calendar year if the recipient is over sixty years and is receiving such portion pursuant to retirement, pension, or similar arrangement.~~

- ~~3: For the purposes of this section, the term "permitholders or applicants for a permit" does not include any department or agency of state government.~~
- ~~4: For the purposes of this section, the term "income" includes retirement benefits, consultant fees, and stock dividends.~~
- ~~5: For the purposes of this section, income is not received "directly or indirectly from permitholders or applicants for a permit" where it is derived from mutual fund payments, or from other diversified investments over which the recipient does not know the identity of the primary sources of income. Conflicts of interest shall comply with 40 Code of Federal Regulations, part 123.25(c), which is incorporated into this chapter by reference.~~

History: Amended effective October 1, 2002.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

~~**33-16-01-28. Appeal.** Any applicant or permittee within the meaning of this chapter person who has received notice of the final determination of the department to deny, suspend, or revoke the applicant's or permittee's national pollutant discharge elimination system application or permit shall have a right to petition the department for relief pursuant to North Dakota Century Code section 61-28-07.~~

History: Amended effective October 1, 2002.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

~~**33-16-01-29. Toxic pollutant effluent standards.** The 40 Code of Federal Regulations, part 129, [40 CFR 129] is incorporated into this chapter by reference.~~

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

~~**33-16-01-30. Secondary treatment regulations.** The 40 Code of Federal Regulations, part 133, [40 CFR 133] is incorporated into this chapter by reference.~~

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

33-16-01-31. Effluent guidelines and standards. The 40 Code of Federal Regulations, subchapter N, with the exception of part 403, is incorporated into this chapter by reference.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

33-16-01-32. Criteria and standards for the national pollutant discharge elimination system.

1. The 40 Code of Federal Regulations, part 125, subpart A - criteria and standards for imposing technology-based treatment requirements under sections 301(b) and 402 of the Act [40 CFR 125, subpart A] is incorporated into this chapter by reference.
2. The 40 Code of Federal Regulations, part 125, subpart B - criteria for issuance of permits to aquaculture projects [40 CFR 125, subpart B] is incorporated into this chapter by reference.
3. The 40 Code of Federal Regulations, part 125, subpart D - criteria and standards for determining fundamentally different factors under sections 301(b)(1)(A) and 301(b)(2)(A) and (E) of the Act [40 CFR 125, subpart D] is incorporated into this chapter by reference.
4. The 40 Code of Federal Regulations, part 125, subpart H - criteria for determining alternative effluent limitations under section 316(a) of the Act [40 CFR 125, subpart H] is incorporated into this chapter by reference.
5. The 40 Code of Federal Regulations, part 125, subpart I - criteria applicable to cooling water intake structures under section 316(b) of the Act [40 CFR 125, subpart I] is incorporated into this chapter by reference.
6. The 40 Code of Federal Regulations, part 125, subpart L - criteria and standards for imposing conditions for the disposal of sewage sludge under section 405 of the Act [40 CFR 125, subpart L] is incorporated into this chapter by reference.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

CHAPTER 33-16-01.1
PRETREATMENT REGULATIONS

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33-16-01.1-01. Definitions. The definitions in section 33-16-01-01 apply to this chapter unless defined differently below.

1. "Approval authority" means the department.
2. "Bypass" means the intentional diversion of wastestreams from any portion of an industrial user's treatment facility.
3. "Categorical industrial user" means an industrial user that is subject to a pretreatment standard for an industry category.
4. "Control authority" means either:
 - a. The publicly owned treatment works, if the publicly owned treatment works which receives the indirect discharge administers an approved pretreatment program in accordance with sections 33-16-01.1-06 and 33-16-01.1-08; or

- b. The department, if the publicly owned treatment works which receives the indirect discharge does not administer an approved pretreatment program in accordance with sections 33-16-01.1-06 and 33-16-01.1-08.
- 5. "Director" means the department.
- 6. "Indirect discharge" means the introduction of pollutants into a publicly owned treatment works from any nondomestic source regulated under section 307(b),(c), or (d) of the Federal Water Pollution Control Act.
- 7. "Industrial user" or "user" means a source of indirect discharge.
- 8. "Interference" means an indirect discharge which, alone or in conjunction with any other indirect discharges, both:
 - a. Inhibits or disrupts the publicly owned treatment works processes or operations, or its sludge processes, use, or disposal; and
 - b. Causes a violation of any requirement of the publicly owned treatment works North Dakota pollutant discharge elimination system permit, including an increase in the magnitude or duration of a violation or prevents sewage sludge use or disposal in compliance with federal or state law or statute.
- 9. "New source" means:
 - a. Any building, structure, facility, or installation for which construction commenced after the publication of proposed pretreatment standards which will apply to such source after promulgation, from which there is or may be an indirect discharge, provided that:
 - (1) The building, structure, facility, or installation is constructed at a site at which no other source is located;
 - (2) The building, structure, facility, or installation totally replaces the process or production equipment that causes the indirect discharge at an existing source; or
 - (3) The production or wastewater generating processes of the building, structure, facility, or installation is substantially independent of an existing source at the same site.
 - b. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of paragraphs 2 and 3 of subdivision a.

but otherwise alters, replaces, or adds to existing process or production equipment.

C. Construction of a new source as defined under this subsection has commenced if the owner or operator has undertaken any of the following:

(1) Begun, or caused to begin, as part of a continuous onsite construction program:

(a) Any placement, assembly, or installation of facilities or equipment; or

(b) Significant site preparation work which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(2) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation.

10. "Passthrough" means an indirect discharge which exits the publicly owned treatment works into waters of the state in quantities or concentrations which, alone or in conjunction with any other discharges, cause a violation of the publicly owned treatment works North Dakota pollutant discharge elimination system permit, including an increase in the magnitude or duration of a violation.

11. "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a publicly owned treatment works.

12. "Pretreatment requirements" means any substantive or procedural requirement related to pretreatment, other than a pretreatment standard, imposed on an industrial user.

13. "Pretreatment standards" means any regulation which applies to industrial users that contains pollutant discharge limits promulgated by the environmental protection agency in accordance with the Federal Water Pollution Control Act, including prohibitive discharge limits established pursuant to section 33-16-01.1-02.

14. "Publicly owned treatment works" means a treatment works as defined by section 212 of the Federal Water Pollution Control Act, which is owned by a state or municipality, including any devices or systems

used in the storage, treatment, recycling, and reclamation of municipal sewage or liquid industrial wastes, as well as sewers, pipes, and other conveyances that convey wastewater to a publicly owned treatment works treatment plant. This term also means the municipality that has jurisdiction over the indirect discharges to and the discharges from the treatment works.

15. "Publicly owned treatment works treatment plant" means that portion of the publicly owned treatment works which is designed to provide treatment of municipal sewage and industrial waste.
16. "Severe property damage" means substantial physical damage to property, damage to treatment facilities which renders them inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. It does not mean economic loss caused by delays in production.
17. "Significant industrial user" means:
 - a. All industrial users subject to categorical pretreatment standards under sections 33-16-01-31 and 33-16-01.1-04; and
 - b. Any other industrial user that meets at least one of the following criteria:
 - (1) Discharges an average of twenty-five thousand gallons [94635 liters] per day or more of process wastewater to the publicly owned treatment works, excluding sanitary wastewater, noncontact cooling water, and boiler blowdown wastewater;
 - (2) Contributes a process wastestream which makes up five percent or more of the average dry weather hydraulic or organic capacity of the publicly owned treatment works treatment plant; or
 - (3) Is designated as a significant industrial user by the control authority on the basis that the user has a reasonable potential for adversely affecting the publicly owned treatment works operation or for violating any pretreatment standard or requirement.
 - c. Upon a finding that an industrial user which meets the criteria of subdivision b has no reasonable potential for adversely affecting the publicly owned treatment works operation or for violating any pretreatment standard or requirement, the control authority may, at any time, determine that the industrial user is not a significant industrial user.

18. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. Upset does not include noncompliance to the extent caused by operational error, inadequate or improperly designed treatment facilities, lack of preventive maintenance, or careless or improper operation.
19. "Water management division director" means the director of the water management division of the regional office of the United States environmental protection agency or this person's delegated representative.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04

33-16-01.1-02. Prohibited discharges. The following prohibitions apply to each industrial user whether or not the user is subject to other pretreatment standards or any national, state, or local pretreatment requirements:

1. An industrial user may not introduce into a publicly owned treatment works any pollutant which causes passthrough or interference.
2. The following pollutants may not be introduced into a publicly owned treatment works from any source:
 - a. Pollutants which create a fire or explosion hazard in the publicly owned treatment works, including wastestreams with a closed cup flashpoint of less than sixty degrees Celsius [140 degrees Fahrenheit] using the test methods specified in 40 Code of Federal Regulations, part 261.21, [40 CFR 261.21].
 - b. Pollutants which will cause corrosive structural damage to the publicly owned treatment works, but in no case discharges with pH lower than 5.0, unless the publicly owned treatment works is specifically designed to accommodate such discharges.
 - c. Solid or viscous pollutants in amounts which will cause obstruction to the flow in the publicly owned treatment works resulting in interference.
 - d. Any pollutant released in a discharge at a flow rate or pollutant concentration which will cause interference.
 - e. Heat in amounts which will inhibit biological activity in the publicly owned treatment works resulting in interference, but in no case heat in such quantities that the temperature at the publicly owned treatment works treatment plant exceeds forty degrees

Celsius [104 degrees Fahrenheit], unless the department, upon request of the publicly owned treatment works, approves alternate temperature limits.

- f. Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or passthrough.
- g. Pollutants which result in the presence of toxic gases, vapors, or fumes within the publicly owned treatment works in a quantity that may cause acute worker health and safety problems.
- h. Any trucked or hauled pollutants, except at discharge points designated by the publicly owned treatment works.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04, 61-28-06

33-16-01.1-03. Local limits.

1. Each publicly owned treatment works developing an approved pretreatment program shall develop and enforce specific limits to implement the prohibitions of section 33-16-01.1-02. Each publicly owned treatment works with an approved pretreatment program shall continue to develop these limits as necessary and effectively enforce such limits.
2. All other publicly owned treatment works shall, if pollutants contributed by a user or users result in interference or passthrough and such violation is likely to recur, develop and enforce specific effluent limits for indirect discharges which, together with appropriate changes in the publicly owned treatment works treatment plant facilities or operation, are necessary to ensure renewed and continued compliance with the publicly owned treatment works North Dakota pollutant discharge elimination system permit or sludge use or disposal practices.
3. Specific limits shall not be developed and enforced without individual notice to persons or groups that have requested such notice and an opportunity to respond.
4. When specific prohibitions or limits on pollutants are developed by a publicly owned treatment works in accordance with this section, the limits shall be deemed pretreatment requirements.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04, 61-28-06

33-16-01.1-04. Categorical pretreatment standards.

1. Industrial users shall comply with all applicable pretreatment standards.
2. Section 33-16-01-31 contains national pretreatment standards which specify quantities or concentrations of pollutants which may be discharged to a publicly owned treatment works by existing or new industrial users in specific industrial categories. Industrial users are subject to all applicable effluent guidelines and standards.
3. The 40 Code of Federal Regulations, part 403.6(a), category determination request, [40 CFR 403.6(a)] is incorporated into this chapter by reference.
4. Categorical industrial users shall comply with the following deadlines for compliance with categorical pretreatment standards:
 - a. Compliance by existing sources with categorical pretreatment standards shall be within three years of the date the standard is effective, unless a shorter compliance time is specified in the specific standard.
 - b. New sources shall have all pollution control equipment required to meet applicable pretreatment standards installed and operational before beginning to discharge. Within the shortest feasible time, but within ninety days, new sources shall meet all applicable pretreatment standards.
 - c. An existing source which becomes an industrial user after the promulgation of an applicable categorical pretreatment standard shall be considered an existing industrial user, unless the existing source is a new source.
5. The 40 Code of Federal Regulations, part 403.6(c), concentration and mass limits, [40 CFR 403.6(c)] is incorporated into this chapter by reference.
6. Except when expressly authorized to do so by an applicable pretreatment standard or pretreatment requirement, an industrial user may not increase the use of process water, or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a pretreatment standard or pretreatment requirement. The control authority may impose mass limitations on industrial users which are using dilution to meet applicable pretreatment standards or pretreatment requirements, or in other cases when the imposition of mass limitations is appropriate.
7. The 40 Code of Federal Regulations, part 403.6(e), combined wastestream formula, [40 CFR 403.6(e)] is incorporated into this

chapter by reference. When wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or wastewater from another regulated process, the effluent from the equalization facility shall meet the adjusted pretreatment limit or limits calculated using the combined wastestream formula.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 23-01-04.1, 61-28-04

33-16-01.1-05. Publicly owned treatment works pretreatment programs.

1. The following publicly owned treatment works shall develop and submit for department approval a pretreatment program within one year after receiving notice that program development is required:
 - a. Any publicly owned treatment works with a total design flow of greater than five million gallons [18927058 liters] per day that receives from any industrial user pollutants which pass through or interfere with the treatment process or are otherwise subject to pretreatment standards.
 - b. Any other publicly owned treatment works for which the department determines a pretreatment program is warranted.
2. Upon development or modification of a pretreatment program, the publicly owned treatment works North Dakota pollutant discharge elimination system permit shall be modified to incorporate the approved or modified program conditions as enforceable conditions of the North Dakota pollutant discharge elimination system permit.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04

33-16-01.1-06. Publicly owned treatment works pretreatment program requirements.

1. Each publicly owned treatment works pretreatment program shall satisfy the program element requirements described in appendix A.
2. The publicly owned treatment works may request conditional approval of the pretreatment program pending the acquisition of funding and personnel for certain elements of the program. The publicly owned treatment works shall describe in the submission the mechanism by which the funding will be acquired. The request for conditional approval must satisfy the requirements of section 33-16-01.1-07, except that the requirements may be relaxed if the submission demonstrates that:

- a. A limited aspect of the program does not need to be implemented immediately;
 - b. The publicly owned treatment works has adequate legal authority and procedures to carry out those aspects of the program which will not be implemented immediately; and
 - c. Funding and personnel for the program aspects to be implemented at a later date will be available when needed.
3. Upon receipt of a request for conditional approval, the department will establish a fixed date for the acquisition of the needed funding and personnel. If funding is not acquired by this date, the conditional approval of the pretreatment program and any removal allowances granted to the publicly owned treatment works may be modified or withdrawn.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04

33-16-01.1-07. Publicly owned treatment works pretreatment program submission packages. The submission package for publicly owned treatment works pretreatment program approval shall include each of the items described in appendix B. Three copies of the submission package shall be submitted to the department as a formal request for approval.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04

33-16-01.1-08. Approval process for publicly owned treatment works pretreatment programs and requests for authority to grant removal credits.

- 1. Within sixty days after receiving a request for publicly owned treatment works pretreatment program approval or a request for authority to grant removal credits, the department shall make a preliminary determination of whether the submission is complete.
- 2. If the submission is determined to be incomplete, the department shall notify the publicly owned treatment works and each person who has requested individual notice, in writing, of the defects identified and of the means by which the publicly owned treatment works can amend its submission package.
- 3. If the submission is determined to be complete, the department shall:
 - a. Notify the publicly owned treatment works that the submission has been received and is under review;

- b. Commence public notice activities as prescribed in sections 33-16-01.1-09 and 33-16-01.1-10; and
 - c. Evaluate the submission for compliance with applicable requirements.
- 4. The department shall have ninety days from the date of public notice of any complete submission to review the submission to determine compliance with the applicable requirements of sections 33-16-01.1-05 and 33-16-01.1-14 and appendix A. The department may have up to an additional ninety days to complete the evaluation if the public comment period is extended beyond thirty days or if a public hearing or public meeting is held. The evaluation period for any submission shall not exceed a total of one hundred eighty days from the date of public notice of any complete submission.
- 5. Departmental procedures shall allow the transmittal of such documents and data to and from the environmental protection agency and to other appropriate governmental agencies as may be necessary.
- 6. After the public comment period has ended, and prior to the deadline contained in subsection 4, the department shall approve or deny the submission based upon departmental evaluation and consideration of any comments received.
- 7. If the submission is denied, the department shall notify the publicly owned treatment works and each person who requested individual notice. The notification shall include suggested modifications and the department may allow the publicly owned treatment works additional time to bring the submission into compliance with applicable requirements.
- 8. No publicly owned treatment works pretreatment program or request for authorization to grant removal credit allowances shall be approved if, following the public notice period and any hearing or meeting held pursuant to section 33-16-01.1-09, the regional administrator sets forth in writing objections to the approval and the reasons for the objection. A copy of the regional administrator's objections shall be provided to the applicant and each person who has requested individual notice. The regional administrator shall provide an opportunity for written comments and may convene a public hearing on the objections. Unless retracted, the regional administrator's objections shall constitute a final ruling to deny approval of a publicly owned treatment works pretreatment program or authorization to grant removal allowances ninety days after the date the objections are issued.
- 9. The department shall provide notice of the decision by:

- a. Notifying those persons who submitted comments and participated in the public hearing or public meeting, if held; and
 - b. Causing to be published a notice of approval or disapproval in the same newspapers as the original notice of request for submission approval was published. The notice shall identify any removal credit authority which was granted as part of the pretreatment program approval.
10. The submission and any comments upon such submission shall be available to the public for inspection and copying.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04

33-16-01.1-09. Public notice.

1. Within twenty days of determining that a submission for publicly owned treatment works pretreatment program approval or removal credit authorization is complete, the department shall issue a public notice of request for approval of the submission.
2. The public notice shall be circulated in a manner designed to inform interested persons of the submission. Procedures for the circulation of public notice shall include at least the following:
 - a. Notice shall be mailed to state and federal fish, shellfish, and wildlife agencies, unless such agencies have asked not to be sent the notices.
 - b. Notice shall be mailed to any other person or group that has requested individual notice, including those on appropriate mailing lists.
 - c. Notice shall be published in local newspapers and periodicals or, if appropriate, in a daily newspaper of general circulation.
3. The public notice shall provide a period of not less than thirty days following the date of the public notice during which time interested persons may submit their written views on the submission. All written comments submitted during the public comment period shall be retained by the department and shall be considered in the decision on whether to approve the submission.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04

33-16-01.1-10. Opportunity for hearing.

1. An applicant for publicly owned treatment works pretreatment program approval or removal credit authorization, affected state, interested state agency or federal agency, or interested person or group of persons may request a public hearing or public meeting with respect to the submission.
2. The request for public hearing or public meeting shall be filed within the public comment period specified in the public notice pursuant to section 33-16-01.1-09 and shall indicate the interest of the person filing the request and the reasons why a hearing or meeting is warranted.
3. The department shall hold a hearing or meeting if the publicly owned treatment works so requests. In addition, a hearing or meeting shall be held if there is significant public interest in issues relating to whether or not the submission should be approved.
4. The department shall publish notice of a hearing or meeting to consider a submission in the same newspaper or newspapers as the notice of the original request for publicly owned treatment works pretreatment program approval or removal credit authorization. In addition, notice of the hearing or meeting shall be sent to those persons requesting individual notice. The notice shall inform interested parties of the nature of the hearing or meeting and the right to participate.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04

33-16-01.1-11. General monitoring and reporting requirements.

1. Publicly owned treatment works which are required to develop a pretreatment program and industrial users which are subject to pretreatment standards shall install, calibrate, use, and maintain the monitoring equipment or methods, including if appropriate, biological monitoring methods, necessary to determine continued compliance with pretreatment standards and requirements.
2. All reports submitted by a user or publicly owned treatment works shall conform to the signatory requirements of section 33-16-01-05.
3. In addition to the requirements of sections 33-16-01.1-12 and 33-16-01.1-13, industrial users and publicly owned treatment works shall submit any other information and reports required under the North Dakota pollutant discharge elimination system or pretreatment regulation or under state law.

4. All information submitted to the state or publicly owned treatment works shall be available to the public at least to the extent provided by 40 Code of Federal Regulations, part 2.302, [40 CFR 2.302]. Monitoring data and other such data as is necessary to determine whether a user is in compliance with applicable pretreatment standards shall be available to the public without restriction.
5. All records of monitoring activity pursuant to sections 33-16-01.1-12 and 33-16-01.1-13 shall conform to the requirements of section 33-16-01-22. The monitoring record shall also include the sampling methods used. The period of retention shall be extended during the course of any unresolved litigation regarding an indirect discharge or the operations of the publicly owned treatment works pretreatment program, or when requested by the department or the administrator of the environmental protection agency. Such records shall be made available for inspection and copying for a reasonable fee by the department and the regional administrator.
6. Any publicly owned treatment works to which reports are submitted by industrial users pursuant to section 33-16-01.1-12 shall make such reports available for inspection and copying by the department and the regional administrator. The publicly owned treatment works shall retain such reports for a minimum of three years. The retention period shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the industrial user or the operation of the publicly owned treatment works pretreatment program, or when requested by the department or the administrator of the environmental protection agency.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04

33-16-01.1-12. Industrial user monitoring and reporting requirements.

1. Each categorical industrial user shall submit a complete baseline monitoring report to the control authority.
 - a. The baseline monitoring report shall be submitted on the appropriate baseline monitoring reporting form, which can be obtained from the department.
 - b. For existing industrial users, the report shall be due one hundred eighty days after the effective date of the applicable categorical pretreatment standard or the final administrative decision made upon a category determination submission, whichever is later.
 - c. For new sources and sources that become industrial users after the promulgation of an applicable categorical pretreatment standard.

the report shall be due ninety days prior to the commencement of the indirect discharge.

2. If a baseline monitoring report contains a compliance schedule for meeting categorical pretreatment standards, the industrial user shall submit compliance schedule progress reports to the control authority.
 - a. Each compliance schedule progress report shall be due fourteen days after the applicable progress date in the compliance schedule.
 - b. Each compliance schedule progress report shall include:
 - (1) A statement whether the user achieved the scheduled action on the applicable date; and
 - (2) If the user has not achieved the scheduled action, the date on which the user expects to achieve the action, the reason for delay, and the steps being taken to return the construction to the established schedule.
 - c. In no case shall more than nine months elapse between compliance schedule progress report submittals.
3. Each categorical industrial user shall submit to the control authority a complete ninety-day compliance report for each applicable pretreatment standard.
 - a. Each ninety-day compliance report shall be submitted on a ninety-day compliance reporting form, which can be obtained from the department.
 - b. For existing industrial users, each report shall be due ninety days after the date for final compliance with the applicable categorical pretreatment standard.
 - c. For new sources and sources that become industrial users after the date for final compliance with the applicable categorical pretreatment standard, each report shall be due thirty days after commencement of the indirect discharge.
4. Each categorical industrial user shall submit complete periodic compliance reports to the control authority.
 - a. Periodic compliance reports submitted to the department shall be submitted on a periodic compliance reporting form, which will be supplied to the user by the department. If the publicly owned treatment works is the control authority, periodic compliance

reports shall require, at a minimum, the data listed in 40 Code of Federal Regulations, part 403.12(e) and part 403.12(g).

- b. Periodic compliance reports shall be submitted in accordance with a reporting schedule prescribed by the control authority. Reporting schedules shall be consistent with any applicable pretreatment standard requirements. In no case shall the reporting frequency be less than twice per year.
5. Each industrial user shall notify the publicly owned treatment works immediately of all discharges that could cause problems to the publicly owned treatment works, including any slug loadings.
6. The 40 Code of Federal Regulations, part 403.12(p), [40 CFR 403.12(p)], which concerns hazardous waste notification, is incorporated into this chapter by reference.
7. All industrial users shall promptly notify the control authority and the publicly owned treatment works in advance of any substantial change in the volume or characteristic of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the user has submitted initial notification under subsection 6.
8. The indirect discharge from each industrial user shall be sampled and analyzed in accordance with a monitoring schedule prescribed by the control authority. The monitoring schedule shall be adequate to allow assessment of the indirect discharge. All analyses shall be performed in accordance with the procedures contained in 40 Code of Federal Regulations, part 136, [40 CFR 136] or with any other test procedure approved by the administrator of the environmental protection agency.
9. Each noncategorical significant industrial user of a publicly owned treatment works which administers an approved pretreatment program shall submit to the publicly owned treatment works, at least semiannually, on dates specified by the publicly owned treatment works, a description of the discharge, including self-monitoring results as required by the publicly owned treatment works.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04

33-16-01.1-13. Publicly owned treatment works reporting requirements.

1. Publicly owned treatment works with approved pretreatment programs shall submit to the department on an annual basis a report describing the program activities. Reports shall be due March twenty-eighth. Each report shall include, at a minimum:

- a. An updated list of the publicly owned treatment works industrial users, including the name and address of each user, and identifying the categorical standards applicable to each user. The list shall indicate which users are subject to local standards that are more stringent than the categorical pretreatment standards and shall also include users that are subject only to local requirements. The publicly owned treatment works shall provide an explanation for each deletion from the previous list;
 - b. A summary of the status of industrial user compliance over the reporting period;
 - c. A summary of compliance and enforcement activities, including inspections, conducted by the publicly owned treatment works during the reporting period;
 - d. A summary of changes to the publicly owned treatment works pretreatment program that have not been previously reported to the department; and
 - e. Any other relevant information requested by the department.
2. If a publicly owned treatment works is under a compliance schedule for pretreatment program development, the publicly owned treatment works shall submit compliance schedule progress reports to the department.
- a. Each compliance schedule progress report shall be due fourteen days after the applicable progress date in the compliance schedule.
 - b. Each compliance schedule progress report shall include:
 - (1) A statement whether the publicly owned treatment works achieved the scheduled action on the applicable date; and
 - (2) If the publicly owned treatment works has not achieved the scheduled action, the date on which the publicly owned treatment works expects to achieve the action, the reason for delay, and the steps being taken to return to the established schedule.
 - c. In no case shall more than nine months elapse between compliance schedule progress report submittals.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04

33-16-01.1-14. Removal credits.

1. The 40 Code of Federal Regulations, part 403.7, removal credits, [40 CFR 403.7] is incorporated into this chapter by reference.
2. Appendix G to 40 Code of Federal Regulations, part 403, pollutants eligible for a removal credit, [appendix G to 40 CFR 403] is incorporated into this chapter by reference.
3. The department shall utilize the procedure prescribed in section 33-16-01.1-08 to evaluate and approve or deny requests for authority to grant removal credits.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 23-01-04.1, 61-28-04

33-16-01.1-15. Variances from categorical pretreatment standards for fundamentally different factors. The 40 Code of Federal Regulations, part 403.13, variances from categorical pretreatment standards for fundamentally different factors, [40 CFR 403.13] is incorporated into this chapter by reference.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 23-01-04.1, 61-28-04

33-16-01.1-16. Net/gross adjustments. The 40 Code of Federal Regulations, part 403.15, net/gross calculation, [40 CFR 403.15] is incorporated into this chapter by reference.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 23-01-04.1, 61-28-04

33-16-01.1-17. Upset.

1. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the following criteria are demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence:
 - a. An upset occurred and the user can identify the cause or causes;
 - b. The facility was at the time being operated in a prudent and professional manner and in compliance with applicable operation and maintenance procedures; and
 - c. The user has submitted the following information to the publicly owned treatment works and to the control authority within

twenty-four hours of becoming aware of the upset. If the information is submitted orally, a written submission shall be provided within five days:

- (1) A description of the indirect discharge and the cause of noncompliance;
 - (2) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
 - (3) Steps being taken or being planned to reduce, eliminate, and prevent recurrence of the noncompliance.
2. In any enforcement proceeding the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.
 3. No determination made during administrative review of claims that noncompliance with categorical pretreatment standards was caused by upset, is final administrative action.
 4. The industrial user shall control production or all indirect discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04, 61-28-07

33-16-01.1-18. Bypass.

1. An industrial user may allow any bypass to occur which does not cause pretreatment standards or pretreatment requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. Such bypasses are not subject to subsections 2 and 3.
2. The industrial user shall provide notification to the control authority of a bypass under the following circumstances:
 - a. If the user knows in advance of the need for a bypass, prior notice shall be submitted, at least ten days before the date of the bypass, if possible.
 - b. The user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four hours from the time the user becomes aware of the bypass. A written submission shall also be provided within five days of the

time the user becomes aware of the bypass. The control authority may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.

- c. The written submission shall contain the following items:
 - (1) A description of the bypass and its cause;
 - (2) The duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and
 - (3) The steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass.
- 3. Bypasses are prohibited unless the following conditions are met. The control authority may approve an anticipated bypass, if the following conditions are met:
 - a. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - b. There were no feasible alternatives to the bypass. This condition is not satisfied if adequate backup equipment was not installed to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - c. The user submitted the notification required in subsection 2.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04

33-16-01.1-19. Pretreatment program modifications. The 40 Code of Federal Regulations, part 403.18, modification of publicly owned treatment works pretreatment programs, [40 CFR 403.18] is incorporated into this chapter by reference.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 23-01-04.1, 61-28-04

33-16-01.1-20. Right of entry.

- 1. Each publicly owned treatment works and industrial user shall permit an authorized representative of the department, upon presentation of the representative's credentials:

- a. To enter the premises of a publicly owned treatment works or of an industrial user of a publicly owned treatment works in which an effluent source is located or in which any records are maintained;
 - b. To have access to and copy any records required to be maintained;
 - c. To inspect any monitoring equipment or method which is required; and
 - d. To have access to and sample any discharge of pollutants to waters of the state or to a publicly owned treatment works which result from the activities or operation of the publicly owned treatment works or industrial user.
2. An industrial user of a publicly owned treatment works with an approved pretreatment program shall permit an authorized representative of the publicly owned treatment works, upon presentation of the representative's credentials, the access detailed in subsection 1.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04

33-16-01.1-21. Enforcement. The department shall evaluate all reports, notifications, and data submitted to or obtained by the department in compliance with this chapter and shall investigate and follow up all apparent violations for possible enforcement action pursuant to North Dakota Century Code section 61-28-08.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04, 61-28-08

APPENDIX A
REQUIRED POTW_s PRETREATMENT PROGRAM ELEMENTS

Legal authority. The publicly owned treatment works (POTW_s) shall operate pursuant to legal authority enforceable in federal, state, or local courts, which authorizes or enables the POTW_s to apply and to enforce the requirements of sections 307(b) and (c), and 402(b)(8) of the Federal Water Pollution Control Act and any regulations implementing those sections. Such authority may be contained in a statute, ordinance, joint powers agreements, or similar mechanisms which the POTW_s is authorized to enact, enter into, or implement, and which are authorized by state law. At a minimum, this legal authority shall enable the POTW_s to accomplish each of the following actions:

1. Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW_s by industrial users if such contributions do not meet applicable pretreatment standards and requirements or if such contributions would cause the POTW_s to violate its NDPDES permit.
2. Require compliance with applicable pretreatment standards and requirements by industrial users.
3. Control through permit, order, or similar means the contribution to the POTW_s by each industrial user to ensure compliance with applicable pretreatment standards and requirements. In the case of significant industrial users, this control shall be achieved through permits or equivalent individual control mechanisms issued to each such user. Such control mechanisms must be enforceable and contain, at a minimum, the following conditions:
 - a. Statement of duration (in no case more than five years);
 - b. Statement of nontransferability without, at a minimum, prior notification to the POTW_s and provision of a copy of the existing control mechanism to the new owner or operator;
 - c. Effluent limits based on applicable general pretreatment standards in chapter 33-16-01.1, categorical pretreatment standards, local limits, and state and local law;
 - d. Self-monitoring, sampling, reporting, notification, and recordkeeping requirements, including an identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based on the applicable general pretreatment standards in chapter 33-16-01.1, categorical pretreatment standards, local limits, and state and local law; and
 - e. Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable

compliance schedule. Such schedules may not extend the compliance date beyond applicable federal deadlines.

4. Require:
 - a. The development of a compliance schedule by each industrial user for the installation of technology required to meet applicable pretreatment standards and requirements; and
 - b. The submissions of all notices and self-monitoring reports from industrial users as are necessary to assess and assure their compliance with pretreatment standards and requirements, including the reports required in section 33-16-01.1-12.
5. Carry out all inspection, surveillance, and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance with applicable pretreatment standards and requirements by industrial users. Representatives of the POTWs shall be authorized to enter any premises of any industrial user in which a discharge source or treatment system is located or in which records are required to be kept under subsection 5 of section 33-16-01.1-11 to assure compliance with pretreatment standards and requirements. Such authority shall be at least as extensive as the authority provided under section 308 of the Federal Water Pollution Control Act.
6.
 - a. Obtain remedies for noncompliance by any industrial user with any pretreatment standards and requirements. All POTWs shall be able to seek injunctive relief for noncompliance by industrial users with pretreatment standards and requirements. All POTWs shall also have authority to seek or assess civil or criminal penalties in at least the amount of one thousand dollars a day for each violation by industrial users of pretreatment standards and requirements.
 - b. Pretreatment standards and requirements which will be enforced through these remedies will include the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by the POTWs; any requirements set forth in individual control mechanisms issued by the POTWs; or any reporting requirements imposed by the POTWs or state or federal regulations. The POTWs shall have authority and procedures after informal notice to the discharger immediately and effectively to halt or prevent any discharge of pollutants to the POTWs which reasonably appears to present an imminent endangerment to the health or welfare of persons. The POTWs shall also have authority and procedures which shall include notice to the affected industrial users and an opportunity to respond to halt or prevent any discharge to the POTWs which presents or may present an

endangerment to the environment or which threatens to interfere with the operation of the POTWs.

7. Comply with the confidentiality requirements set forth in subsection 4 of section 33-16-01.1-11.

Procedures. The POTWs shall develop and implement procedures to ensure compliance with the requirements of a pretreatment program. At a minimum, these procedures shall enable the POTWs to accomplish each of the following actions:

1. Identify and locate all possible industrial users which might be subject to the POTWs pretreatment program. Any compilation, index, or inventory of industrial users made under this subsection shall be made available to the department or regional administrator upon request.
2. Identify the character and volume of pollutants contributed to the POTWs by the industrial users which are subject to the POTWs pretreatment program. This information shall be made available to the department or regional administrator upon request.
3. Notify industrial users which are subject to the POTWs pretreatment program of applicable pretreatment standards and any applicable requirements under sections 204(b) and 405 of the Federal Water Pollution Control Act and subtitles C and D of the Resource Conservation and Recovery Act. Within thirty days of departmental approval of a significant industrial user's list (see "*Significant industrial users*"), notify each significant industrial user of its status as such and of all requirements applicable to it as a result of such status.
4. Receive and analyze self-monitoring reports and other notices submitted by industrial users in accordance with the self-monitoring requirements in section 33-16-01.1-12.
5. Randomly sample and analyze the effluent from industrial users and conduct surveillance activities in order to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards. Inspect and sample the effluent from each significant industrial user at least once a year. Evaluate, at least once every two years, whether each such significant industrial user needs a plan to control slug discharges. For purposes of this subsection, a slug discharges any discharge of a nonroutine, episodic nature, including an accidental spill or a noncustomary batch discharge. The results of such activities shall be available to the department upon request. If the POTWs decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:
 - a. Description of discharge practices, including nonroutine batch discharges:

- b. Description of stored chemicals;
 - c. Procedures for immediately notifying the POTWs of slug discharges, including any discharge that would violate a prohibition under subsection 2 of section 33-16-01.1-02, with procedures for followup written notification within five days; and
 - d. If necessary, procedures to prevent adverse impact from accidental spills, including but not limited to inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and measures and equipment for emergency response.
6. Investigate instances of noncompliance with pretreatment standards and requirements, as indicated in the reports and notices required under section 33-16-01.1-12, or indicated by analysis, inspection, and surveillance activities. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions.
7. Comply with the public participation requirements of 40 Code of Federal Regulations, part 25, [40 CFR 25] in the enforcement of national pretreatment standards. These procedures shall include provision for at least annual public notification, in the largest daily newspaper published in the municipality in which the POTWs is located, of industrial users which, at any time during the previous twelve months, were in significant noncompliance with applicable pretreatment requirements. For the purposes of this provision, an industrial user is in significant noncompliance if its violation meets one or more of the following criteria:
- a. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent or more of all of the measurements taken during a six-month period exceed by any magnitude the daily maximum limit or the average limit for the same pollutant parameter;
 - b. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC=1.4 for five-day biochemical oxygen demand, total suspended solids, fats, oil, and grease, and 1.2 for all other pollutants except pH);
 - c. Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the control authority determines

has caused, alone or in combination with other discharges, interference, or passthrough (including endangering the health of POTWs personnel or the general public);

- d. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare, or to the environment or has resulted in the POTWs exercise of its emergency authority to halt or prevent such a discharge;
- e. Failure to meet, within ninety days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;
- f. Failure to provide, within thirty days after the due date, required reports such as baseline monitoring reports, ninety-day compliance reports, periodic self-monitoring reports, and compliance schedule progress reports;
- g. Failure to accurately report noncompliance; or
- h. Any other violation or group of violations which the control authority determines will adversely affect the operation or implementation of the local pretreatment program.

Funding. The POTWs shall have sufficient resources and qualified personnel to carry out the authorities and procedures described in "Legal authority" and "Procedures." In some limited circumstances, funding and personnel may be delayed when the POTWs has adequate legal authority and procedures to carry out these pretreatment program requirements, and a limited aspect of the pretreatment program does not need to be implemented immediately (see subsection 2 of section 33-16-01.1-06).

Local limits. The POTWs shall develop local limits as required in section 33-16-01.1-03 or demonstrate that they are not necessary.

Enforcement response plan. The POTWs shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how a POTWs will investigate and respond to instances of an industrial user noncompliance. The plan shall, at a minimum:

1. Describe how the POTWs will investigate the instances of noncompliance;
2. Describe the types of escalating enforcement responses the POTWs will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;

3. Identify (by title) the official(s) responsible for each type of response; and
4. Adequately reflect the POTWs primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in "Legal authority" and "Procedures."

Significant industrial users. The POTWs shall prepare a list of its significant industrial users. The list shall identify the criteria in subsection 17 of section 33-16-01.1-01 applicable to each industrial user and, for industrial users meeting the criteria in subdivision b of subsection 17 of section 33-16-01.1-01, shall also indicate whether the POTWs has made a determination pursuant to subdivision c of subsection 17 of section 33-16-01.1-01 that such industrial user should not be considered a significant industrial user. The initial list shall be submitted to the department as a nonsubstantial modification pursuant to section 33-16-01.1-19. Modifications to the list shall be submitted to the department pursuant to subdivision a of subsection 1 of section 33-16-01.1-13.

APPENDIX B
POTWs PRETREATMENT PROGRAM SUBMISSION PACKAGES

A POTWs requesting approval of a POTWs pretreatment program shall develop a program description, which includes the following information:

A statement from the city solicitor or a city official acting in a comparable capacity (or the attorney for those POTWs which have independent legal counsel) that the POTWs has authority adequate to carry out the programs described in Appendix A. This statement shall:

1. Identify the provision of legal authority which provides the basis for each procedure described in "Procedures" in Appendix A;
2. Identify the manner in which the POTWs will implement the program requirements set forth in Appendix A, including the means by which pretreatment standards will be applied to individual industrial users (e.g., by order, permit, ordinance, etc.); and
3. Identify how the POTWs intends to ensure compliance with pretreatment standards and requirements, and to enforce them in the event of noncompliance by industrial users.

A copy of any statutes, ordinances, regulations, agreements, or other authorities relied upon by the POTWs for its administration of the program. This submission shall include a statement reflecting the endorsement or approval of the local boards or bodies responsible for supervising or funding the POTWs pretreatment program, or both, if approved;

A brief description, including organization charts, of the POTWs organization which will administer the pretreatment program. If more than one agency is responsible for administration of the program, the responsible agencies should be identified, their respective responsibilities delineated, and their procedures for coordination set forth; and

A description of the funding levels and full-time and part-time manpower available to implement the program.

TITLE 45
INSURANCE COMMISSIONER

OCTOBER 2002

CHAPTER 45-03-05

45-03-05-19. Adequacy of surplus. The factors set forth in subsection ~~2~~ 6 of North Dakota Century Code section 26.1-10-05 are not intended to be an exhaustive list. In determining the adequacy and reasonableness of an insurer's surplus, no single factor shall be controlling. The commissioner, instead, will consider the net effect of all of these factors plus other factors bearing on the financial condition of the insurer. In comparing the surplus maintained by other insurers, the commissioner will consider the extent to which each of these factors varies from company to company and in determining the quality and liquidity of investments in subsidiaries, the commissioner will consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.

History: Effective January 1, 1982; amended effective January 1, 1992; October 1, 2002.

General Authority: NDCC 26.1-10-12

Law Implemented: NDCC 26.1-10-05

**FORM A
STATEMENT REGARDING THE
ACQUISITION OF CONTROL OF OR MERGER WITH A DOMESTIC INSURER**

Name of Domestic Insurer

BY

Name of Acquiring Person (Applicant)

Filed with the Insurance Department of _____
(State of domicile of insurer
being acquired)

Dated: _____, 19 20 ____

Name, title, address, and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:

ITEM 1. INSURER AND METHOD OF ACQUISITION

State the name and address of the domestic insurer to which this application relates and a brief description of how control is to be acquired.

ITEM 2. IDENTITY AND BACKGROUND OF THE APPLICANT

1. State the name and address of the applicant seeking to acquire control over the insurer.
2. If the applicant is not an individual, state the nature of its business operations for the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence. Briefly describe the business intended to be done by the applicant and the applicant's subsidiaries.
3. Furnish a chart or listing clearly presenting the identities of the interrelationships among the applicant and all affiliates of the applicant. No affiliate need be identified if its total assets are equal to less than one-half of one percent of the total assets of the ultimate controlling person affiliated with the applicant. Indicate in such chart or listing the percentage of voting securities of each such person which is owned or controlled by the applicant or by any other such person. If control

of any person is maintained other than by the ownership or control of voting securities, indicate the basis of such control. As to each person specified in such chart or listing indicate the type of organization, e.g., corporation, trust, partnership, and the state or other jurisdiction of domicile. If court proceedings involving a reorganization or liquidation are pending with respect to any such person, indicate which person, and set forth the title of the court, nature of proceedings, and the date when commenced.

ITEM 3. IDENTITY AND BACKGROUND OF INDIVIDUALS ASSOCIATED WITH THE APPLICANT

State the following with respect to (1) the applicant if the applicant is an individual or (2) all persons who are directors, executive officers, or owners of ten percent or more of the voting securities of the applicant if the applicant is not an individual:

1. Name and business address.
2. Present principal business activity, occupation, or employment including position and office held and the name, principal business, and address of any corporation or other organization in which such employment is carried on.
3. Material occupations, positions, offices, or employment during the last five years, giving the starting and ending dates of each and the name, principal business, and address of any business corporation or other organization in which each such occupation, position, office, or employment was carried on; if any such occupation, position, office, or employment required licensing by or registration, with any federal, state, or municipal governmental agency, indicate such fact, the current status of such licensing or registration, and an explanation of any surrender, revocation, suspension, or disciplinary proceedings in connection therewith.
4. Whether or not such person has ever been convicted in a criminal proceeding (excluding minor traffic violations) during the last ten years and, if so, give the date, nature of conviction, name and location of court, and penalty imposed or other disposition of the case.

ITEM 4. NATURE, SOURCE, AND AMOUNT OF CONSIDERATION

1. Describe the nature, source, and amount of funds or other considerations used or to be used in effecting the merger or other acquisition of control. If any part of the same is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading securities, furnish a description of the transaction, the names of the parties thereto, the relationship, if any, between the borrower and the

lender, the amounts borrowed or to be borrowed, and copies of all agreements, promissory notes, and security arrangements relating thereto.

2. Explain the criteria used in determining the nature and amount of such consideration.
3. If the source of the consideration is a loan made in the lender's ordinary course of business and if the applicant wishes the identity of the lender to remain confidential, the applicant must specifically request that the identity be kept confidential.

ITEM 5. FUTURE PLANS OF INSURER

Describe any plans or proposals which the applicant may have to declare an extraordinary dividend, to liquidate such insurer, to sell its assets to or merge it with any person or persons, or to make any other material change in its business operations or corporate structure or management.

ITEM 6. VOTING SECURITIES TO BE ACQUIRED

State the number of shares of the insurer's voting securities which the applicant, its affiliates, and any person listed in Item 3 plan to acquire, and the terms of the offer, request, invitation, agreement, or acquisition, and a statement as to the method by which the fairness of the proposal was arrived at.

ITEM 7. OWNERSHIP OF VOTING SECURITIES

State the amount of each class of any voting security of the insurer which is beneficially owned or concerning which there is a right to acquire beneficial ownership by the applicant, its affiliates, or any person listed in Item 3.

ITEM 8. CONTRACTS, ARRANGEMENTS, OR UNDERSTANDINGS WITH RESPECT TO VOTING SECURITIES OF THE INSURER

Give a full description of any contracts, arrangements, or understandings with respect to any voting security of the insurer in which the applicant, its affiliates, or any person listed in Item 3 is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss, or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been entered into.

ITEM 9. RECENT PURCHASES OF VOTING SECURITIES

Describe any purchases of any voting securities of the insurer by the applicant, its affiliates, or any person listed in Item 3 during the twelve calendar months preceding the filing of this statement. Include in such description the dates

of purchase, the names of the purchasers, and the consideration paid or agreed to be paid therefor. State whether any such shares so purchased are hypothecated.

ITEM 10. RECENT RECOMMENDATIONS TO PURCHASE

Describe any recommendations to purchase any voting security of the insurer made by the applicant, its affiliates, or any person listed in Item 3, or by anyone based upon interviews or at the suggestion of the applicant, its affiliates, or any person listed in Item 3 during the twelve calendar months preceding the filing of this statement.

ITEM 11. AGREEMENTS WITH BROKER-DEALERS

Describe the terms of any agreement, contract, or understanding made with any broker-dealer as to solicitation of voting securities of the insurer for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto.

ITEM 12. FINANCIAL STATEMENTS AND EXHIBITS

1. Financial statements and exhibits shall be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.
2. The financial statements shall include the annual financial statements of the persons identified in Item 2 (c) for the preceding five fiscal years (or for such lesser period as such applicant and its affiliates and any predecessors thereof shall have been in existence), and similar information covering the period from the end of such person's last fiscal year, if such information is available. Such statements may be prepared on either an individual basis, or, unless the commissioner otherwise requires, on a consolidated basis if such consolidated statements are prepared in the usual course of business.

The annual financial statements of the applicant shall be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the applicant is an insurer which is actively engaged in the business of insurance, the financial statements need not be certified, provided they are based on the Annual Statement of such person filed with the insurance department of the person's domiciliary state and are in accordance with the requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of such state.

3. File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer and (if distributed) of additional soliciting material relating thereto, any proposed employment, consultation, advisory, or management contracts concerning the insurer, annual reports to the stockholders of the insurer, and the applicant for the last two fiscal years, and any additional documents or papers required by Form A or sections 45-03-05-04 and 45-03-05-06.

ITEM 13. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of North Dakota Century Code section 26.1-10-03, _____ has caused this application to be duly

Name of Applicant

signed on its behalf in the City of _____ and State of _____, on the _____ day of _____, 19 20 ____.

(SEAL)

Name of Applicant

BY: _____
(Name) (Title)

Attest:

(Signature of officer)

(Title)

CERTIFICATION

The undersigned deposes and says that the applicant has duly executed the attached application dated _____, 19 20 ____, for and on behalf of _____; that the applicant is the

(Name of Applicant)

_____ of such company and that the applicant is
(Title of officer)

authorized to execute and file such instrument. Deponent further says that deponent is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of deponent's knowledge, information, and belief.

(Signature) _____

(Type or print name beneath) _____

FORM B

INSURANCE HOLDING COMPANY SYSTEM REGISTRATION STATEMENT

Filed with the Insurance Department of the State of _____

By

Name of Registrant

On Behalf of the Following Insurance Companies

Name

Address

| | |
|--|--|
| | |
| | |
| | |
| | |
| | |

Date: _____, 19 20 ____

Name, title, address and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:

| |
|--|
| |
| |
| |

ITEM 1. IDENTITY AND CONTROL OF REGISTRANT

Furnish the exact name of each insurer registering or being registered (hereinafter called "the registrant"), the home office address and principal executive offices of each; the date on which each registrant became part of the insurance holding company system; and the methods by which control of each registrant was acquired and is maintained.

ITEM 2. ORGANIZATIONAL CHART

Furnish a chart or listing clearly presenting the identities of and interrelationships among all affiliated persons within the insurance holding company system. No affiliate need be shown if its total assets are equal to less than one-half of one percent of the total assets of the ultimate controlling person within the insurance holding company system unless it has assets valued at or exceeding (insert amount). The chart or listing should show the percentage of each class of voting securities of each affiliate which is owned, directly or indirectly,

by another affiliate. If control of any person within the system is maintained other than by the ownership or control of voting securities, indicate the basis of such control. As to each person specified in such chart or listing indicate the type of organization, e.g., corporation, trust, partnership, and the state or other jurisdiction of domicile.

ITEM 3. THE ULTIMATE CONTROLLING PERSON

As to the ultimate controlling person in the insurance holding company system furnish the following information:

1. Name.
2. Home office address.
3. Principal executive office address.
4. The organizational structure of the person, i.e., corporation, partnership, individual, trust, etc.
5. The principal business of the person.
6. The name and address of any person who holds or owns ten percent or more of any class of voting security, the class of such security, the number of shares held of record or known to be beneficially owned, and the percentage of class so held or owned.
7. If court proceedings involving a reorganization or liquidation are pending, indicate the title and location of the court, the nature of proceedings, and the date when commenced.

ITEM 4. BIOGRAPHICAL INFORMATION

Furnish the following information for the directors and executive officers of the ultimate controlling person; the individual's name and address, the individual's principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years.

ITEM 5. TRANSACTIONS AND AGREEMENTS

Briefly describe the following agreements in force and transactions currently outstanding or which have occurred during the last calendar year between the registrant and its affiliates:

1. Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the registrant or of the registrant by its affiliates;

2. Purchases, sales, or exchanges of assets;
3. Transactions not in the ordinary course of business;
4. Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the registrant's assets to liability, other than insurance contracts entered into in the ordinary course of the registrant's business;
5. All management agreements, service contracts, and all cost-sharing arrangements;
6. Reinsurance agreements;
7. Dividends and other distributions to shareholders;
8. Consolidated tax allocation agreements; and
9. Any pledge of the registrant's stock or of the stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

No information need be disclosed if such information is not material for purposes of Section 26.1-10-04 of the North Dakota Century Code.

Sales, purchases, exchanges, loans, or extensions of credit, investments, or guarantees involving one-half of one percent or less of the registrant's admitted assets as of next preceding December thirty-first shall not be deemed material.

The description shall be in a manner as to permit the proper evaluation thereof by the commissioner, and shall include at least the following: the nature and purpose of the transaction, the nature and amounts of any payments or transfers of assets between the parties, the identity of all parties to such transaction, and relationship of the affiliated parties to the Registrant.

ITEM 6. LITIGATION OR ADMINISTRATIVE PROCEEDINGS

A brief description of any litigation or administrative proceedings of the following types, either then pending or concluded within the preceding fiscal year, to which the ultimate controlling person or any of its directors or executive officers was a party or of which the property of any such person is or was the subject; give the names of the parties and the court or agency in which such litigation or proceeding is or was pending:

1. Criminal prosecutions or administrative proceedings by any government agency or authority which may be relevant to the trustworthiness of any party thereto; and

2. Proceedings which may have a material effect upon the solvency or capital structure of the ultimate holding company including, but not necessarily limited to, bankruptcy, receivership, or other corporate reorganizations.

ITEM 7. STATEMENT REGARDING PLAN OR SERIES OF TRANSACTIONS

The insurer shall furnish a statement that transactions entered into since the filing of the prior registration statement are not part of a plan or series of like transactions, the purpose of which is to avoid statutory threshold amounts and the review that might otherwise occur.

ITEM 8. FINANCIAL STATEMENTS AND EXHIBITS

1. Financial statements and exhibits should be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.
2. The financial statements shall include the annual financial statements of the ultimate controlling person in the insurance holding company system as of the end of the person's latest fiscal year.

If at the time of the initial registration, the annual financial statements for the latest fiscal year are not available, annual statements for the previous fiscal year may be filed and similar financial information shall be filed for any subsequent period to the extent such information is available. Such financial statements may be prepared on either an individual basis, or unless the commissioner otherwise requires, on a consolidated basis if such consolidated statements are prepared in the usual course of business.

Unless the commissioner otherwise permits, the annual financial statements shall be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of the ultimate controlling person and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the ultimate controlling person is an insurer which is actively engaged in the business of insurance, the annual financial statements need not be certified, provided they are based on the annual statement of such insurer filed with the insurance department of the insurer's domiciliary state and are in accordance with requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of such state.

3. Exhibits shall include copies of the latest annual reports to shareholders of the ultimate controlling person and proxy material used by the ultimate controlling person; and any additional documents or papers required by

Form B or North Dakota Administrative Code sections 45-03-05-04 and 45-03-05-06.

ITEM 9. FORM C REQUIRED

A Form C, Summary of Registration Statement, must be prepared and filed with this Form B.

ITEM 10. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of Section 26.1-10-04 of the North Dakota Century Code, the registrant has caused this registration statement to be duly signed on its behalf in the City of _____, and State of _____ on the _____ day of _____, 19 20 ____.

(SEAL)

(Name of registrant)

By: _____

(Name)

(Title)

Attest:

(Signature of officer)

(Title)

CERTIFICATION

The undersigned deposes and says that the undersigned has duly executed the attached registration statement dated _____, 19 20 ____,

for and on behalf of _____; that the

(Name of company)

undersigned is the _____ of such company, and that

(Title of officer)

the undersigned has authority to execute and file such instrument. The deponent further says that deponent is familiar with such instrument and that the facts therein set forth are true to the best of deponent's knowledge, information, and belief.

(Signature) _____

(Type or print name beneath) _____

FORM C
SUMMARY OF REGISTRATION STATEMENT
Filed with the Insurance Department of the State of _____

BY

Name of Registrant

On Behalf of the Following Insurance Companies

| Name | Address |
|------|---------|
|------|---------|

| | |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

Date: _____, 19 20 _____

Name, title, address, and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:

Furnish a brief description of all items in the current registration statement which represent changes from the prior registration statement. The description shall be in a manner as to permit the proper evaluation thereof by the commissioner, and shall include specific references to item numbers in the registration statement and to the terms contained therein.

Changes occurring under Item 2 of Form B insofar as changes in the percentage of each class of voting securities held by each affiliate is concerned, need only be included where such changes are ones which result in ownership or holdings of ten percent or more of voting securities, loss or transfer of control, or acquisition or loss of partnership interest.

Changes occurring under Item 4 of Form B need only be included where: an individual is, for the first time, made a director or executive officer of the ultimate controlling person; a director or executive officer terminates his or her responsibilities with the ultimate controlling person; or in the event an individual is named president of the ultimate controlling person.

If a transaction disclosed on the prior registration statement has been changed, the nature of such change shall be included. If a transaction disclosed

on the prior registration statement has been effectuated, furnish the mode of completion and any flow of funds between affiliates resulting from the transaction.

The insurer shall furnish a statement that transactions entered into since the filing of the prior registration statement are not part of a plan or series of like transactions whose purpose it is to avoid statutory threshold amounts and the review that might otherwise occur.

SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of Section 26.1-10-04 of the North Dakota Century Code, the registrant has caused this summary of registration statement to be duly signed on its behalf in the City of _____ and State of _____ on the _____ day of _____, 19 20 ____.

(SEAL)

(Name of Applicant)

By: _____
(Name) (Title)

Attest:

(Signature of officer)

(Title)

CERTIFICATION

The undersigned deposes and says that the deponent has duly executed the attached summary of registration statement dated _____, 19 20 ____, for and on behalf of _____; that the deponent is the

(Name of company)

_____ of such company;
(Title of officer)

and that the deponent is authorized to execute and file such instrument. Deponent further says that deponent is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of deponent's knowledge, information, and belief.

(Signature) _____

(Type or print name beneath) _____

**FORM D
PRIOR NOTICE OF A TRANSACTION**

Filed with the Insurance Department of the State of _____

BY

Name of Registrant

On Behalf of the Following Insurance Companies

Name

Address

| Name | Address |
|------|---------|
| | |
| | |
| | |
| | |

Date: _____, 19 20 ____

Name, title, address, and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:

| |
|--|
| |
| |
| |
| |

ITEM 1. IDENTITY OF PARTIES TO TRANSACTION

Furnish the following information for each of the parties to the transaction:

1. Name.
2. Home office address.
3. Principal executive office address.
4. The organizational structure, i.e., corporation, partnership, individual, trust, etc.
5. A description of the nature of the parties' business operations.
6. Relationship, if any, of other parties to the transaction to the insurer filing the notice, including any ownership or debtor/creditor interest by any other parties to the transaction in the insurer seeking approval, or by the insurer filing the notice in the affiliated parties.

7. Where the transaction is with a nonaffiliate, the names of the affiliates which will receive, in whole or in substantial part, the proceeds of the transaction.

ITEM 2. DESCRIPTION OF THE TRANSACTION

Furnish the following information for each transaction for which notice is being given:

1. A statement of the nature of the transaction.
2. The proposed effective date of the transaction.

ITEM 3. SALES, PURCHASES, EXCHANGES, LOANS, EXTENSIONS OF CREDIT, GUARANTEES, OR INVESTMENTS

Furnish a brief description of the amount and source of funds, securities, property, or other consideration for the sale, purchase, exchange, loan, extension of credit, guarantee, or investment, whether any provision exists for purchase by the insurer filing notice, by any party to the transaction, or by any affiliate of the insurer filing notice, a description of the terms of any securities being received, if any, and a description of any other agreements relating to the transaction such as contracts or agreements for services, consulting agreements, and the like. If the transaction involves other than cash, furnish a description of the consideration, its cost, and its fair market value, together with an explanation of the basis for evaluation.

If the transaction involves a loan, extension of credit, or a guarantee, furnish a description of the maximum amount which the insurer will be obligated to make available under such loan, extension of credit or guarantee, the date on which the credit or guarantee will terminate, and any provisions for the accrual of or deferral of interest.

If the transaction involves an investment, guarantee, or other arrangement, state the time period during which the investment, guarantee, or other arrangement will remain in effect, together with any provisions for extensions or renewals of such investments, guarantees, or arrangements. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given if the maximum amount which can at any time be outstanding or for which the insurer can be legally obligated under the loan, extension of credit, or guarantee is less than: (a) in the case of nonlife insurers, the lesser of three percent of the insurer's admitted assets or twenty-five percent of surplus as regards policyholders, or (b) in the case of life insurers, three percent of the insurer's admitted assets, each as of the next preceding December thirty-first.

ITEM 4. LOANS OR EXTENSIONS OF CREDIT TO A NONAFFILIATE

If the transaction involves a loan or extension of credit to any person who is not an affiliate, furnish a brief description of the agreement or understanding

whereby the proceeds of the proposed transaction, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase the assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit, and specify in what manner the proceeds are to be used to loan to, extend credit to, purchase assets of or make investments in any affiliate. Describe the amount and source of funds, securities, property, or other consideration for the loan or extension of credit and, if the transaction is one involving consideration other than cash, a description of its cost, and its fair market value together with an explanation of the basis for evaluation. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given if the loan or extension of credit is one which equals less than, in the case of nonlife insurers, the lesser of three percent of the insurer's admitted assets or twenty-five percent of surplus as regards policyholders or, with respect to life insurers, three percent of the insurer's admitted assets, each as of the next preceding December thirty-first.

ITEM 5. REINSURANCE

If the transaction is a reinsurance agreement or modification thereto, as described by Section 26.1-10-04(2)(6) of the North Dakota Century Code, furnish a description of the known or estimated amount of liability to be ceded or assumed in each calendar year, the period of time during which the agreement will be in effect, and a statement whether an agreement or understanding exists between the insurer and nonaffiliate to the effect that any portion of the assets constituting the consideration for the agreement will be transferred to one or more of the insurer's affiliates. Furnish a brief description of the consideration involved in the transaction, and a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given for reinsurance agreements or modifications thereto if the reinsurance premium or a change in the insurer's liabilities in connection with the reinsurance agreement or modification thereto is less than five percent of the insurer's surplus as regards policyholders, as of the next preceding December thirty-first.

ITEM 6. MANAGEMENT AGREEMENTS, SERVICE AGREEMENTS, AND COST-SHARING ARRANGEMENTS

For management and service agreements, furnish:

1. A brief description of the managerial responsibilities or services to be performed.
2. A brief description of the agreement, including a statement of its duration, together with brief descriptions of the basis for compensation and the terms under which payment or compensation is to be made.

For cost-sharing arrangements, furnish:

1. A brief description of the purpose of the agreement.
2. A description of the period of time during which the agreement is to be in effect.
3. A brief description of each party's expenses or costs covered by the agreement.
4. A brief description of the accounting basis to be used in calculating each party's costs under the agreement.

ITEM 7. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of Sections 26.1-10-04 and 26.1-10-05 of the North Dakota Century Code, _____ has caused this notice to be duly signed on its behalf in the City of _____ and State of _____ on the _____ day of _____, 19 20 _____.

(SEAL)

(Name of Applicant)

By:

(Name)

(Title)

Attest:

(Signature of officer)

(Title)

CERTIFICATION

The undersigned deposes and says that the deponent has duly executed the attached notice dated _____, 19 20 _____, for and on behalf of _____; that the deponent is the _____ of such

(Name of Applicant)

(Title of officer)

company and that the deponent is authorized to execute and file such instrument. Deponent further says that deponent is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of deponent's knowledge, information, and belief.

(Signature) _____

(Type or print name beneath) _____

CHAPTER 45-03-07.1

45-03-07.1-01. Credit for reinsurance - Reinsurer licensed in this state.

Pursuant to North Dakota Century Code section 26.1-31.2-01, the commissioner shall allow credit for reinsurance ceded by a domestic ~~insurance~~ insurer to an assuming ~~insurers~~ insurer that ~~were~~ was licensed in this state as of the any date of ~~the ceding insurer's~~ on which statutory financial statement credit for reinsurance is claimed.

History: Effective October 1, 1995; amended effective October 1, 2002.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-02. Credit for reinsurance - Accredited reinsurers.

1. Pursuant to North Dakota Century Code section 26.1-31.2-01, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is accredited as a reinsurer in this state as of the any date of ~~the ceding insurer's~~ on which statutory financial statement credit for reinsurance is claimed. An accredited reinsurer is one which:
 - a. Files a properly executed form AR-1 as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records;
 - b. Files with the commissioner a certified copy of a ~~letter or a~~ certificate of authority or ~~of compliance as~~ other acceptable evidence that it is licensed to transact insurance or reinsurance in at least one state, or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;
 - c. Files annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and
 - ~~d.~~
 - (1) Maintains a surplus as regards policyholders in an amount not less than twenty million dollars and whose accreditation has not been denied by the commissioner within ninety days of its submission; ~~or, in the case of companies with~~
 - (2) Maintains a surplus as regards policyholders of less than twenty million dollars, and whose accreditation has been approved by the commissioner.

2. If the commissioner determines that the assuming insurer has failed to meet or maintain any of these qualifications, the commissioner may upon written notice and hearing revoke the accreditation. Credit may not be allowed a domestic ceding insurer ~~with respect to reinsurance ceded after January 1, 1996~~, if the assuming insurer's accreditation has been ~~denied or revoked by the commissioner after notice and hearing~~.

History: Effective October 1, 1995; amended effective October 1, 2002.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-03. Credit for reinsurance - Reinsurer domiciled and licensed in another state.

1. Pursuant to North Dakota Century Code section 26.1-31.2-01, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that as of the date of the ceding insurer's statutory financial statement:
 - a. Is domiciled and licensed in, or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed in, a state that employs standards regarding credit for reinsurance substantially similar to those applicable under North Dakota Century Code chapter 26.1-31.2 and this chapter;
 - b. Maintains a surplus as regards policyholders in an amount not less than twenty million dollars; and
 - c. Files a properly executed form AR-1 with the commissioner as evidence of its submission to this state's authority to examine its books and records.
2. The provisions of this section relating to surplus as regards policyholders do not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system. As used in this section, "substantially similar" standards means credit for reinsurance standards which the commissioner determines equal or exceed the standards of North Dakota Century Code chapter 26.1-31.2 and this chapter.

History: Effective October 1, 1995; amended effective October 1, 2002.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-04. Credit for reinsurance - Reinsurers maintaining trust funds.

1. Pursuant to North Dakota Century Code section 26.1-31.2-01, the commissioner shall allow credit for reinsurance ceded by a domestic

insurer to an assuming insurer that, as of the any date of the ceding insurer's on which statutory financial statement credit for reinsurance is claimed, and thereafter for so long as credit for reinsurance is claimed, maintains a trust fund in an amount prescribed in this section in a qualified United States financial institution as defined in North Dakota Century Code section 26.1-31.2-03, for the payment of the valid claims of its United States policyholders and domiciled ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the commissioner substantially the same information as that required to be reported on the national association of insurance commissioners annual statement form by licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund.

2. The following requirements apply to the following categories of assuming insurer:
 - a. The trust fund for a single assuming insurer must consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding domiciled insurers, and in addition, the assuming insurer shall maintain a trusteed surplus of not less than twenty million dollars.
 - b.
 - (1) The trust fund for a group, including incorporated and individual unincorporated underwriters, must consist of funds in trust in an amount not less than the group's aggregate liabilities attributable to business written in the United States and, in addition, the group shall maintain a trusteed surplus of which one hundred million dollars must be held jointly for the benefit of the United States ceding insurers of any member of the group for all years of account.
 - (2) The incorporated members of the group may not be engaged in any business other than underwriting as a member of the group and must be subject to the same level of regulation solvency ~~regulation~~ and control by the group's domiciliary regulator as are the unincorporated members. The group shall, within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the commissioner;
 - (a) An annual certifications of the solvency of each underwriter certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or, if
 - (b) If a certification is unavailable, a financial statement prepared by each underwriter's independent public accountants, of each underwriter member of the group.

- c. (1) The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of ten billion dollars, calculated and reported in substantially the same manner as prescribed by the annual statement instructions and accounting practices and procedures manual of the national association of insurance commissioners, and which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation, must ~~consist~~:
- (a) Consist of funds in trust in an amount not less than the assuming insurers' several liabilities attributable to business ceded by United States domiciled ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group; ~~and, in addition, the group shall maintain~~
 - (b) Maintain a joint trustee surplus of which one hundred million dollars shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group. ~~The group shall file; and~~
 - (c) File a properly executed form AR-1 as evidence of the submission to this state's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination. ~~The~~
- (2) Within ninety days after the statements are due to be filed with the group's domiciliary regulator, the group shall make available to file with the commissioner an annual certifications certification of each underwriter member's solvency by the members' domiciliary regulators and financial statements, prepared by independent public accountants, of each underwriter member prepared by its independent public accountants of the group.
3. a. Credit for reinsurance shall not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument must provide that:

- a. (1) Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied thirty days after entry of the final order of any court of competent jurisdiction in the United States;
 - b. (2) Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States policyholders and ceding insurers, their assigns and successors in interest;
 - c. (3) The trust shall be subject to examination as determined by the commissioner;
 - d. (4) The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; and
 - e. (5) No later than February twenty-eighth of each year, the trustees of the trust shall report to the commissioner in writing setting forth the balance in the trust and listing the trust's investments at the preceding yearend, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December thirty-first.
4. b. Credit for reinsurance will not be granted unless the assuming insurer agrees in the trust agreement to the following conditions:
- a. (1) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by this subsection or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.
 - b. (2) The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.

- e. (3) If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.
 - e. (4) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.
4. For purposes of this rule, the term "liabilities" means the assuming insurer's gross liabilities attributable to reinsurance ceded by United States domiciled insurers that are not otherwise secured by acceptable means, and, includes:
- a. For business ceded by domestic insurers authorized to write accident and health and property and casualty insurance:
 - (1) Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;
 - (2) Reserves for losses reported and outstanding;
 - (3) Reserves for losses incurred but not reported;
 - (4) Reserves for allocated loss expenses; and
 - (5) Unearned premiums.
 - b. For business ceded by domestic insurers authorized to write life, health, and annuity insurance:
 - (1) Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;
 - (2) Aggregate reserves for accident and health policies;
 - (3) Deposit funds and other liabilities without life or disability contingencies; and
 - (4) Liabilities for policy and contract claims.
5. Assets deposited in trusts established pursuant to North Dakota Century Code section 26.1-31.2-01 and this section shall be valued according to their fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States financial institution as defined in North Dakota Century Code section

26.1-31.2-03, clean, irrevocable, unconditional, and "evergreen" letters of credit issued or confirmed by a qualified United States financial institution, as defined in North Dakota Century Code section 26.1-31.2-03, and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by, or under common control with either the grantor or beneficiary of the trust shall not exceed five percent of total investments. No more than twenty percent of the total of the investments in the trust may be foreign investments authorized under paragraph 5 of subdivision a, subdivision c, paragraph 2 of subdivision f, and subdivision g, and no more than ten percent of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in United States dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of North Dakota Century Code section 26.1-31.2-01 shall be invested only as follows:

- a. Government obligations that are not in default as to principal or interest, that are valid and legally authorized, and that are issued, assumed, or guaranteed by:
 - (1) The United States or by any agency or instrumentality of the United States;
 - (2) A state of the United States;
 - (3) A territory, possession, or other governmental unit of the United States;
 - (4) An agency or instrumentality of a governmental unit referred to in paragraphs 2 and 3 if the obligations shall be by law, statutory or otherwise, payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under this paragraph if payable solely out of special assessments on properties benefited by local improvements; or
 - (5) The government of any other country that is a member of the organization for economic cooperation and development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the securities valuation office of the national association of insurance commissioners.

- b. Obligations that are issued in the United States, or that are dollar-denominated and issued in a non-United States market, by a solvent United States institution other than an insurance company or that are assumed or guaranteed by a solvent United States institution other than an insurance company and that are not in default as to principal or interest if the obligations:
- (1) Are rated A or higher or the equivalent by a securities rating agency recognized by the securities valuation office of the national association of insurance commissioners, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;
 - (2) Are insured by at least one authorized insurer, other than the investing insurer or a parent, subsidiary, or affiliate of the investing insurer, licensed to insure obligations in this state and, after considering the insurance, are rated AAA or the equivalent by a securities rating agency recognized by the securities valuation office of the national association of insurance commissioners; or
 - (3) Have been designated as class one or class two by the securities valuation office of the national association of insurance commissioners.
- c. Obligations issued, assumed, or guaranteed by a solvent non-United States institution chartered in a country that is a member of the organization for economic cooperation and development or obligations of United States corporations issued in a non-United States currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the securities valuation office of the national association of insurance commissioners.
- d. An investment made pursuant to the provisions of subdivisions a, b, or c shall be subject to the following additional limitations:
- (1) An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed five percent of the assets of the trust;
 - (2) An investment in any one mortgage-related security shall not exceed five percent of the assets of the trust;
 - (3) The aggregate total investment in mortgage-related securities shall not exceed twenty-five percent of the assets of the trust; and

(4) Preferred or guaranteed shares issued or guaranteed by a solvent United States institution are permissible investments if all of the institution's obligations are eligible as investments under paragraphs 1 and 3 of subdivision b, but shall not exceed two percent of the assets of the trust.

e. As used in this section:

(1) "Mortgage-related security" means an obligation that is rated AA or higher or the equivalent by a securities rating agency recognized by the securities valuation office of the national association of insurance commissioners and that either:

(a) Represents ownership of one or more promissory notes or certificates of interest or participation in the notes, including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates, or participation, that:

[1] Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C.A. section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and

[2] Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the secretary of housing and urban development pursuant to 12 U.S.C.A. sections 1709 and 1715-b, or, when the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the secretary of housing and urban development pursuant to 12 U.S.C.A. section 1703; or

(b) Is secured by one or more promissory notes or certificates of deposit or participations in the notes, with or without recourse to the insurer of the notes,

and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of subparagraph a.

- (2) "Promissory note", when used in connection with a manufactured home, shall also include a loan, advance, or credit sale as evidenced by a retail installment sales contract or other instrument.

f. Equity interests.

- (1) Investments in common shares or partnership interests of a solvent United States institution are permissible if:

(a) Its obligations and preferred shares, if any, are eligible as investments under this subsection; and

(b) The equity interests of the institution, except an insurance company, are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. § 78a to 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the national association of securities dealers, incorporated. A trust shall not invest in equity interests under this paragraph an amount exceeding one percent of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company.

- (2) Investments in common shares of a solvent institution organized under the laws of a country that is a member of the organization for economic cooperation and development, if:

(a) All its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the securities valuation office of the national association of insurance commissioners; and

(b) The equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the organization for economic cooperation and development.

- (3) An investment in or loan upon any one institution's outstanding equity interests shall not exceed one percent of the assets of the trust. The cost of an investment in equity

interests made pursuant to this paragraph, when added to the aggregate cost of other investments in equity interests then held pursuant to this paragraph, shall not exceed ten percent of the assets in the trust.

g. Obligations issued, assumed, or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the securities valuation office of the national association of insurance commissioners.

h. Investment companies.

(1) Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S.C. § 802, are permissible investments if the investment company:

(a) Invests at least ninety percent of its assets in the types of securities that qualify as an investment under subdivision a, b, or c or invests in securities that are determined by the commissioner to be substantively similar to the types of securities set forth in subdivision a, b, or c; or

(b) Invests at least ninety percent of its assets in the types of equity interests that qualify as an investment under paragraph 1 of subdivision f.

(2) Investments made by a trust in investment companies under this paragraph shall not exceed the following limitations:

(a) An investment in an investment company qualifying under subparagraph a of paragraph 1 shall not exceed ten percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed twenty-five percent of the assets in the trust; and

(b) Investments in an investment company qualifying under subparagraph b of paragraph 1 shall not exceed five percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to paragraph 1 of subdivision f.

i. Letters of credit.

- (1) In order for a letter of credit to qualify as an asset of the trust, the trustee must have the right and the obligation pursuant to the deed of trust or some other binding agreement, as duly approved by the commissioner, to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.
- (2) The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct, or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances in which such draw would be required shall be deemed to be negligence or willful misconduct.

6. A specific security provided to a ceding insurer by an assuming insurer pursuant to section 45-03-07.1-06 shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.

History: Effective October 1, 1995; amended effective December 1, 2001; October 1, 2002.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-05. Credit for reinsurance required by law. Pursuant to North Dakota Century Code section 26.1-31.2-01, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of subsections 1, 2, 3, and 4 of North Dakota Century Code section 26.1-31.2-01, but only ~~with respect~~ as to the insurance of risks located in jurisdictions where ~~such~~ the reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means any state, district, or territory of the United States and any lawful national government.

History: Effective October 1, 1995; amended effective October 1, 2002.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-06. Reduction Asset or reduction from liability for reinsurance ceded to an unauthorized assuming insurer not meeting the requirements of sections 45-03-07.1-01 through 45-03-07.1-05.

1. Pursuant to North Dakota Century Code section 26.1-31.2-02, the commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of North Dakota Century Code section 26.1-31.2-01 in an amount not exceeding the liabilities carried by the ceding insurer. ~~Such~~ The reduction must be in the amount of funds held by or on behalf of

the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations ~~thereunder~~ under the reinsurance contract. ~~Such~~ The security must be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in North Dakota Century Code section 26.1-31.2-03. This security may be in the form of any of the following:

- ~~1.~~ a. Cash.
 - ~~2.~~ b. Securities listed by the securities valuation office of the national association of insurance commissioners and qualifying as admitted assets.
 - ~~3.~~ c. Clean, irrevocable, unconditional, and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in North Dakota Century Code section 26.1-31.2-03, effective no later than December thirty-first of the year for which filing is being made, and in the possession of, or in trust for, the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever occurs first.
2. An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer ~~under subsections 1, 2, and 3 of section 45-03-07.1-06 pursuant to this section~~ shall be allowed only when the requirements of ~~sections 45-03-07.1-07, 45-03-07.1-08, 45-03-07.1-09, and section 45-03-07.1-10 are met and the applicable portions of sections 45-03-07.1-07, 45-03-07.1-08, and 45-03-07.1-09 have been satisfied.~~

History: Effective October 1, 1995; amended effective December 1, 2001; October 1, 2002.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-07. Trust agreements qualified under section 45-03-07.1-06.

1. As used in this section:
 - a. "Beneficiary" means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by

operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court-appointed domiciliary receiver, including conservator, rehabilitator, or liquidator.

- b. "Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.
- c. "Obligations", as used in subdivision k of subsection 2 means:
 - (1) Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;
 - (2) Reserves for reinsured losses reported and outstanding;
 - (3) Reserves for reinsured losses incurred but not reported; and
 - (4) Reserves for allocated reinsured loss expenses and unearned premiums.

2. Required conditions:

- a. The trust agreement must be entered into between the beneficiary, the grantor, and a trustee which shall be a qualified United States financial institution as defined in North Dakota Century Code section 26.1-31.2-03.
- b. The trust agreement must create a trust account into which assets must be deposited.
- c. All assets in the trust account must be held by the trustee at the trustee's office in the United States.
- d. The trust agreement must provide that:
 - (1) The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;
 - (2) No other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;
 - (3) It is not subject to any conditions or qualifications outside of the trust agreement; and

- (4) It shall not contain references to any other agreements or documents except as provided for under subdivision k.
- e. The trust agreement must be established for the sole benefit of the beneficiary.
- f. The trust agreement must require the trustee to:
 - (1) Receive assets and hold all assets in a safe place;
 - (2) Determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any such assets, without consent or signature from the grantor or any other person or entity;
 - (3) Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;
 - (4) Notify the grantor and the beneficiary within ten days of any deposits to or withdrawals from the trust account;
 - (5) Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title, and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and
 - (6) Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.
- g. The trust agreement must provide that at least thirty days, but not more than forty-five days, prior to termination of the trust account, written notification of termination must be delivered by the trustee to the beneficiary.
- h. The trust agreement must be made subject to and governed by the laws of the state in which the trust is ~~established~~ domiciled.
- i. The trust agreement must prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding

agreement, as duly approved by the commissioner, to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

- j. The trust agreement must provide that the trustee is liable for its own negligence, willful misconduct, or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances in which such draw would be required shall be deemed to be negligence or willful misconduct.

- k. Notwithstanding other provisions of this chapter, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, when it is customary practice to provide a trust agreement for a specific purpose, ~~such a the trust agreement; notwithstanding any other conditions in this chapter,~~ may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:
 - (1) To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;
 - (2) To make payment to the assuming insurer of any amounts held in the trust account that exceed one hundred two percent of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or
 - (3) If the ceding insurer has received notification of termination of the trust account and ~~where~~ if the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in North Dakota Century Code section 26.1-31.2-03 apart from its general assets, in trust for such uses and purposes specified in paragraphs 1 and 2 as may remain executory after such withdrawal and for any period after the termination date.

- l. Notwithstanding other provisions of this chapter, when a trust agreement is established to meet the requirements of section

45-03-07.1-06 in conjunction with a reinsurance agreement covering life, annuities, or accident and health risks, if it is customary practice to provide a trust agreement for a specific purpose, such trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

(1) To pay or reimburse the ceding insurer for ~~the~~:

(a) ~~The~~ assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and

~~(2) (b)~~ ~~To pay or reimburse the~~ The assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;

~~(3) (2)~~ To pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or

~~(4) (3)~~ If the ceding insurer has received notification of termination of the trust and the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution apart from its general assets, in trust for the uses and purposes specified in paragraphs 1; and 2; ~~and 3~~ as may remain executory after withdrawal and for any period after the termination date.

m. Notwithstanding any other provisions in the trust instrument, if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight or other

designated receiver all of the assets of the trust fund. The assets shall be applied in accordance with the priority statutes and laws of the state in which the trust is domiciled applicable to the assets of insurance companies in liquidation. If the commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy claims of the United States beneficiaries of the trust, the assets or any part of them shall be returned to the trustee for distribution in accordance with the trust agreement.

- n. The reinsurance agreement ~~entered into in conjunction with the trust agreement~~ may, but need not, contain the provisions required by paragraph 2 of subdivision a of subsection 4, so long as these required conditions are included in the trust agreement.

3. Permitted conditions:

- a. The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than ninety days after receipt by the beneficiary and grantor of receive the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than ninety days after receipt by the trustee and the beneficiary of receive the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.
- b. The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any such interest or dividends must be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.
- c. The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution may be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions which the trustee determines are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in paragraph 2 of subdivision a of subsection 4.
- d. The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to

be transferred. Such transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

- e. The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary, with written approval by the beneficiary, must be delivered over to the grantor.

4. Additional conditions applicable to reinsurance agreements:

- a. A reinsurance agreement, ~~which is entered into in conjunction with a trust agreement and the establishment of a trust account,~~ may contain provisions that:

- (1) Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover;
- (2) Stipulate that assets deposited in the trust account must be valued according to their current fair market value and must consist only of cash, United States legal tender, certificates of deposit issued by a United States bank and payable in United States legal tender, and investments ~~of the types~~ permitted by North Dakota Century Code title 26.1 or any combination of the above, provided investments in or issued by an entity controlling, controlled by, or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent of total investments. The reinsurance agreement may further specify the types of investments to be deposited. If a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, then the trust agreement may contain the provisions required by this paragraph in lieu of including such provisions in the reinsurance agreement;
- (3) Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or a signature from the assuming insurer or any other entity;
- (4) Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

(5) Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver, or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(a) To pay or reimburse the ceding insurer for ~~the~~:

[1] The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;

~~(b) [2] To reimburse the ceding insurer for the~~ The assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; and

~~(c) [3] To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer liabilities for policies ceded under the agreement. The account must include amounts for policy reserves, claims and losses incurred, including losses incurred but not reported, loss adjustment expenses, and unearned premium reserves; and~~ Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

~~(d) To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.~~

~~(b)~~ To make payment to the assuming insurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

b. The reinsurance agreement may also contain provisions that:

- (1) Give the assuming insurer the right to seek approval from the ceding insurer, which shall not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:
 - (a) At the time of withdrawal, the assuming insurer shall replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or
 - (b) After withdrawal and transfer, the market value of the trust account is no less than one hundred two percent of the required amount.

~~The ceding insurer may not unreasonably or arbitrarily withhold its approval.~~

- (2) Provide for:
 - (a) ~~The the return of any amount withdrawn in excess of the actual amounts required for subparagraphs a, b, and c of paragraph 5 of subdivision a, or in the case of subparagraph d of paragraph 5 of subdivision a, any amounts that are subsequently determined not to be due; and~~
 - (b) Interest ~~interest~~ payments, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to paragraph 5 of subdivision a.
- (3) Permit the award by any arbitration panel or court of competent jurisdiction of:
 - (a) Interest at a rate different from that provided in ~~subparagraph b of paragraph 2;~~
 - (b) Court or arbitration costs;
 - (c) Attorney's fees; and
 - (d) Any other reasonable expenses.

C. Financial reporting. A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the department in compliance with this chapter when established on or before the date of filing of the financial statement of the ceding insurer.

Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction must be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

- d. Existing agreements. Any trust agreement or underlying reinsurance agreement in existence prior to October 1, 1995, will continue to be acceptable until January 1, 1996, at which time the agreements will have to ~~be in full compliance~~ fully comply with this chapter for the trust agreement to be acceptable.
- e. The failure of any trust agreement to specifically identify the beneficiary as defined in subsection 1 may not be construed to affect any actions or rights which the commissioner may take or possess pursuant to the provisions of the laws of this state.

History: Effective October 1, 1995; amended effective December 1, 2001; October 1, 2002.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-08. Letters of credit qualified under section 45-03-07.1-06.

1. The letter of credit must be clean, irrevocable, ~~and unconditional,~~ and issued or confirmed by a qualified United States financial institution as defined in North Dakota Century Code section 26.1-31.2-03. The letter of credit must contain an issue date and expiration ~~date of expiration~~ and stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit must also indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself may not contain reference to any other agreements, documents, or entities, except as provided in subdivision a of subsection 9. As used in this section, "beneficiary" means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court-appointed domiciliary receiver, including conservator, rehabilitator, or liquidator.
2. The heading of the letter of credit may include a boxed section ~~that contains~~ containing the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section must be clearly marked to indicate that such information is for internal identification purposes only.

3. The letter of credit must contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.
4. The term of the letter of credit must be for at least one year and must contain an "evergreen clause" that prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" must provide for a period of no less than thirty days' notice prior to ~~expiry~~ the expiration date or nonrenewal.
5. The letter of credit must state whether it is subject to and governed by the laws of this state or the uniform customs and practice for documentary credits of the international chamber of commerce, publication 500, and all drafts drawn thereunder must be presentable at an office in the United States of a qualified United States financial institution.
6. If the letter of credit is made subject to the uniform customs and practice for documentary credits of the international chamber of commerce, publication 500, then the letter of credit must specifically address and ~~make provision~~ provide for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in article 17 of publication 500 occur.
7. The letter of credit must be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to North Dakota Century Code section 26.1-31.2-03.
8. If the letter of credit is issued by a qualified United States financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in subsection 7, then the following additional requirements must be met:
 - a. The issuing qualified United States financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and
 - b. The "evergreen clause" must provide for thirty days' notice prior to ~~expiry~~ the expiration date for nonrenewal.
9. Reinsurance agreement provisions.
 - a. The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions that:
 - (1) Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover.

- (2) Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:
- (a) To pay or reimburse the ceding insurer for the:
 - [1] The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;
 - (b) [2] ~~To reimburse the ceding insurer for the~~ The assuming insurer's share, under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement; and
 - [3] Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.
 - (c) ~~To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agreement, such amount shall include amounts for policy reserves, claims and losses incurred, and unearned premium reserves; and~~
 - (d) ~~To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.~~
- (3) ~~All of the provisions of this subdivision should be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.~~
- (4) (b) If the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and if the assuming insurer's entire obligations under the specific reinsurance remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the assuming insurer's

share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified United States financial institution apart from its general assets, in trust for such uses and purposes specified in paragraph 2 of subdivision a as may remain after withdrawal and for any period after the termination date.

(3) All of the provisions of this subdivision must be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

b. Nothing contained in subdivision a precludes the ceding insurer and assuming insurer from providing for:

(1) An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to paragraph 2 of subdivision a; or

(2) The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or, ~~in the case of subparagraph d of paragraph 2 of subdivision a,~~ any amounts that are subsequently determined not to be due.

~~10: A letter of credit may not be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the department unless an acceptable letter of credit with the filing ceding insurer as beneficiary has been issued on or before the date of filing of the financial statement. Further, the reduction for the letter of credit may be up to the amount available under the letter of credit but no greater than the specific obligation under the reinsurance agreement that the letter of credit was intended to secure.~~

History: Effective October 1, 1995; amended effective December 1, 2001; October 1, 2002.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-10. Reinsurance contract. Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of sections 45-03-07.1-01, 45-03-07.1-02, 45-03-07.1-03, 45-03-07.1-04, and 45-03-07.1-06 or otherwise in compliance with North Dakota Century Code section 26.1-31.2-01 after October 1, 1995, unless the reinsurance agreement:

1. Includes a proper insolvency clause; and

2. Includes a provision pursuant to North Dakota Century Code section 26.1-31.2-01 whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give such court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of such court or panel.

History: Effective October 1, 1995; amended effective October 1, 2002.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

CHAPTER 45-03-12

45-03-12-04. Securities lending, repurchase, reverse repurchase, and dollar roll transactions. An insurer may enter into a securities lending, repurchase, reverse repurchase, and dollar roll transaction with business entities, subject to the following requirements:

1. The insurer's board of directors shall adopt a written plan for engaging in investment practices consistent with the requirements of the written plan in section 45-03-12-05 and which specifies guidelines and objectives to be followed, such as:
 - a. A description of how cash received will be invested or used for general corporation purposes of the insurer;
 - b. Operational procedures to manage interest rate risk, counterparty default risk, the conditions under which proceeds from reverse repurchase transactions may be used in the ordinary course of business, and the use of acceptable collateral in a manner that reflects the liquidity needs of the transaction; and
 - c. The extent to which the insurer may engage in these transactions.

The board shall review and assess the insurer's technical investment and administrative capabilities and expertise before adopting a written plan concerning an investment practice.

2. For purposes of this section, acceptable collateral means:
 - a. As to securities lending transactions and for the purpose of calculating counterparty exposure amount, cash, cash equivalents, letters of credit, direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States or any agency of the United States, or by the federal national mortgage association or the federal home loan mortgage corporation;
 - b. As to repurchase transactions, cash, cash equivalents, and direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States or an agency of the United States, or by the federal national mortgage association or the federal home loan mortgage corporation; and
 - c. As to reverse repurchase transactions, cash and cash equivalents.
3. The insurer shall enter into a written agreement for all transactions authorized in this section other than dollar roll transactions. The written agreement shall require that each transaction terminate no more than one year from its inception or upon the earlier demand of the insurer.

The agreement shall be with the business entity counterparty, but for securities lending transactions, the agreement may be with an agent acting on behalf of the insurer, if the agent is a primary dealer in United States government securities recognized by the federal reserve bank of New York and if the agreement:

- a. Requires the agent to enter into separate agreements with each counterparty that are consistent with the requirements of this section; and
 - b. Prohibits securities lending transactions under the agreement with the agent or its affiliates.
4. Cash received in a transaction under this section shall be invested in accordance with North Dakota Century Code section 26.1-05-19 and in a manner that recognizes the liquidity needs of the transaction or used by the insurer for its general corporate purposes. For so long as the transaction remains outstanding, the insurer, its agent, or custodian shall maintain, as to acceptable collateral received in a transaction under this section, either physically or through the book entry systems of the federal reserve, depository trust company, or other securities depositories approved by the commissioner:
- a. Possession of the acceptable collateral;
 - b. A perfected security interest in the acceptable collateral; or
 - c. In the case of a jurisdiction outside of the United States, title to, or rights of a secured creditor to, the acceptable collateral.
5. For purposes of calculations made to determine compliance with this subsection, no effect will be given to the insurer's future obligation to resell securities, in the case of a repurchase transaction, or to repurchase securities, in the case of a reverse repurchase transaction. An insurer shall not enter into a transaction under this section if, as a result of and after giving effect to the transaction:
- a. The aggregate amount of securities then loaned, sold to, or purchased from any one business entity counterparty under this section would exceed five percent of its admitted assets. In calculating the amount sold to or purchased from a business entity counterparty under repurchase or reverse repurchase transactions, effect may be given to netting provisions under a master written agreement; or
 - b. The aggregate amount of all securities then loaned, sold to, or purchased from all business entities under this section would exceed forty percent of its admitted assets.

6. In a dollar roll transaction, the insurer shall receive cash in an amount at least equal to the market value of the securities transferred by the insurer in the transaction as of the transaction date.
7. The amount of collateral required for securities lending, repurchase, and reverse repurchase transactions is the amount required pursuant to the provision of the ~~purposes and procedures of the securities valuation office~~ national association of insurance commissioners accounting practices and procedures manual described in section 45-03-15-01.
8. Securities acquired by an insurer in a repurchase transaction shall not be sold in a reverse repurchase transaction, loaned in a securities lending transaction, or otherwise pledged.

History: Effective December 1, 2001; amended effective October 1, 2002.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-05-19

CHAPTER 45-06-11

45-06-11-01. Definitions. As used in this chapter:

1. "Enrollment date" means the first day of coverage or, if there is a waiting period, the first day of the waiting period.
2. "First day of coverage" means, in the case of an individual covered for benefits under a group health plan in the group market, the first day of coverage under the plan and, in the case of an individual covered by health insurance coverage in the individual market, the first day of coverage under the policy.
3. "Health carrier" means any entity that provides health insurance in this state. For purposes of this chapter, "health carrier" includes an insurance company, a prepaid limited health services corporation, a fraternal benefits society, a health maintenance organization, a nonprofit health services corporation, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation.
4. "Late enrollee" means an individual whose enrollment in a plan is a late enrollment.
5. "Late enrollment" means enrollment under a group health plan other than on the earliest date on which coverage can become effective under the terms of the plan, or a special enrollment date for the individual. If an individual ceases to be eligible for coverage under the plan by terminating employment, and then subsequently becomes eligible for coverage under the plan by resuming employment, only eligibility during the individual's most recent period of employment is taken into account in determining whether the individual is a late enrollee under the plan with respect to the most recent period of coverage. Similar rules apply if an individual again becomes eligible for coverage following a suspension of coverage that applied generally under the plan.
- ~~2:~~ 6. "Preexisting condition exclusion" means a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the effective date of coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before such date.
- ~~3:~~ 7. "Waiting period" means, with respect to a group health benefit plan and an individual who is a potential participant or beneficiary in the plan, the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the plan before an employee or dependent is eligible to enroll under the terms of a group health plan. If an employee or dependent enrolls as a late enrollee or

on a special enrollment date, any period before such late or special enrollment is not a waiting period. If an individual seeks and obtains coverage in the individual market, any period after the date the individual files a substantially complete application for coverage and before the first day of coverage is a waiting period.

History: Effective December 1, 1997; amended effective October 1, 2002.

General Authority: NDCC 26.1-08-12(4), 26.1-36.3-06(3)(b), 26.1-36.4-04

Law Implemented: NDCC 26.1-08-12(4), 26.1-36.3-06(3)(b), 26.1-36.4-04

45-06-11-03. Certification of coverage in the individual market.

1. This section applies to all health carriers offering health insurance coverage in the individual market.
2. A certificate of coverage must be provided, without charge, for individuals and dependents, who are or were covered under an individual health insurance policy, for the following:
 - a. An automatic certificate must be provided within a reasonable period of time after the individual ceases to be covered under the policy; and
 - b. A certificate of coverage must be provided upon request if the request is made, by or on behalf of an individual, within twenty-four months after coverage ends.
 - c. A certificate of coverage issued under this section must be provided in writing. However, a written certificate is not required if:
 - (1) The individual is entitled to receive a certificate of coverage;
 - (2) The individual requests that the certificate be sent to another plan or health carrier instead of to the individual;
 - (3) The plan or health carrier agrees to accept the information through means other than a written certificate; and
 - (4) The plan or health carrier receives the certification within a reasonable time.
 - d. A certificate of coverage issued under this section must include the following information in a form similar to that shown in appendix A:
 - (1) The date on which the certificate is issued;
 - (2) The name of the individual or dependent to whom the certificate applies and any other information necessary to identify the individual;

- (3) The name, address, and telephone number of the issuer of the certificate;
 - (4) A telephone number to call for further information;
 - (5) The date the qualifying previous coverage ended, unless the certificate indicates that the qualifying previous coverage is continuing as of the date of the certificate; and
 - (6) Either one of the following statements:
 - (a) A statement that the individual has at least eighteen months of qualifying previous coverage; or
 - (b) Both the date the individual first sought coverage, as evidenced by a substantially complete application, and the date qualifying previous coverage began.
- e. If an automatic certificate is provided under this section, the period that must be included on the certificate is the last period of continuous qualifying previous coverage ending on the date coverage ceased.
 - f. If an individual requests a certificate under this section, a certificate must be provided for each period of continuous qualifying previous coverage ending within the twenty-four-month period ending on the date of the request. A separate certificate may be provided for each such period of continuous qualifying previous coverage.
 - g. A health carrier may provide a single certificate for both an individual and the individual's dependents if it provides all the required information for each individual and dependent, and separately states the information that is not identical.
 - h. The certificate is required to be provided, without charge, to each individual described in this section or an entity requesting the certificate on behalf of the individual. The certificate may be provided by first-class mail. If the certificate or certificates are provided to the individual and the individual's spouse at the individual's last-known address, the requirements of this section are satisfied with respect to all individuals residing and dependents at that address. If the dependent's last-known address is different than the individual's last-known address, a separate certificate is required to be provided to the dependent at the dependent's last-known address.
 - i. A health carrier must establish a procedure for individuals to request and receive certificates under this section.

- j. If an automatic certificate is required to be provided under this section, and the individual entitled to receive the certificate designates another individual or entity to receive the certificate, the health carrier responsible for providing the certificate is permitted to provide the certificate to the designated party.
- k. If a certificate is required to be provided upon request under this section and the individual entitled to receive the certificate designates another individual or entity to receive the certificate, the health carrier responsible for providing the certificate is required to provide the certificate to the designated party.
- l. A health carrier is required to use reasonable efforts to determine any information needed for a certificate relating to the dependent coverage. In any case in which an automatic certificate is required to be furnished with respect to a dependent under this section, no individual certificate is required to be furnished until the health carrier knows, or making reasonable efforts should know, of the dependent's cessation of coverage under the plan.
- m. If a certificate furnished by a health carrier does not provide the name of any dependent of an individual covered by the certificate, the individual may, if necessary, use the procedures described in this section for demonstrating dependent status. In addition, an individual may, if necessary, use these procedures to demonstrate that a child was enrolled within thirty days of birth, adoption, or placement for adoption.
- n. A health carrier that cannot provide the names of dependents, or related coverage information, for purposes of providing a certificate of coverage for a dependent may satisfy the requirements of this section by providing the name of the participant covered by the health carrier and specifying that the type of coverage described in the certificate is for dependent coverage. This subdivision is in effect through June 30, 1998.
- o. For purposes of certificates provided at the request of, or on behalf of, an individual in this section, a health carrier must make reasonable efforts to obtain and provide the names of any dependent covered by the certificate ~~where~~ if such information is requested to be provided. If the certificate does not include the name of any dependent of an individual covered by the certificate, the individual may, if necessary, use the procedures described in this section for submitting documentation to establish that the qualifying previous coverage in the certificate applies to the dependent.
- p. A health carrier providing an automatic certificate that does not contain the name of a dependent must furnish a certificate within

twenty-one days after the individual ceases to be covered under the policy.

- q. If an individual enrolls in a group health benefit plan with respect to which the plan or health carrier uses the alternative method of counting qualifying previous coverage described in this section, the individual provides a certificate of coverage under this section, and the plan or health carrier in which the individual enrolls so requests, the entity that issued the certificate, the "prior entity", is required to disclose promptly to a requesting plan or health carrier, the "requesting entity", the information set forth in this section. The prior entity furnishing the information under this subsection may charge the requesting entity for the reasonable cost of disclosing such information.
- r. Every health carrier must allow individuals to establish qualifying previous coverage by means other than a certificate. The health carrier is required to take into account all information that it obtains or that is presented on behalf of an individual in making its determination, based on the relevant facts and circumstances, whether the individual has qualifying previous coverage and is entitled to offset all or a portion of any preexisting condition exclusion period. The health carrier shall treat the individual as having provided a certificate if the individual attests to the period of qualifying previous coverage, presents relevant corroborating evidence, and cooperates with the plan or health carrier's efforts to verify the coverage. While a health carrier may refuse to credit coverage if the individual fails to cooperate with efforts to verify coverage, the health carrier may not consider an individual's inability to obtain a certificate as evidence of the absence of qualifying previous coverage.

History: Effective December 1, 1997; amended effective October 1, 2002.

General Authority: NDCC 26.1-08-12(4), 26.1-36.3-06(3)(b), 26.1-36.4-04

Law Implemented: NDCC 26.1-08-12(4), 26.1-36.3-06(3)(b), 26.1-36.4-04

. 45-06-11-04. Certification of coverage in the group market.

1. A health carrier offering group health insurance coverage under a group health benefit plan is required to provide certificates of qualifying previous coverage in accordance with this section.
2. Any entity required to provide a certificate under this section for an individual is deemed to have satisfied the requirements of this section for that individual if another party provides the certificate, but only to the extent the information related to the individual's qualifying previous coverage and waiting period is provided by the other party.

3. A health carrier is not required to provide information regarding coverage provided to an individual by another party.
4. If an individual's coverage under a health carrier's policy ceases before an individual's coverage under the plan ceases, the health carrier is required to provide sufficient information to the plan to enable a certificate to be provided by the plan, after cessation of the individual's coverage under the plan, that reflects the period of coverage under the policy.
5. A certificate of coverage must be provided, without charge, for individuals and dependents, who are or were covered under a group health insurance policy, for the following:
 - a. An automatic certificate must be provided in the following circumstances:
 - (1) In the case of an individual who is a qualified beneficiary entitled to elect Consolidated Omnibus Budget Reconciliation Act [Pub. L. 99-272; 100 Stat. 82] continuation coverage, an automatic certificate is required to be provided at the time the individual would lose coverage under the plan in the absence of Consolidated Omnibus Budget Reconciliation Act continuation coverage or alternative coverage elected instead of Consolidated Omnibus Budget Reconciliation Act continuation coverage.
 - (2) In the case of an individual who is not a qualified beneficiary entitled to elect Consolidated Omnibus Budget Reconciliation Act continuation coverage, an automatic certificate is required to be provided at the time the individual ceases to be covered under the plan. A health carrier satisfies this requirement if it provides the certificate within a reasonable time period after the individual ceases to be covered under the plan. In the case of an individual who is entitled to elect continuation coverage under North Dakota Century Code section 26.1-36-23 or 26.1-36-23.1, an automatic certificate is required to be furnished no later than thirty-one days after the individual ceases to be covered under the plan.
 - (3) In the case of an individual who has elected Consolidated Omnibus Budget Reconciliation Act continuation coverage, an automatic certificate must be provided at the time the individual's coverage under the plan ceases. The health carrier satisfies this requirement if it provides the automatic certificate within a reasonable time after coverage ceases. An automatic certificate is required to be provided to an individual regardless of whether the individual has previously received an automatic certificate.

- b. A certificate of coverage must be provided upon request if the request is made, by or on behalf of an individual, within twenty-four months after coverage ends.
6. A certificate of coverage issued pursuant to this section must be provided in writing. However, a written certificate is not required if:
 - a. The individual is entitled to receive a certificate of coverage;
 - b. The individual requests that the certificate be sent to another plan or health carrier instead of to the individual;
 - c. The plan or health carrier agrees to accept the information through means other than a written certificate; and
 - d. The plan or health carrier receives the certification within a reasonable time.
7. A certificate of coverage issued under this section must include the following information in a form similar to that shown in appendix B:
 - a. The date on which the certificate is issued;
 - b. The name of the individual or dependent to whom the certificate applies and any other information necessary to identify the individual;
 - c. The name, address, and telephone number of the issuer of the certificate;
 - d. A telephone number to call for further information;
 - e. The date qualifying previous coverage ended, unless the certificate indicates the qualifying previous coverage is continuing as of the date of the certificate; and
 - f. Either:
 - (1) A statement that the individual has at least eighteen months of qualifying previous coverage; or
 - (2) The date any waiting period began and the date qualifying previous coverage began.
8. If an automatic certificate is provided under this section, the period that must be included on the certificate is the last period of continuous qualifying previous coverage ending on the date coverage ended.

9. If an individual requests a certificate under this section, a certificate must be provided for each period of continuous qualifying previous coverage ending within the twenty-four-month period ending on the date of the request. A separate certificate may be provided for each such period of continuous qualifying previous coverage.
10. A certificate may provide information with respect to both a participant and the participant's dependents if the information is identical for each individual or, if the information is not identical, certificates may be provided on one form if the form provides all the required information for each individual and separately states the information that is not identical.
11. The certificate is required to be provided to each individual described in this section or an entity requesting the certificate on behalf of the individual. The certificate may be provided by first-class mail. If the certificate or certificates are provided to the participant and the participant's spouse at the participant's last-known address, the requirements of this section are satisfied with respect to all individuals residing at that address. If the dependent's last-known address is different than the participant's last-known address, a separate certificate is required to be provided to the dependent at the dependent's last-known address.
12. A health carrier must establish a procedure for individuals to request and receive certificates under this section.
13. If an automatic certificate is required to be provided under this section, and the individual entitled to receive the certificate designates another individual or entity to receive the certificate, the health carrier responsible for providing the certificate is permitted to provide the certificate to the designated party.
14. If a certificate is required to be provided upon request under this section and the individual entitled to receive the certificate designates another individual or entity to receive the certificate, the health carrier responsible for providing the certificate is required to provide the certificate to the designated party.
15. A health carrier is required to use reasonable efforts to determine any information needed for a certificate relating to the dependent coverage. In any case in which an automatic certificate is required to be furnished with respect to a dependent under this section, no individual certificate is required to be furnished until the health carrier knows, or making reasonable efforts should know, of the dependent's cessation of coverage under the plan.
16. If a certificate furnished by a health carrier does not provide the name of any dependent of an individual covered by the certificate,

the individual may, if necessary, use the procedures described in this section for demonstrating dependent status. In addition, an individual may, if necessary, use these procedures to demonstrate that a child was enrolled within thirty days of birth, adoption, or placement for adoption.

17. A health carrier that cannot provide the names of dependents, or related coverage information, for purposes of providing a certificate of coverage for a dependent may satisfy the requirements of this section by providing the name of the participant covered by the health carrier and specifying that the type of coverage described in the certificate is for dependent coverage. This subsection is in effect through June 30, 1998.
18. For purposes of certificates provided on the request of, or on behalf of, an individual in this section, a health carrier must make reasonable efforts to obtain and provide the names of any dependent covered by the certificate ~~where~~ when such information is requested to be provided. If the certificate does not include the name of any dependent of an individual covered by the certificate, the individual may, if necessary, use the procedures described in this section for submitting documentation to establish that the qualifying previous coverage in the certificate applies to the dependent.
19. Issuers of group and individual health insurance are required to provide certificates of any qualifying previous coverage they provide in the group or individual health insurance market even if the coverage is provided in connection with an entity or program that is not itself required to provide a certificate because it is not subject to the group market provisions.
20. If an individual enrolls in a group health benefit plan with respect to which the plan or health carrier uses the alternative method of counting qualifying previous coverage described in this section, the individual provides a certificate of coverage under this section, and the plan or health carrier in which the individual enrolls so requests, the entity that issued the certificate, the "prior entity", is required to disclose promptly to a requesting plan or health carrier, the "requesting entity", the information set forth in this section. The prior entity furnishing the information under this subsection may charge the requesting entity for the reasonable cost of disclosing such information.
21. Every health carrier must allow individuals to establish qualifying previous coverage by means other than a certificate. The health carrier is required to take into account all information that it obtains or that is presented on behalf of an individual in making its determination, based on the relevant facts and circumstances, whether the individual has qualifying previous coverage and is entitled to offset all or a portion of any preexisting condition exclusion period. The health carrier shall treat the individual as having provided a certificate if the individual attests to the period of qualifying previous coverage, presents relevant

corroborating evidence, and cooperates with the plan or health carrier's efforts to verify the coverage. While a health carrier may refuse to credit coverage where the individual fails to cooperate with efforts to verify coverage, the health carrier may not consider an individual's inability to obtain a certificate as evidence of the absence of qualifying previous coverage.

22. Every health carrier offering health insurance on a group basis ~~is~~ using the alternative method of crediting coverage is required to allow an individual to demonstrate categories of qualifying previous coverage in a fashion similar to that outlined in subsection 21. Likewise, a health carrier offering health insurance on a group basis must allow an individual to demonstrate dependent status in a fashion similar to that outlined in subsection 21.

History: Effective December 1, 1997; amended effective October 1, 2002.

General Authority: NDCC 26.1-08-12(4), 26.1-36.3-06(3)(b), 26.1-36.4-04

Law Implemented: NDCC 26.1-08-12(4), 26.1-36.3-06(3)(b), 26.1-36.4-04

CERTIFICATE OF INDIVIDUAL HEALTH INSURANCE COVERAGE

***IMPORTANT**—This certificate provides evidence of your prior health coverage. You may need to furnish this certificate if you become eligible under a group health plan that excludes coverage for certain medical conditions that you have before you enroll, if medical advice, diagnosis, care, or treatment was recommended or received for the condition during the six months before your enrollment in the new plan. If you become covered under another group health plan, check with the plan administrator to see if you need to provide this certificate. You may also need this certificate to establish your right to buy coverage for yourself or your family, with no exclusion for previous medical conditions, if you are not covered under a group health plan.

1. Date of this certificate: _____
2. Name of policyholder: _____
3. Identification number of policyholder: _____
4. Name of any dependents to which this certificate applies: _____

5. Name, address, and telephone number of issuer responsible for providing this certificate:

6. For further information, call: _____
7. If all individuals identified in lines 2 and 4 have at least 18 months of creditable coverage (disregarding periods of coverage before a 63-day break), check here _____ and skip lines 8 and 9.
8. Date coverage began: _____
9. Date that a substantially completed application was received from this policyholder: _____
10. Date coverage ended: _____ (or check here if coverage is continuing as of the date of this certificate: _____).

NOTE: Separate certificates will be furnished if information is not identical for the participant and each beneficiary.

CERTIFICATE OF GROUP HEALTH PLAN COVERAGE

***IMPORTANT**—This certificate provides evidence of your prior health coverage. You may need to furnish this certificate if you become eligible under a group health plan that excludes coverage for certain medical conditions that you have before you enroll. This certificate may need to be provided if medical advice, diagnosis, care, or treatment was recommended or received for the condition within the six-month period prior to your enrollment in the new plan. If you become covered under another group health plan, check with the plan administrator to see if you need to provide this certificate. You may also need this certificate to buy, for yourself or your family, an insurance policy that does not exclude coverage for medical conditions that are present before you enroll.

1. Date of this certificate: _____
2. Name of group health plan: _____
3. Name of participant: _____
4. Identification number of participant: _____
5. Name of any dependents to which this certificate applies:

6. Name, address, and telephone number of plan administrator or issuer responsible for providing this certificate:

7. For further information, call: _____
8. If the individuals identified in line 3 and line 5 have at least 18 months of creditable coverage (disregarding periods of coverage before a 63-day break), check here _____ and skip lines 9 and 10.
9. Date waiting period or affiliation period (if any) began: _____
10. Date coverage began: _____
11. Date coverage ended: _____ (or check here if coverage is continuing as of the date of this certificate: _____).

NOTE: Separtate certificates will be furnished if information is not identical for the the participant and each beneficiary.

CHAPTER 45-12-01

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

1. "Alteration" means a structural modification of or a departure from an original or existing construction.
2. "Apartments" means all multiple dwellings, including condominiums.
3. "Approved" means approved by the commissioner.
4. "A.S.M.E. Code" means the Boiler and Pressure Vessel Construction Code of the American society of mechanical engineers of which sections I, II, IV, V, VIII (divisions 1, 2, and 3), IX, and X, ~~1998~~ 2001 edition, are hereby adopted by the commissioner and incorporated by reference as a part of this article. A copy of the American Society of Mechanical Engineers Code is on file at the office of the boiler inspection program. The American Society of Mechanical Engineers Code may be obtained from the American society of mechanical engineers headquarters at 3 park avenue, New York, New York 10016-5990.
5. "Boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum for use externally to itself by the direct application of heat from the combustion of fuels or from electricity or nuclear energy. The term boiler includes fired units for heating or vaporizing liquids other than water when these units are separate from processing systems and are complete within themselves, as provided under North Dakota Century Code section 26.1-22.1-01.
6. "Certificate inspection" means an inspection, the report of which is used by the chief boiler inspector to decide whether a certificate may be issued under North Dakota Century Code section 26.1-22.1-10.
7. "Certificate of competency" means a certificate issued by a jurisdiction indicating that a person has passed an examination prescribed by the national board of boiler and pressure vessel inspectors.
8. "Chief inspector" means the chief boiler inspector appointed by the commissioner to serve in the capacity as stated by law.
9. "Commissioner" means the insurance commissioner of North Dakota.
10. "Condemned boiler" means a boiler that has been inspected and declared unsafe or disqualified by legal requirements by an inspector qualified to take such action who has applied a stamping or marking designating its rejection.

11. "Deputy inspector" means a boiler inspector or inspectors employed by the commissioner to assist the chief inspector in making inspections of boilers.
12. "Existing installations" includes any boiler constructed, installed, or placed in operation before July 1, 1973.
13. "External inspection" means an inspection made when a boiler is in operation.
14. "Fusion welding" means a process of welding metals in a molten or molten and vaporous state, without the application of mechanical pressure or blows. Such welding may be accomplished by the oxyacetylene or oxyhydrogen flame or by the electric arc. Thermic welding is also classed as fusion.
15. "High pressure, high temperature water boiler" means a water boiler operating at pressures exceeding one hundred sixty pounds per square inch gauge [1103.17 kilopascals] or temperatures exceeding two hundred fifty degrees Fahrenheit [121.16 degrees Celsius]. For practical purposes it must be deemed the same as a power boiler.
16. "Hot water supply boiler" means a fired boiler used exclusively to supply hot water for purposes other than space heating and includes all service-type and domestic-type water heaters not otherwise exempt by North Dakota Century Code section 26.1-22.1-06.
17. "Inspector" means the chief boiler inspector or any deputy inspector or special inspector.
18. "Internal inspection" means an inspection made when a boiler is shut down and handholes and manholes are opened for inspection of the interior.
19. "Low pressure and heating boiler" means a boiler operated at pressures not exceeding fifteen pounds per square inch gauge [103 kilopascals] for steam or at pressures not exceeding one hundred sixty pounds per square inch gauge [1103.17 kilopascals] and temperatures not exceeding two hundred fifty degrees Fahrenheit [121.1 degrees Celsius] for water.
20. "Major repair" means a repair upon which the strength of a boiler would depend. Major repairs are those that are not of a routine nature as described in the National Board Inspection Code.
21. "Miniature boiler" means any boiler that does not exceed any of the following limits:
 - a. Sixteen-inch [40.64-centimeter] inside diameter of shell.

- b. Twenty square feet [1.86 square meter] heating surface.
 - c. Five cubic feet [.142 cubic meter] gross volume, exclusive of casing and insulation.
 - d. One hundred pounds per square inch gauge [689.48 kilopascals] maximum allowable working pressure.
22. "National board" means the national board of boiler and pressure vessel inspectors, 1055 crupper avenue, Columbus, Ohio 43229, whose membership is composed of the chief inspectors of government jurisdictions who are charged with the enforcement of the provisions of the American Society of Mechanical Engineers Code.
23. "National Board Inspection Code" means the manual for boiler and pressure vessel inspectors supplied by the national board. The National Board Inspection Code, ~~4998~~ 2001 edition, is hereby adopted by the commissioner and incorporated by reference as a part of this article. Copies of this code may be obtained from the national board at 1055 crupper avenue, Columbus, Ohio 43229.
24. "New boiler installations" includes all boilers constructed, installed, or placed in operation after July 1, 1973.
25. "Nonstandard boiler" means a boiler that does not bear the state stamp, the national board stamping, the American society of mechanical engineers stamp, or the stamp of any state or political subdivision which has adopted a standard of construction equivalent to that required by this article.
26. "Owner or user" means any person, firm, corporation, state, or political subdivision owning or operating any boiler which is not specifically exempt under North Dakota Century Code section 26.1-22.1-06 within North Dakota.
27. "Power boiler" means a closed vessel in which steam or other vapor (to be used externally to itself) is generated at a pressure of more than fifteen pounds per square inch gauge [103 kilopascals] by the direct application of heat.
28. "Reciprocal commission" means a commission issued by the commissioner to persons who have passed a written examination prescribed by the national board and who hold a national board commission issued by the national board, or to persons who have passed the written examination prescribed by the national board and are employed by a self-insured corporation making their own inspections.

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

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

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

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-14

CHAPTER 45-12-02

45-12-02-18. Reports of welded repair or alterations. All alterations and major repairs made to boilers in North Dakota must be reported on the appropriate national board report of welded repair or alteration form R-1 and this form must be completely filled out. The completed form must be sent to the chief boiler inspector by the repair concern effecting the repair to the chief boiler inspector or alteration within thirty days of the completion of the repair or alteration.

Subject to the administrative procedures of the boiler inspection program and the approval of the inspector, repairs of a routine nature may be given prior approval or the requirement for the repair report may be waived. The National Board Inspection Code must be used as a guideline in determining repairs of a routine nature.

History: Effective June 1, 1994; amended effective October 1, 2002.

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-14

CHAPTER 45-12-03

45-12-03-01.1. Boiler inspection fees. The following will be charged for boiler inspections:

1. High pressure boilers.
 - a. Internal inspections.

| | Fee |
|--|-----------------------------------|
| - 50 square feet [4.65 square meters] or less of heating surface | \$50.00 <u>\$60.00</u> |
| - Over 50 square feet [4.65 square meters] and not over 500 square feet [46.45 square meters] | 60.00 <u>\$70.00</u> |
| - Over 500 square feet [46.45 square meters] and not over 4,000 square feet [371.61 square meters] | 70.00 <u>\$80.00</u> |
| - Over 4,000 square feet [371.61 square meters] of heating surface | 80.00 <u>\$90.00</u> |
 - b. External inspections.

| | |
|--|------------------------------------|
| - 50 square feet [4.65 square meters] of heating surface or less; 100 KW or less | \$ 35.00 <u>\$40.00</u> |
| - Over 50 square feet [4.65 square meters] of heating surface; over 100 KW | 45.00 <u>\$50.00</u> |
2. Low pressure boilers.
 - a. Internal inspections.

| | |
|------------------|------------------------------------|
| - Without manway | \$ 50.00 <u>\$60.00</u> |
| - With manway | 60.00 <u>\$70.00</u> |
 - b. External inspections.

| | |
|--|------------------------------------|
| - Hot water heat and low pressure steam | \$ 35.00 <u>\$40.00</u> |
| - Hot water supply | 20.00 <u>\$25.00</u> |
| - Additional boilers at same account for same day inspection (account = same owner, management firm, user, etc.) | 25.00 <u>\$35.00</u> |
3. Steam traction engines.

| | |
|-------------------------------|------------------------------------|
| - Internal | \$ 45.00 <u>\$50.00</u> |
| - External | 40.00 <u>\$45.00</u> |
| - Hydrostatic test | 50.00 <u>\$55.00</u> |
| - Ultrasonic survey, per hour | 35.00 <u>\$40.00</u> |
4. Multiple boiler fee cap. Inspection fees for the same account, per day, must be as stated in this fee schedule, or at the flat rate of ~~three hundred~~

~~twenty-five~~ four hundred dollars, whichever is less. This is in addition to the ~~state~~ certificate fee noted in subsection 5.

- | | |
|---|--------------------|
| 5. State certificate <u>Certificate</u> fee, per certificate <u>as</u> | \$15.00 |
| <u>required by North Dakota Century Code section</u> | <u>\$20.00</u> |
| <u>26.1-22.1-10</u> | |

History: Effective June 1, 1994; amended effective January 1, 2000; October 1, 2002.

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-14

45-12-03-17. Major repairs and alterations. If a major repair or alteration is necessary, an inspector must be called for consultation and advice as to the best method of making such repair or alteration. After such repair or alteration is made, it is subject to the approval of the inspector.

History: Effective June 1, 1994; amended effective October 1, 2002.

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-14

45-12-03-19. Repairs to boilers.

1. **Rejection of repair.** Any riveted or welded repair made to a boiler in North Dakota which does not meet this article's requirements will be cause for rejection of the repair by an inspector.
2. **Rejection of welds.** Any weld found to contain heavy slag inclusions or to be porous or found to be cracked will be reason for rejection of the weld and either part or all of the weld must be removed by grinding or shipping chipping and the weld must be replaced.

History: Effective June 1, 1994; amended effective October 1, 2002.

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-14

CHAPTER 45-12-04

45-12-04-02. Appurtenances - Piping and tests.

1. The inspector shall inspect all boilers and connected appurtenances for their safe operation and all pressure piping connecting them to the appurtenances and all piping up to and including the first stop valve, or the second stop valve when two are required.
2. Any pressure piping to the boiler, such as water column, blowoff valve, feedwater regulator, super heater, economizer, stop valves, etc., which are shipped connected to the boiler as a unit, must be hydrostatically tested with the boiler and witnessed by an inspector.
3. All economizers and super heaters, whether separately fired or not, and whether located within the scope of boiler external piping or not, must be constructed to section I of the American Society of Mechanical Engineers Code.
4. The chief boiler inspector may waive American society of mechanical engineers section I boiler external piping requirements for new and secondhand boilers of less than forty horsepower output if the boiler external piping is mechanically installed (i.e., no welding), the piping does not exceed two-inch [5.08 centimeters] national pipe standard in size, the piping is schedule eighty minimum, and the boiler maximum allowable working pressure does not exceed one hundred fifty pounds per square inch [1034.22 kilopascals] gauge.

History: Effective June 1, 1994; amended effective October 1, 2002.

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-14

CHAPTER 45-12-09

45-12-09-11. Feedwater connections.

1. Feedwater connections must be independent of any water gauge connections and be made to the condensate return pipe or reservoir of the condensate return tank.
2. Alternatively, makeup water or water treatment may be introduced through an independent connection. The water flow from the independent connection may not discharge directly against parts of the boiler exposed to direct radiant heat from the fire. Makeup water or water treatment may not be introduced through openings or connections provided for inspection or cleaning, safety valve, safety relief valve, blowoff, water column, water gauge glass, pressure gauge, or temperature gauge.
3. When there is more than one boiler connected to a system, each boiler must have an independent feedwater line.
4. There must be a stop valve and a check valve in the feedwater line at the boiler. For hot water heating boilers, the check valve must be a backflow preventer approved by the State Plumbing Code, ~~1999~~ 2000 edition, ~~1996 addenda~~.
5. Hot water heating boilers, not equipped with an approved low-water fuel cutoff, must be equipped with an automatic feeding device or pressure reducing valve method of feeding, in addition to a manual bypass capable of feeding the boiler at a pressure of six percent above safety relief valve setting.

History: Effective June 1, 1994; amended effective January 1, 2000; October 1, 2002.

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-14

45-12-09-19. Modular hot water heating boilers.

1. Individual modules must be limited to a maximum input of four hundred thousand British thermal units [4.22×10 to the 8th power joules] per hour (gas), three gallons [11.36 liters] per hour (oil), or one hundred fifteen ~~kilowatts-hours~~ kilowatt-hours (electricity).
2. Each module of a modular hot water heating boiler must be equipped with the following:
 - a. Pressure/altitude gauge (see section 45-12-09-12).
 - b. Thermometer (see section 45-12-09-13).

- c. ~~High-limit~~ Operating temperature control (see subsection 4 2 of section 45-12-09-14).
 - d. Safety relief valve (see section 45-12-09-07).
 - e. Drain valve (see section 45-12-09-20).
3. The assembled modular hot water heating boiler must be equipped with the following:
- a. ~~Operating~~ High-limit temperature control (see subsection 2 1 of section 45-12-09-14).
 - b. Low-water fuel cutoff (see section 45-12-09-18).
 - c. Makeup feedwater connection (see section 45-12-09-11).
 - d. Expansion tank provisions (see section 45-12-09-15).
 - e. Stop valves (see section 45-12-09-10).

History: Effective June 1, 1994; amended effective October 1, 2002.

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-14

CHAPTER 45-12-10

45-12-10-01. 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, 2, or 3, ~~1998~~ 2001 edition, 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 Boiler and Pressure Vessel Code, section VIII, division 1, 2, or 3, ~~1998~~ 2001 edition, with these exceptions:

1. Pressure vessels under federal control.
2. Pressure vessels that do not exceed four cubic feet [~~thirty~~ 30 United States gallons] in volume and two hundred fifty pounds per square inch gauge [1723.70 kilopascals] 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 gauge [4136.88 kilopascals] in pressure.
4. Unfired pressure vessels installed or ordered prior to November 1, 1987. However, these unfired pressure vessels must be maintained in a safe operating condition using ANSI/NB-23 and ANSI/API-510 as guidelines.

Unfired pressure vessels referenced by this section must be protected with the American society of mechanical engineers stamped pressure relief devices as defined in section VIII of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, ~~1998~~ 2001 edition.

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.

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

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-14

45-12-10-02. Application of standards - Repairs.

4. These rules apply only to new construction, except as noted below:

- a. 1. Reinstalled pressure vessels must meet the rules for new construction. Exception: National board registration is required only for those vessels ordered and constructed after November 1, 1987.

- b. 2. Repairs to unfired pressure vessels and to safety and safety relief valves for those vessels:
 - (+) a. Repairs to safety valves and safety relief valves must be such that valve function is not impaired and the repaired valve will perform to the standards for which it was originally constructed. It is recommended that these repairs be made by a firm in possession of a valid "VR" certificate of authorization from the national board of boiler and pressure vessel inspectors.

 - (2) b. Repairs to unfired pressure vessels must be such that vessels repaired will be returned to a safe and satisfactory operating condition, provided there is not deviation from the original design. It is recommended that these repairs be made by a firm in possession of a valid "R" certificate of authorization from the national board of boiler and pressure vessel inspectors.

 - (3) c. The National Board Inspection Code (ANSI/NB-23, 1998 2001 edition) and the American Petroleum Institute Code (ANSI/API-510, 1997 edition) cover repair and alteration procedures. ANSI/API-510 may be used to cover the maintenance inspection, repair, alteration, and rerating procedure for pressure vessels used by the petroleum and chemical process industries. It is intended that ANSI/NB-23 cover installations other than those covered by ANSI/API-510.

- e. 3. Alterations to unfired pressure vessels:
 - (+) a. Alterations, as defined in ANSI/NB-23, must be made by a national board "R" certificate holder.

 - (2) b. Alterations may also be made by an organization operating under the provisions of ANSI/API-510, provided the alteration is within the scope of ANSI/API-510.

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

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-14

TITLE 50
STATE BOARD OF MEDICAL EXAMINERS

AUGUST 2002

CHAPTER 50-03-01

50-03-01-03. Supervision contract requirements. Upon undertaking the supervision of a physician assistant as contemplated by this chapter, the physician shall file with the board a copy of the contract establishing that relationship. That contract must be approved by the board of medical examiners.

The contract must be confirmed annually by completing and filing with the board such forms as are requested and provided by the board. The board must be notified within seventy-two hours of any contract termination or modification.

Every physician who supervises a physician assistant under this chapter must practice medicine in North Dakota. No physician may act as a supervising physician for any physician assistant who is ~~that physician's spouse~~ or a member of the physician's immediate family unless specific authorization for such supervision has been approved by the board of medical examiners. For purposes of this section, "immediate family" means a spouse, parent, child, or sibling of the supervising physician.

History: Amended effective July 1, 1988; July 1, 1994; April 1, 1996; August 1, 2002.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-17-02(10)

50-03-01-10.1. Disciplinary action. The board is authorized to take disciplinary action against a licensed physician assistant by any one or more of the following means, as it may find appropriate:

1. Revocation of license.
2. Suspension of license.
3. Probation.
4. Imposition of stipulations, limitations, or conditions relating to the practice of medicine.

duties of a physician assistant

5. Letter of censure.
6. Require the licensee to provide free public or charitable service for a defined period.
7. Impose fines, not to exceed five thousand dollars for any single disciplinary action. Any fines collected by the state board of medical examiners must be deposited in the state general fund.

History: Effective August 1, 2002.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-17-02(10)

50-03-01-11. Revocation of license Grounds for disciplinary action.

The board may deny, ~~suspend, or revoke licensure of~~ an application for licensure or may take disciplinary action against a physician assistant upon any of the following grounds:

1. Failing to demonstrate the qualifications for licensure under this act or the regulations of the board.
2. Soliciting or receiving any form of compensation from any person other than the assistant's registered employer for services performed as a physician assistant.
3. ~~Willfully or negligently divulging a professional confidence or discussing a patient's condition or a physician's diagnosis without the express permission of the physician. The use of any false, fraudulent, or forged statement or document or the use of any fraudulent, deceitful, dishonest, or immoral practice in connection with any of the licensing requirements.~~
4. The making of false or misleading statements about the physician assistant's skill or the efficacy of any medicine, treatment, or remedy.
5. The conviction of any misdemeanor, determined by the board to have a direct bearing upon a person's ability to serve the public as a physician assistant, or any felony. A license may not be withheld contrary to the provisions of North Dakota Century Code chapter 12.1-33.
6. The habitual or excessive use of intoxicants or drugs.
7. Physical or mental disability materially affecting the ability to perform the duties of a physician assistant in a competent manner.
- 5- 8. Aiding or abetting the practice of medicine by a person not licensed by the board or by an incompetent or impaired person.

- ~~6.~~ 9. Gross negligence in performing the duties, tasks, or functions assigned to the assistant by a supervising physician the performance of the person's duties as a physician assistant.
- ~~7.~~ 10. Manifest incapacity or incompetence to perform as a physician assistant.
 - ~~8.~~ Conduct unbecoming in a person licensed as a physician assistant or detrimental to the best interests of the public or the profession.
 - 11. The willful or negligent violation of the confidentiality between physician assistant and patient, except as required by law.
 - 12. The performance of any dishonorable, unethical, or unprofessional conduct.
 - 13. Obtaining any fee by fraud, deceit, or misrepresentation.
- ~~9.~~ 14. Repeated or willful violation of the contract of employment on file with the board.
 - 15. The violation of any provision of a physician assistant practice act or the rules and regulations of the board, or any action, stipulation, condition, or agreement imposed by the board or its investigative panels.
- ~~10.~~ 16. Representing himself or herself to be a physician.
 - ~~11.~~ Fraud or deceit in obtaining initial licensure as a physician assistant, the renewal of licensure as a physician assistant, or in the practice of the physician assistant profession.
 - 17. The advertising of the person's services as a physician assistant in an untrue or deceptive manner.
 - 18. Sexual abuse, misconduct, or exploitation related to the licensee's performance of the licensee's duties as a physician assistant.
 - 19. The prescription, sale, administration, distribution, or gift of any drug legally classified as a controlled substance or as an addictive or dangerous drug for other than medically accepted therapeutic purposes.
 - 20. The failure to comply with the reporting requirements of North Dakota Century Code section 43-17.1-05.1.
 - 21. A continued pattern of inappropriate care as a physician assistant.

22. The use of any false, fraudulent, or deceptive statement in any document connected with the performance of the person's duties as a physician assistant.
23. The prescribing, selling, administering, distributing, or giving to oneself or to one's spouse or child any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug.
24. The violation of any state or federal statute or regulation relating to controlled substances.
25. The imposition by another state or jurisdiction of disciplinary action against a license or other authorization to perform duties as a physician assistant based upon acts or conduct by the physician assistant that would constitute grounds for disciplinary action as set forth in this section. A certified copy of the record of the action taken by the other state or jurisdiction is conclusive evidence of that action.
26. The lack of appropriate documentation in medical records for diagnosis, testing, and treatment of patients.
27. The failure to furnish the board or the investigative panel, their investigators or representatives, information legally requested by the board or the investigative panel.

History: Amended effective July 1, 1988; November 1, 1993; April 1, 1996; October 1, 1999; August 1, 2002.

General Authority: NDCC 43-17-13

Law Implemented: NDCC 43-17-02(10)

CHAPTER 50-04-01

50-04-01-03. Credits accepted. The board accepts the following as meeting its requirements for board approval:

1. American medical association (AMA) physician's recognition award category 1 credit certified by continuing education providers who are accredited by:
 - a. The accreditation council for continuing medical education (ACCME); or
 - b. Organizations recognized by the ACCME as accrediters of CME for physicians.
2. American osteopathic association (AOA) category 1 credit certified by continuing education providers who are accredited by the AOA.
3. American academy of family physicians prescribed credit and American academy of family physicians elective credit which has been approved for category 1 credit by that organization.
4. Courses approved for section 1 credit as defined by the royal college of physicians and surgeons of Canada ~~at a maintenance of competence rating of 1.5 or greater.~~
5. Other courses approved by the North Dakota state board of medical examiners as being equivalent to AMA or AOA category 1 credit.

Except in the case of any requests submitted pursuant to subsection 5, it is the responsibility of the licensee to verify an appropriate credit designation with the source of the program, not with the board. All licensees are encouraged to verify an appropriate credit designation before taking any particular course.

History: Effective November 1, 1998; amended effective August 1, 2002.

General Authority: NDCC 43-17-27.1

Law Implemented: NDCC 43-17-27.1

NOVEMBER 2002

CHAPTER 50-02-13

50-02-13-02.1. License requirement - Exception. The provisions of section 50-02-13-02 notwithstanding, a resident who is enrolled in a postgraduate training program in another state may complete a rotation in this state without obtaining a North Dakota license if:

1. The out-of-state postgraduate training program is accredited by the accreditation council for graduate medical education;
2. Participation in the North Dakota rotation is an official component of the participant's postgraduate training program;
3. The North Dakota rotation will be completed within ninety days or less; and
4. The participant holds a valid unencumbered license to participate in postgraduate training programs in the state in which the participant's postgraduate training program is located. If that state does not require residents to hold a license, then the individual must obtain a North Dakota license before beginning the rotation in this state.

History: Effective November 1, 2002.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-17-18

TITLE 67
DEPARTMENT OF PUBLIC INSTRUCTION

NOVEMBER 2002

CHAPTER 67-09-01

67-09-01-01. Definitions. For purposes of this article:

1. "Application" means the appropriate construction approval application provided by the department ~~or one sanctioned by the department,~~ including all required supporting documentation.
2. "Board" means the North Dakota state board of public school education.
3. "Construction" means construction, purchase, repair, improvement, renovation, or modernization of any school building or facility which is estimated by the school board to cost more than twenty-five thousand dollars.
4. "Consult" means to meet with, discuss data and plans, and seek advice and counsel.
5. "Department" means the North Dakota department of public instruction.
6. "District" means a North Dakota public school district.
7. "Emergency construction" means any new construction or remodeling construction that is requested ~~as the result~~ because of damage or destruction of buildings or facilities by as a result of fire, wind tornado, flood, or other act of God.
8. "Facility" includes a parking lot, athletic complex, or any other improvement to real property owned by the district.
9. "Facility plan" means the school district's facility plan required for new construction, or remodeling construction estimated to cost one hundred fifty thousand dollars or more, completed on forms provided or sanctioned by the department.

10. "New construction" means any construction that provides additional area to the current buildings or facilities and is estimated to cost more than twenty-five thousand dollars.
11. "Project" means the building, facility, or improvement that would result from the construction.
12. "Remodeling construction" means any construction that improves current buildings or facilities and is estimated to cost more than twenty-five thousand dollars.
13. "Stable" enrollment may only be demonstrated by using either of the following methods:
 - a. The enrollment for the district has remained the same or has increased over the three-year period prior to the year the application is made; or
 - b. The enrollment as projected by the department using the cohort-survival method will remain the same or will increase over the five-year period subsequent to the year the application is made.
- 42- 14. "Superintendent" means the North Dakota superintendent of public instruction.
- 43- 15. "Technical assistance" means counsel, advice, and involvement in the completion of the application and facility plan.

History: Effective April 1, 1994; amended effective November 1, 2002.

General Authority: NDCC 15.1-36-01

Law Implemented: NDCC 15.1-36-01

67-09-01-02. Construction costing more than twenty-five thousand dollars must be approved by the superintendent of public instruction - Exception. A district may not undertake construction of any school building or facility estimated to cost more than twenty-five thousand dollars unless ~~the~~:

1. The construction is approved by the superintendent. ~~If, or~~
2. The construction is the result required as part of a plan to correct deficiencies as required and under North Dakota Century Code section 15.1-06-09, approved by the state fire marshal, approval by the superintendent is required only after the estimated costs of

improvement and the estimated cost does not exceed seventy-five thousand dollars.

History: Effective April 1, 1994; amended effective May 1, 1999; November 1, 2002.

General Authority: NDCC 15.1-36-01

Law Implemented: NDCC 15.1-06-09, 15.1-36-01

67-09-01-02.1. General requirements for approval. The superintendent may not approve any new construction or remodeling construction unless the school district demonstrates:

1. The need for the project:
2. The educational utility of the project:
3. a. The ability to sustain a stable or increasing student enrollment for a period of time at least equal to the anticipated usable life of the project; or
 - b. Potential use of the project by a future reorganized school district; and
4. The capacity to pay for the project.

History: Effective November 1, 2002.

General Authority: NDCC 15.1-36-01

Law Implemented: NDCC 15.1-06-09, 15.1-36-01

67-09-01-03. Consultation with the department required. The district shall consult with the department at least:

1. Sixty days prior to the submission of an application if the construction is new construction, or remodeling construction estimated to cost one hundred fifty thousand dollars or more; or
2. Thirty days prior to the submission of an application if the construction is remodeling construction estimated to cost less than one hundred fifty thousand dollars.

The department may waive the timelines in this section for ~~applications submitted under section 67-09-01-06 before July 1, 1994, and for emergency construction.~~

History: Effective April 1, 1994; amended effective November 1, 2002.

General Authority: NDCC 15.1-36-01

Law Implemented: NDCC 15.1-36-01

67-09-01-05. Facility plan required for certain construction. Repealed effective November 1, 2002. ~~A district proposing to undertake new construction;~~

~~or remodeling construction estimated to cost one hundred fifty thousand dollars or more must meet the requirements of this section and all other sections in this chapter.~~

- ~~1. The district must submit to the department a facility plan with the application for construction approval.~~
- ~~2. At the time of consultation with the department, the district shall complete and review its facility plan with the department. The district shall receive and consider technical assistance provided by the department in completing and reviewing the district's facility plan.~~
- ~~3. The district's facility plan must include:
 - ~~a. Alternatives considered by the district and reasons for rejecting alternatives;~~
 - ~~b. Evidence of attempted cooperation or collaboration with area schools, health and human service agencies, and other educational agencies and political subdivisions;~~
 - ~~c. Description of district programs and services and an assessment of improvements that will occur as a result of construction completion;~~
 - ~~d. The location of schoolsites in each surrounding school district, including surrounding districts' attendance numbers in elementary and high school, capacity of buildings, and distances from the applicant's district;~~
 - ~~e. Past, current, and projected enrollment data;~~
 - ~~f. Trend data on general fund revenues, expenditures, and fund balances;~~
 - ~~g. Trend data on tax levies;~~
 - ~~h. Trend data on taxable valuation per pupil;~~
 - ~~i. Current bonded indebtedness, debt retirement schedules, and total capital expenditures of the district;~~
 - ~~j. Current sources of district revenue;~~
 - ~~k. A description and preliminary diagrams of the proposed construction;~~
 - ~~l. Geographic information regarding area proposed to be served;~~~~

- ~~ff.~~ A description of district schools and facilities;
 - ~~fn.~~ Violations of fire, health, safety, and any other required state or federal standards which will be corrected by the construction;
 - ~~fo.~~ Trend data on school or facility maintenance;
 - ~~fp.~~ Estimated differences in operating costs as a result of construction completion;
 - ~~fq.~~ Description of programs to reduce energy costs and waste disposal costs; and
 - ~~fr.~~ Other data as deemed advisable by the superintendent.
4. The district's facility plan must be approved by the department before it may be submitted to the superintendent with the application.

History: Effective April 1, 1994.

General Authority: NDCC 15.1-36-01

Law Implemented: NDCC 15.1-36-01

67-09-01-05.1. Approval of remodeling construction costing less than one hundred fifty thousand dollars. The superintendent may approve remodeling construction estimated to cost less than one hundred fifty thousand dollars if the district demonstrates:

1. The need for the remodeling construction by showing that the remodeling is required to address any of the following criteria:
 - a. Implementation of the life safety code;
 - b. Implementation of the Americans with Disabilities Act of 1990 [42 U.S.C. 12101, et seq.];
 - c. Implementation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794];
 - d. Asbestos abatement or removal;
 - e. The school's total enrollment, or the enrollment in a particular grade range that will be affected by the remodeling, has increased;
 - f. The part of the building or facility that is to be remodeled has exceeded its useful life;
 - g. The building or facility has been damaged as a result of fire, tornado, flood, or other act of God; or

- h. Violations of fire, health, safety, and any other required state or federal standards will be corrected by the construction;
- 2. The remodeling construction will enhance or facilitate delivery of educational services in the district;
- 3. Enrollment is likely to increase or remain stable for a period of time at least equal to the anticipated usable life of the project or the project will potentially be used by a future reorganized school district; and
- 4. The ability to pay for the project.

History: Effective November 1, 2002.

General Authority: NDCC 15.1-36-01

Law Implemented: NDCC 15.1-36-01

67-09-01-05.2. Approval of new construction or remodeling construction costing one hundred fifty thousand dollars or more. The superintendent may approve new construction or remodeling construction estimated to cost one hundred fifty thousand dollars or more, if the district meets the following requirements:

- 1. The district must submit a completed facility plan with the application for construction approval.
- 2. At the time of consultation with the department, the district shall complete and review its facility plan with the department. The district shall receive and consider technical assistance provided by the department in completing and reviewing the district's facility plan. If the district submitted an acceptable facility plan within the preceding two years, the district may submit a copy of that plan but the superintendent may require the district to update or revise the plan.
- 3. The facility plan must include:
 - a. A description and preliminary diagrams of the proposed construction;
 - b. A description of programs to reduce energy costs and waste disposal costs;
 - c. Trend data on school or facility maintenance;
 - d. The estimated difference in operation costs as a result of construction completion; and
 - e. Any other information deemed advisable by the superintendent.

4. The facility plan must address the following factors, which relate to the need for the project, but may also relate to the other general requirements for approval as indicated in section 67-09-01-02.1:
 - a. A description of district schools and facilities;
 - b. Alternatives considered by the district and reasons for rejecting alternatives;
 - c. Evidence that demonstrates that, despite attempted cooperation or collaboration with area schools, health and human service agencies and other education agencies and political subdivisions, no form of cooperation with another entity will result in buildings or facilities that meet the needs of the students;
 - d. The need for buildings or facilities could not be met within the district or adjacent districts at a comparable cost by leasing, repairing, remodeling, or sharing existing buildings or facilities or by using temporary buildings or facilities;
 - e. Description of district programs and services and an assessment of improvements that will occur as a result of construction completion;
 - f. Violations of fire, health, safety, and any other required state or federal standards, which will be corrected by the construction;
 - g. The new construction or remodeling is required to address any of the following criteria:
 - (1) Implementation of the life safety code;
 - (2) Implementation of the Americans with Disabilities Act of 1990 [42 U.S.C. 12101, et seq.];
 - (3) Implementation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794];
 - (4) Asbestos abatement or removal;
 - (5) The school's total enrollment or the enrollment in a particular grade range that will be affected by the construction has increased;
 - (6) The building or facility, or part of the building or facility, has exceeded its useful life; or
 - (7) The building or facility has been damaged or destroyed as a result of fire, tornado, flood, or other act of God; and

- b. Geographic information regarding the area proposed to be served;
 - c. Appropriate efforts to determine how this building or facility fits into the learning needs of the area have been made;
 - d. Information regarding the potential utilization of the project by a future reorganized school district; and
 - e. Any other information deemed advisable by the superintendent.
8. The facility plan must address the following factors, which relate to the district's capacity to pay for the project, but may also relate to the other general requirements for approval as indicated in section 67-09-01-02.1:
- a. The availability and manner of financing the construction has been thoroughly evaluated;
 - b. Trend data on general fund revenues, expenditures, and fund balances;
 - c. Trend data on tax levies;
 - d. Trend data on taxable valuation per student;
 - e. Current bonded indebtedness, debt retirement schedules, and total capital expenditures of the district;
 - f. Current sources of district revenue;
 - g. The operating budget of the district can satisfactorily meet the projected operating cost of the proposed building or facility; and
 - h. Any other information deemed advisable by the superintendent.

History: Effective November 1, 2002.

General Authority: NDCC 15.1-36-01

Law Implemented: NDCC 15.1-36-01

67-09-01-06. Submission of application. The district shall submit the application to the department, along with its approved facility plan, if necessary. If the superintendent determines the application or facility plan is not complete, the superintendent shall return the application and facility plan to the district for ~~proper~~ completion.

History: Effective April 1, 1994; amended effective November 1, 2002.

General Authority: NDCC 15.1-36-01

Law Implemented: NDCC 15.1-36-01

67-09-01-07. Demonstration of need and educational utility. Repealed effective November 1, 2002. The superintendent may not approve the application unless the district demonstrates to the superintendent's satisfaction the need and educational utility of the project based on criteria that include the following:

1. ~~For remodeling construction estimated to cost less than one hundred fifty thousand dollars:~~
 - a. ~~The district demonstrates the requisite need for the remodeling construction;~~
 - b. ~~The building or facility will be in use for at least three years;~~
 - c. ~~Enrollment is likely to remain relatively stable for at least three years; and~~
 - d. ~~The remodeling construction will enhance or facilitate delivery of educational services in the district.~~

2. ~~For new construction, or remodeling construction estimated to cost one hundred fifty thousand dollars or more:~~
 - a. ~~The proposed building or facility is comparable in size and quality to buildings or facilities recently constructed in other districts that have similar enrollments;~~
 - b. ~~The district has attempted cooperation or collaboration with area schools, health and human service agencies, and other educational agencies and political subdivisions;~~
 - c. ~~The need for buildings or facilities could not be met within the district or adjacent districts at a comparable cost by leasing, repairing, remodeling, or sharing existing buildings or facilities or by using temporary buildings or facilities;~~
 - d. ~~No form of cooperation with another district would provide the buildings or facilities to meet the needs of the students;~~
 - e. ~~The building or facility will enhance or facilitate the delivery of educational services in the district;~~
 - f. ~~The economic and population bases of the communities to be served are likely to grow or to remain at a level sufficient to ensure the cost effectiveness of the building or facility;~~
 - g. ~~The building or facility meets or exceeds the size standards recommended by the department;~~

- h. ~~Appropriate efforts to determine how this building or facility fits into the learning needs of the area have been made;~~
- i. ~~The availability and manner of financing the construction has been thoroughly evaluated; and~~
- j. ~~The operating budget of the district can satisfactorily meet the projected operation cost of the proposed building or facility.~~

History: Effective April 1, 1994.

General Authority: NDCC 15.1-36-04

Law Implemented: NDCC 15.1-36-04

67-09-01-08. Application acted on within sixty days. Within sixty days of receipt of the completed application, the superintendent shall issue a written decision either ~~approve~~ approving or ~~disapprove~~ disapproving the application and shall provide a written rationale for ~~such approval or disapproval~~ the decision. However, if the application seeks approval of emergency construction, the superintendent shall approve or disapprove the application within seven days of receipt, or as soon thereafter as is reasonably possible.

History: Effective April 1, 1994; amended effective November 1, 2002.

General Authority: NDCC 15.1-36-01

Law Implemented: NDCC 15.1-36-01

67-09-01-09. Appeal of disapproved application to board.

1. If the superintendent disapproves the district's application, the district may appeal the superintendent's decision to the board by serving a written notice of appeal on the superintendent, with a statement of the reasons ~~why~~ the application should be approved, within thirty days of the mailing of the notification of disapproval.
2. If the district includes new information in its written notice of appeal that was not considered by the superintendent when making the superintendent's decision, the matter shall be sent back to the superintendent for reconsideration. If the matter is sent back to the superintendent, the superintendent may request additional information from the district, and the timeline for initial consideration of an application shall apply.
3. Within sixty days of receipt of ~~the~~ a written appeal request that does not include new information, the board shall review the application, the superintendent's written rationale for disapproval, and the district's statement of reasons ~~why~~ the application should be approved, and determine whether the application should be approved. The board may ask questions of the school board and the school board's representatives, and the superintendent and the superintendent's

representatives. The board's decision on the district's application is final.

History: Effective April 1, 1994; amended effective November 1, 2002.

General Authority: NDCC 15.1-36-01

Law Implemented: NDCC 15.1-36-01

67-09-01-10. Approval effective for two years - Change in approved plan. Construction approval received under this chapter is effective for two years from the date of approval. If the district has not commenced construction within the two-year period, the district must apply again for construction approval. If a district modifies an approved plan and the modification results in a cost of more than twenty-five thousand dollars in excess of the cost of the approved plan, the district shall obtain the approval of the superintendent as provided by this chapter.

History: Effective April 1, 1994; amended effective November 1, 2002.

General Authority: NDCC 15.1-36-01

Law Implemented: NDCC 15.1-36-01

CHAPTER 67-11-02

67-11-02-01. Credentials required. ~~The principal of an accredited North Dakota elementary school must hold the North Dakota elementary principal's provisional credential, level II professional credential, or level I professional credential. For purposes of school accreditation, a school may employ as an elementary principal only a person who holds a provisional elementary principal's credential, the level II professional credential, or the level I professional credential as outlined in this chapter or who has been authorized by the education standards and practices board in that specialty at a level the department determines meets or exceeds the requirements of this chapter and is consistent with the North Dakota teacher education program approval standards 2000 with 2002 revisions adopted by the education standards and practices board on August 1, 2002.~~

History: Effective February 1, 2000; amended effective November 1, 2002.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15.1-02-04, 15.1-02-11

67-11-02-03. Types of credentials.

1. A provisional credential is:
 - a. Issued to an individual that does not meet the qualifications for a level I or level II professional credential and is employed as an elementary principal;
 - b. Issued as the initial credential and is valid for two years until the end of the second school year following the year in which the provisional credential is issued and is not renewable;
 - b. c. Issued upon satisfying the standards identified in subsections 1 and 2 of section 67-11-02-05; and
 - e. d. Issued upon completion of eight semester hours of coursework in educational leadership from a state-approved program in educational administration.
2. A level II professional credential is:
 - a. Issued for a five-year period with renewal to coincide with the period for which the individual is licensed to teach by the North Dakota education standards and practices board; however, an individual holding a lifetime educator's professional license must renew the individual's credential every five years;
 - b. Renewal of the level II professional credential is available only for principals serving elementary schools in the enrollment category one hundred or fewer students; and

- b. ~~c.~~ Issued upon satisfying standards identified in subsections 1, 2, and 3 of section 67-11-02-05.
3. A level I professional credential is:
 - a. Issued for a five-year period with renewal available to coincide with the period for which the individual is licensed to teach by the North Dakota education standards and practices board; however, an individual holding a lifetime educator's professional license must renew the individual's credential every five years; and
 - b. Issued upon satisfying credential standards identified in subsections 1, 2, and 4 of section 67-11-02-05.
 4. The provisional credential, the level II professional credential, and the level I professional credential are valid only if the individual holding the credential also holds a valid North Dakota educator's professional license to teach at the elementary level during the period for which the credential has been issued.
 5. If a level II professional credential or a level I professional credential issued under this chapter will expire within twelve months of issuance because the educator's professional license will expire within twelve months of the issuance of the new credential, the level II professional credential or a level I professional credential will be issued for a period coinciding with the period of licensure of the succeeding educator's professional license.

History: Effective February 1, 2000; amended effective May 16, 2000; November 1, 2002.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15.1-02-04, 15.1-02-11

67-11-02-06. Application process. The application process to obtain a credential under this chapter requires submission of:

1. ~~An application form provided by the department of public instruction~~ A completed form SFN 51300, including name, social security number, date, address, telephone number, ~~teaching certificate~~ educator's professional license type and number, employment information, academic preparation, and references;
2. A ~~photocopy~~ copy of official transcripts;
3. A letter of verification for applicants attending a North Dakota college with an approved program, attesting to the completion of the academic standard required for the level of credential requested. Applicants providing a ~~photocopy~~ copy of official transcripts from an approved

college in another state will have the academic standard verification made by the department of public instruction; and

4. A letter of recommendation signed by a supervisor or employer who has firsthand knowledge of the individual's professional work, experience, and service.

History: Effective February 1, 2000; amended effective November 1, 2002.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15.1-02-04, 15.1-02-11

67-11-02-07. Renewal requirements. To renew the level I and level II professional credentials, an individual must:

1. ~~Submit~~ submit one of the following:
 - a. 1. A ~~photocopy~~ copy of official transcripts of eight semester hours of graduate work in education acquired after the date of the original credentialing or last renewal, of which four semester hours are in the area of educational administration; or
 - b. 2. A ~~photocopy~~ copy of official transcripts of four semester hours of graduate work in education acquired after the date of the original credentialing or last renewal and verification of attendance or participation in at least six educational conferences or workshops from the listing in this ~~subdivision~~ subsection attended after the date of the original credentialing or last renewal. The verification must be a signed statement by the conference or workshop sponsors, employer, or a school district business manager. Acceptable conferences or workshops are:
 - (1) a. North Dakota association of elementary principals state and area conferences or workshops;
 - (2) b. National association of elementary principals regional and national conferences or workshops;
 - (3) c. North Dakota association of school administrators state and area conferences or workshops;
 - (4) d. North central association annual and regional conferences or workshops;
 - (5) e. North Dakota council of educational leaders state and area conferences or workshops;
 - (6) f. North Dakota education association state and area conferences or workshops; or

(7) g. Department of public instruction annual conference or workshops;
and.

2. ~~Submit a letter of recommendation signed by a supervisor or employer who has firsthand knowledge of the individual's professional work, experience, and service.~~

History: Effective February 1, 2000; amended effective May 16, 2000; November 1, 2002.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15.1-02-04, 15.1-02-11

67-11-02-08. Reconsideration. If issuance or renewal of any credential under this chapter is denied, the denial must be in writing and must state all reasons for denial and the applicant must be notified of the opportunity for reconsideration. If an application for issuance or renewal of any credential under this chapter is denied, the applicant may request a reconsideration of the decision. A request for reconsideration must be ~~submitted to~~ in writing and must be received by the superintendent of public instruction within three weeks of the date of mailing by the department of public instruction. Late requests will not be considered. The reconsideration request must state:

1. The facts, law, or rule the applicant believes was erroneously interpreted or applied; and
2. The applicant's arguments on how the facts, law, or rule should have been applied, giving specific reasons and thorough analysis.

The superintendent of public instruction shall issue a final written response on the reconsideration request within three weeks after receiving a complete reconsideration request.

History: Effective February 1, 2000; amended effective November 1, 2002.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15.1-02-04, 15.1-02-11

CHAPTER 67-11-04

67-11-04-01. Library media credential. ~~The librarians of accredited North Dakota schools must hold a library media credential. For purposes of school accreditation, a school may employ as a librarian only a person who holds a library media credential as outlined in this chapter or who has been authorized by the education standards and practices board in this specialty at a level the department determines meets or exceeds the requirements of this chapter and is consistent with the North Dakota teacher education program approval standards 2000 with 2002 revisions adopted by the education standards and practices board on August 1, 2002.~~

History: Effective February 1, 2000; amended effective November 1, 2002.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15.1-02-04, 15.1-02-11

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

1. Library media director credential.
 - a. This credential will be known as the LM01 credential.
 - b. The applicant must:
 - (1) Hold a valid North Dakota ~~teaching~~ educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections ~~15-36-04~~ 15.1-13-08 and ~~15-38-18~~ 15.1-13-10 and North Dakota Administrative Code title 67.1 based on a bachelor's degree with a certifiable major or minor or an endorsement in elementary, middle level, or secondary education;
 - (2) Have a master's degree in library science, media education, education, or education administration from a state-approved program; and
 - (3) Complete sixteen semester hours of library coursework under subsection 2 of section 67-11-04-05, ten semester hours of coursework under subsection 3 of section 67-11-04-05, and twelve semester hours of coursework under subsection 4 of section 67-11-04-05 from a state-approved program.
 - c. The credential is valid for only while the individual holds a valid North Dakota educator's professional license. Except as provided in subsection 6, a credential must be renewed each time the educator's professional license is renewed. However, an individual who holds a lifetime North Dakota educator's professional license must renew the credential every five years, provided the holder

~~has a valid North Dakota teaching license during that period, and is renewable for five-year terms.~~

2. Library media specialist credential.

a. This credential will be known as the LM02 credential.

b. The applicant must:

(1) Hold a valid North Dakota teaching educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections ~~15-36-01 and 15-38-18~~ 15.1-13-08 and 15.1-13-10 and North Dakota Administrative Code title 67.1 based on a bachelor's degree with a certifiable major or minor or an endorsement in elementary, middle level, or secondary education; and

(2) Complete sixteen semester hours of library coursework under subsection 2 of section 67-11-04-05 and ten semester hours of coursework under subsection 3 of section 67-11-04-05 from a state-approved program.

c. The credential is valid ~~for only while the individual holds a valid North Dakota educator's professional license. Except as provided in subsection 6, a credential must be renewed each time the individual's educator's professional license is renewed. However, an individual who holds a lifetime North Dakota educator's professional license must renew the credential every five years; provided the holder has a valid North Dakota teaching license during that period, and is renewable for five-year terms.~~

3. Librarian credential.

a. This credential will be known as the LM03 credential.

b. The applicant must:

(1) Hold a valid North Dakota teaching educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections ~~15-36-01 and 15-38-18~~ 15.1-13-08 and 15.1-13-10 and North Dakota Administrative Code title 67.1 based on a bachelor's degree with a certifiable major or minor or an endorsement in elementary, middle level, or secondary education; and

- (2) Complete sixteen semester hours of library coursework under subsection 2 of section 67-11-04-05 from a state-approved program.
 - c. The credential is valid ~~for only while the individual holds a valid North Dakota educator's professional license. Except as provided in subsection 6, a credential must be renewed each time the individual's educator's professional license is renewed. However, an individual who holds a lifetime North Dakota educator's professional license must renew the credential every five years; provided the holder has a valid North Dakota teaching license during that period, and is renewable for five-year terms.~~
4. Librarian designate credential.
 - a. This credential will be known as the LM04 credential. This credential will no longer be issued after June 30, 2000. See section 67-11-04-04.5 for an option to satisfy accreditation requirements.
 - b. The applicant must:
 - (1) Hold a valid North Dakota ~~teaching~~ educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections ~~15-36-01 and 15-38-18~~ 15.1-13-08 and 15.1-13-10 and North Dakota Administrative Code title 67.1 based on a bachelor's degree with a certifiable major or minor or an endorsement in elementary, middle level, or secondary education; and
 - (2) Complete eight semester hours of library coursework under subsection 2 of section 67-11-04-05 from a state-approved program.
 - c. The credential is valid for five years, provided the holder has a valid North Dakota ~~teaching~~ educator's professional license during that period, and may not be renewed.
5. Plan of study option to qualify for the library media director, library media specialist, or librarian credentials, in order to accrue the qualification points to satisfy the accreditation requirements.

If a school is unable to employ a credentialed librarian, as required by the enrollment of students served, the school may employ a licensed teacher to serve as the librarian. A written library plan of study to become a credentialed librarian must be submitted to the department of public instruction and be approved. The licensed teacher must have completed a minimum of one basic library media course, excluding

the basic course in children's literature, in order for the plan to be considered for approval. Once the written plan of study is approved, the licensed teacher must submit transcripts documenting completion of a minimum of five semester hours of library media coursework each year, until the licensed teacher qualifies for the required credential. In order for the school to receive library qualification points in the library media services category to satisfy the accreditation requirements, the licensed teacher must ~~maintain an approved~~ follow the plan of study approved by the department of public instruction.

6. If a credential issued under this chapter will expire within twelve months of issuance because the educator's professional license will expire within twelve months of the issuance of the credential, the credential will be issued for a period coinciding with the period of licensure of the succeeding educator's professional license.

History: Effective February 1, 2000; amended effective May 16, 2000; November 1, 2002.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15.1-02-04, 15.1-02-11

67-11-04-06. Application process.

1. An ~~initial~~ applicant must submit the following:
- a. 1. A completed application form, SFN 14236, provided by the department of public instruction, including name, social security number, address, telephone number, type of credential applied for, employment information, and signature; and
 - b. 2. A photocopy copy of official transcripts.
- ~~2. An applicant upgrading the applicant's credential must submit the following:~~
- a. ~~A completed application form, SFN 14236, provided by the department of public instruction; and~~
 - b. ~~A photocopy of official transcripts.~~

History: Effective February 1, 2000; amended effective May 16, 2000; November 1, 2002.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15.1-02-04, 15.1-02-11

67-11-04-07. Renewal requirements.

- ~~1. Each credential is valid for five years provided the holder has a valid North Dakota teaching license during that period.~~

2. All library media director, library media specialist, and librarian credentials are renewed by submitting the following:
 - a. ~~1. A renewal completed application form, SFN 50547 14236, provided by the department of public instruction, including name, social security number, address, telephone number, type of credential applied for, employment information, and signature; and~~
 - b. ~~2. A photocopy copy of official transcripts must be provided documenting completion of four semester hours of undergraduate or graduate credit in the areas of library, media, education, curriculum, or communication; and~~
 - c. ~~A letter of recommendation must be submitted signed by a supervisor or employer who has knowledge of the applicant's professional work, experience, and service.~~

History: Effective February 1, 2000; amended effective May 16, 2000; November 1, 2002.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15.1-02-04, 15.1-02-11

67-11-04-08. Reconsideration. If issuance or renewal of any credential under this chapter is denied, the denial must be in writing and must state all reasons for denial and the applicant must be notified of the opportunity for reconsideration. If an application for issuance or renewal of any credential under this chapter is denied, the applicant may request a reconsideration of the decision. A request for reconsideration must be submitted to in writing and received by the superintendent of public instruction within three weeks of the date of mailing by the department of public instruction. Late requests will not be considered. The reconsideration request must state the following:

1. The facts, law, or rule the applicant believes was erroneously interpreted or applied; and
2. The applicant's arguments on how the facts, law, or rule should have been applied, giving specific reasons and thorough analysis.

The superintendent of public instruction shall issue a final written response on the reconsideration request within three weeks after receiving a complete reconsideration request.

History: Effective February 1, 2000; amended effective November 1, 2002.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15.1-02-04, 15.1-02-11

CHAPTER 67-11-05

67-11-05-01. School counselor credential. ~~Except as provided in North Dakota Century Code section 15.1-13-08, the counselor of an accredited North Dakota school must hold the North Dakota school counselor credential or the counselor designate credential. For purposes of school accreditation, a school may employ as a school counselor only a person who holds a school counselor credential or the counselor designate credential as outlined in this chapter or who has been authorized by the education standards and practices board in that specialty at a level the department determines meets or exceeds the requirements of this chapter and is consistent with the North Dakota teacher education program approval standards 2000 with 2002 revisions adopted by the education standards and practices board on August 1, 2002.~~

History: Effective February 1, 2000; amended effective May 16, 2000; November 1, 2002.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15-20.4-03, 15.1-02-04, 15.1-02-11, 15.1-13-23

67-11-05-03. Program approval for school counselor programs. Whenever this chapter refers to "state-approved program", it refers to the process by which the education standards and practices board in concert with the department of public instruction shall supervise a system of program approval at those colleges within the state of North Dakota which provide school counselor education programs. School counselor education programs; from other states or private colleges which meet standards for program approval ~~from other states~~; are listed in the manual on certification and preparation of education personnel in the United States and Canada published by the national association of state directors of teacher education and certification.

History: Effective May 16, 2000; amended effective November 1, 2002.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15-20.4-03, 15.1-02-04, 15.1-02-11, 15.1-13-23

67-11-05-04. Types of credentials.

1. Counselor designate credential CD08 will no longer be issued. A CD08 issued on or before January 1, 2001, is valid until the expiration date on the credential. See subsection 4 of section 67-11-05-04 for an option to satisfy accreditation requirements.
2. Counselor designate credential CD16 is valid ~~for~~ only while the individual holds a valid North Dakota educator's professional license. A credential must be renewed each time the individual's educator's professional license is renewed. However, an individual who holds a lifetime North Dakota educator's professional license must renew the credential every five years, provided the holder has a valid North Dakota teaching license during that period, and is renewable for five-year terms.

3. School counselor credential CG01, CG02, or CG03, CG1G, CG2G, or CG3G.

a. ~~This credential~~ These credentials will be known as the CG01 and CG1G for secondary, CG02 and CG2G for elementary, and CG03 and CG3G for elementary and secondary in any school grade configuration.

b. Each CG01, CG02, and CG03 credential is valid ~~for only while the individual holds a valid North Dakota educator's professional license. A credential must be renewed each time the individual's educator's professional license is renewed. However, an individual who holds a lifetime North Dakota educator's professional license must renew the credential every five years, provided the holder has a valid North Dakota teaching license during that period, and is renewable for five-year terms.~~

c. Each CG1G, CG2G, and CG3G credential is valid for one year, provided the holder is pursuing the seven-year course of study required by North Dakota Century Code section 15.1-13-23 and North Dakota Administrative Code section 67.1-02-04-03, and is renewable for one-year terms until the earlier of:

(1) Seven years from the date of initial employment as a school counselor; or

(2) The credentialed individual acquires an educator's professional license.

After successful completion of the required seven-year course of study and acquisition of an educator's professional license, and prior to the expiration of the one-year term for the last year the individual was credentialed as a CG1G, CG2G, or CG3G, the individual must obtain appropriate credentials as a CG01, CG02, or CG03.

4. Plan of study option to qualify for counselor qualification points to satisfy accreditation requirements.

If a school is unable to employ a credentialed counselor or counselor designate, as required by the enrollment of students served, the school may employ a licensed teacher to serve as the counselor designate. A written plan of study, from a state-approved school counseling program, including course names, numbers, and credit hours, to become a credentialed counselor or counselor designate must be submitted to the department of public instruction and be approved. Upon written request, the department may authorize a change of the courses selected for a particular year in the written plan of study if the change will not result in fewer than five semester hours per year

of core counseling coursework. The licensed teacher must have completed a minimum of ~~one graduate core counseling course~~ eight hours of graduate coursework in counseling from a state-approved school counseling program in order for the plan to be considered for approval. Once the written plan of study is approved, the licensed teacher must submit transcripts documenting completion of a minimum of five semester hours of graduate core counseling coursework, as listed in subdivision d of subsection 1 of section 67-11-05-05, each year until the teacher obtains the required credential. ~~In order for the school to receive counselor qualification points in the pupil personnel services category to satisfy accreditation requirements, the licensed teacher must maintain an approved plan of study.~~

5. To synchronize credentials issued under this chapter with the licensure period of the educator's professional license, any credential that will expire within twelve months of issuance, because the educator's professional license will expire within twelve months of the issuance of the new credential, will be issued for a period coinciding with the period of licensure of the succeeding educator's professional license.

History: Effective February 1, 2000; amended effective May 16, 2000; November 1, 2002.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15-20.4-03, 15.1-02-04, 15.1-02-11, 15.1-13-23

67-11-05-05. Credential standards.

1. **School counselor credential standards for CG01, CG02, and CG03 credentials.** The counselor must:
 - a. Hold a valid ~~teaching~~ educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15-36-01 and 15-38-18 and North Dakota Administrative Code title 67.1 except as provided through provisions in North Dakota Century Code section ~~45-36-48~~ 15.1-13-23 and subsection 3;
 - b. Have two years of successful professional experience in teaching or a related human service field except as provided through provisions in North Dakota Century Code section ~~45-36-48~~ 15.1-13-23;
 - c. Obtain a favorable letter of recommendation from the counselor's state-approved school counseling program advisor; and
 - d. Have a master's degree in education, counseling, or a related human service field and the following graduate core counseling coursework content from a state-approved school counseling program listed below:

- (1) Elementary school counseling (~~CG02 and~~ CG2G, CG03, and CG3G);
 - (2) Secondary school counseling (~~CG01 and~~ CG1G, CG03, and CG3G);
 - (3) Supervised school-based internship:
 - (a) For the CG01, CG1G, CG2G, or the CG02, a minimum of four hundred fifty contact hours at the appropriate grade levels; and
 - (b) For the CG03 and the CG3G, a minimum of four hundred fifty contact hours of which at least one hundred fifty contact hours are at both the elementary and secondary level;
 - (4) Guidance administration and consulting;
 - (5) Counseling theories;
 - (6) Assessment techniques;
 - (7) Group techniques or group dynamics;
 - (8) Career counseling and testing; and
 - (9) Counseling techniques.
2. **Counselor designate credential standards CD16.** The counselor designate must:
- a. Hold a valid teaching educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections ~~15.1-13-10~~ 15.1-13-08 and ~~15.1-13-08~~ 15.1-13-10 and North Dakota Administrative Code title 67.1;
 - b. Have completed a minimum of sixteen semester hours of graduate core counseling courses from a state-approved school counseling program; and
 - c. Obtain a favorable letter of recommendation from the counselor's state-approved school counseling program advisor.
3. **School counselor credential standards for CG1G, CG2G, and CG3G credentials.** To qualify as a CG1G, CG2G, or CG3G, an individual must:

- a. Have a graduate degree in counseling from a state-approved school counseling program;
- b. Have completed the requirements required in subdivisions c and d of subsection 1; and
- c. Be pursuing licensure as a teacher by engaging in a course of study that will result in licensure within seven years of initial employment as a school counselor as provided in section 67.1-02-04-03.

History: Effective February 1, 2000; amended effective May 16, 2000; November 1, 2002.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15-20.4-03, 15.1-02-04, 15.1-02-11, 15.1-13-23

67-11-05-06. Application process. An initial applicant must submit the following:

1. A completed application form, SFN 51622, provided by the department of public instruction;
2. A photocopied copy of official transcripts;
3. ~~Documentation~~ Written documentation from a supervisor verifying two years of successful professional experience in teaching or a related human service field except as provided ~~through provisions in~~ by North Dakota Century Code section 15.1-13-23 and subsection 3 of section 67-11-05-05;
4. A favorable letter of recommendation from the applicant's state-approved school counseling program advisor; and
5. Documentation from a counselor educator verifying the school-based internship for a CG01, CG02, ~~or~~ CG03, CG1G, CG2G, or CG3G that details:
 - a. Grade levels and number of contact hours involved in the internship experience; and
 - b. The name and location of the school where the internship occurred.

History: Effective February 1, 2000; amended effective May 16, 2000; November 1, 2002.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15-20.4-03, 15.1-02-04, 15.1-02-11, 15.1-13-23

67-11-05-07. Renewal requirements.

1. All counselor credentials are renewed by submitting ~~the following:~~

- a. ~~A photocopy~~ a copy of official transcripts documenting the completion of four semester hours of graduate coursework in education, of which two semester hours must be in the area of counseling. These two semester hours of required counseling coursework may be replaced by thirty clock-hours of continuing education hours in counseling with a signed verification of attendance or participation by the conference or workshop sponsor, the employer, or a school district business manager; ~~and~~.
 - b. ~~A letter of recommendation signed by a supervisor or employer who has knowledge of the individual's professional work experience and service.~~
2. Renewals for the purpose of aligning the renewal dates of their credentials with their teaching educator's professional licenses may be granted upon request of applicants. The number of semester hours needed for renewal will be calculated on a one semester hour per year basis.

History: Effective February 1, 2000; amended effective May 16, 2000; November 1, 2002.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15-20.4-03, 15.1-02-04, 15.1-02-11, 15.1-13-23

CHAPTER 67-11-06

67-11-06-01. Credentials required. ~~The secondary principal of an accredited North Dakota school must hold the North Dakota secondary principal's provisional or professional credential. For purposes of school accreditation, a school may employ as a secondary principal only a person who holds a secondary principal's provisional or professional credential as outlined in this chapter or who has been authorized by the education standards and practices board in that specialty at a level the department determines meets or exceeds the requirements of this chapter and is consistent with the North Dakota teacher education program approval standards 2000 with 2002 revisions adopted by the education standards and practices board on August 1, 2002.~~

History: Effective February 1, 2000; amended effective November 1, 2002.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15.1-02-04, 15.1-02-11

67-11-06-03. Types of credentials.

1. A provisional credential is:
 - a. Issued to an individual that does not meet the qualifications for a level I or level II professional credential and is employed as a secondary principal;
 - b. Issued as the initial credential and is valid for two years until the end of the second school year following the year in which the provisional credential is issued and is not renewable;
 - ~~b.~~ c. Issued upon satisfying the standards identified in subsections 1 and 2 of section 67-11-06-05; and
 - ~~e.~~ d. Issued to a person enrolled in a state-approved program in educational leadership and who has completed eight semester hours of coursework in that area.

2. A level II professional credential is:
 - a. Issued for a five-year period with renewal to coincide with the period for which the individual is licensed to teach by the North Dakota education standards and practices board; however, an individual holding a lifetime educator's professional license must renew the individual's credential every five years;
 - b. Renewal of the level II professional credential is available only for principals serving secondary schools in the enrollment category one hundred or fewer students; and

- b. c. Issued upon satisfying standards identified in subsections 1, 2, and 3 of section 67-11-06-05.
3. A level I professional credential is:
 - a. Issued for a five-year period with renewal available to coincide with the period for which the individual is licensed to teach by the North Dakota education standards and practices board and may be renewed at the end of that period; however, an individual holding a lifetime educator's professional license must renew the individual's credential every five years; and
 - b. Issued upon satisfying credential standards identified in subsections 1, 2, and 4 of section 67-11-06-05.
 4. The provisional credential, the level II professional credential, and the level I professional credential are valid only if the individual holding the credential also holds a valid North Dakota educator's professional license to teach at the secondary level during the period for which the credential has been issued.
 5. If a level I or level II professional credential issued under this chapter will expire within twelve months of issuance because the educator's professional license will expire within twelve months of the issuance of the new level I or level II professional credential, the level I or level II professional credential will be issued for a period coinciding with the period of licensure of the succeeding educator's professional license.

History: Effective February 1, 2000; amended effective May 16, 2000; November 1, 2002.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15.1-02-04, 15.1-02-11

67-11-06-05. Credential standards. The documentation on each standard must be verified within the department before any credential will be issued.

1. An applicant must hold a valid North Dakota teaching educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections ~~15.1-13-10~~ 15.1-13-08 and ~~15.1-13-08~~ 15.1-13-10 and North Dakota Administrative Code title 67.1 allowing the individual to teach at the secondary level.
2. An applicant must have at least three years of teaching or administrative experience or a combination thereof in secondary schools:
 - a. Equal to full-time equivalency, that is to equal at least six hours for a one hundred eighty-day school term.

- b. Positions must have been stated on a professional contract.
 - c. Teaching is defined as being assigned as a regular classroom teacher, music teacher, art teacher, counselor, physical education teacher, basic skills or remedial reading teacher, special education teacher, or library media specialist, or any combination of these assignments in a secondary school. Administrative experience is defined as being assigned the duties of principal of a senior high, junior high, or middle school that includes any combination of grades seven through twelve of an approved school or as a superintendent or central office administrator of an approved kindergarten through grade twelve school.
3. The level II credential requires twenty semester hours of graduate credit taken in a master's degree program from a state-approved program in educational administration. Course preparation for the credential is as follows:
- a. Leadership, planning, and organizational behavior in education.
 - b. Educational law and organizational structure of education.
 - c. Personnel, supervision, and staff development.
 - d. Curriculum, instruction, and learning theory.
 - e. Policy and educational finance.
 - f. Administration of the secondary school.
 - g. Secondary school curriculum.
4. The level I credential requires one of the following:
- a. A master's degree in educational administration from a state-approved program. Course preparation must be from the following:
 - (1) Theory and practice of leadership and administration;
 - (2) Legal and political foundations of education;
 - (3) Supervision and staff development;
 - (4) Statistics, research, analysis, and writing;
 - (5) Educational foundations, curriculum, and instruction;

- (6) Information systems for management and instruction;
 - (7) Administration of the secondary school; and
 - (8) Secondary school curriculum; or
- b. A master's degree with a major certifiable by the education standards and practices board in addition to twenty semester hours of credit that includes courses specific to the secondary level contained within a master's degree in educational administration from a state-approved program. Course preparation is as follows:
- (1) Leadership, planning, and organizational behavior in education;
 - (2) Educational law and organizational structure of education;
 - (3) Personnel, supervision, and staff development;
 - (4) Curriculum, instruction, and learning theory;
 - (5) Policy and educational finance;
 - (6) Administration of the secondary school; and
 - (7) Secondary school curriculum.

History: Effective February 1, 2000; amended effective May 16, 2000; November 1, 2002.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15.1-02-04, 15.1-02-11

67-11-06-06. Application process. The application process to obtain a credential under this chapter ~~is~~ requires submission of:

1. ~~An application form provided by the department of public instruction must be submitted~~ A completed form SFN 51300, including the applicant's name, social security number, date, address, telephone number, ~~teaching certificate~~ educator's professional license type and number, employment information, academic preparation, and references;
2. A ~~photocopy~~ copy of official transcripts ~~must be provided~~;
3. A letter of verification must be provided for applicants attending a North Dakota college with an approved program, attesting to the completion of the academic standard required for the level of the credential requested. Applicants providing a ~~photocopy~~ copy of official transcripts from an

approved college in another state must have the academic standard verification made by the department of public instruction; and

4. A letter of recommendation must be provided signed by a supervisor or employer who has firsthand knowledge of the individual's professional work, experience, and service.

History: Effective February 1, 2000; amended effective November 1, 2002.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15.1-02-04, 15.1-02-11

67-11-06-07. Renewal requirements. To renew the level I and level II professional credentials, an individual shall:

4. ~~Submit~~ submit one of the following:
 - a. 1. A ~~photocopy~~ copy of official transcripts of eight semester hours of graduate work in education acquired after the date of the original credentialing or last renewal, of which four semester hours are in the area of educational administration; or
 - b. 2. A ~~photocopy~~ copy of official transcripts of four semester hours of graduate work in education acquired after the date of the original credentialing or last renewal and verification of attendance or participation in at least six educational conferences or workshops from the listing in this ~~subdivision~~ subsection. The verification must be a signed statement by the conference or workshop sponsors, employer, or a school district business manager. Acceptable conferences or workshops are:
 - (~~1~~) a. North Dakota association of secondary school principals state and area conferences or workshops;
 - (~~2~~) b. National association of secondary school principals regional and national conferences or workshops;
 - (~~3~~) c. North Dakota council of educational leaders state and area conferences or workshops;
 - (~~4~~) d. American association of school administrators regional and national conferences or workshops;
 - (~~5~~) e. North central association annual or regional conferences or workshops; and
 - (~~6~~) f. Department of public instruction conferences or workshops; ~~and.~~

2. ~~Submit a letter of recommendation signed by a supervisor or employer who has firsthand knowledge of the individual's professional work, experience, and service.~~

History: Effective February 1, 2000; amended effective May 16, 2000; November 1, 2002.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15.1-02-04, 15.1-02-11

67-11-06-08. Reconsideration. If issuance or renewal of any credential under this chapter is denied, the denial must be in writing and must state all reasons for denial and the applicant must be notified of the opportunity for reconsideration. If an application for issuance or renewal of any credential under this chapter is denied, the applicant may request a reconsideration of the decision. A request for reconsideration must be ~~submitted to~~ in writing and must be received by the superintendent of public instruction within three weeks of the date of mailing by the department of public instruction. Late requests will not be considered. The reconsideration request must state the following:

1. The facts, law, or rule the applicant believes was erroneously interpreted or applied; and
2. The applicant's arguments on how the facts, law, or rule should have been applied, giving specific reasons and thorough analysis.

The superintendent of public instruction shall issue a final written response on the reconsideration request within three weeks after receiving a complete reconsideration request.

History: Effective February 1, 2000; amended effective November 1, 2002.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15.1-02-04, 15.1-02-11

CHAPTER 67-11-07

67-11-07-01. Credentials required. ~~The superintendent of an accredited North Dakota school must hold the North Dakota superintendent's provisional or professional credential. For purposes of school accreditation, a school may employ as a superintendent only a person who holds a superintendent's provisional or professional credential as outlined in this chapter or who has been authorized by the education standards and practices board in that specialty at a level the department determines meets or exceeds the requirements of this chapter and is consistent with the North Dakota teacher education program approval standards 2000 with 2002 revisions adopted by the education standards and practices board on August 1, 2002.~~

History: Effective February 1, 2000; amended effective November 1, 2002.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15.1-02-04, 15.1-02-11

67-11-07-03. Types of credentials.

1. The provisional credential is valid until the end of the second school year following the year in which the provisional credential is issued, is not renewable, and is:
 - a. Issued to an individual that does not meet the qualifications for a professional credential;
 - b. Issued for two years as a nonrenewable credential as the initial credential; and
 - b: c. Issued to those who have a level I principal's credential but lack the coursework or the experience, or both, necessary for the professional credential as identified in section 67-11-07-05.
2. The professional credential is:
 - a. Issued for to coincide with the period for which the individual is licensed to teach by the North Dakota education standards and practices board and may be renewed; however, an individual holding a lifetime educator's professional license must renew the individual's credential every five years with renewal available; and
 - b. Issued upon satisfying standards identified in section 67-11-07-05.
3. The provisional credential and the professional credential are valid only if the individual holding the credential also holds a valid North Dakota educator's professional license to teach during the period for which the credential has been issued. If a professional credential issued under this chapter will expire within twelve months of issuance because the educator's professional license will expire within twelve months of

issuance of the new professional credential, the professional credential will be issued for a period coinciding with the period of licensure of the succeeding educator's professional license.

History: Effective February 1, 2000; amended effective May 16, 2000; November 1, 2002.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15.1-02-04, 15.1-02-11

67-11-07-05. Credential standards. The applicant must fulfill all the following standards to obtain a credential under this chapter. The applicant must:

1. Hold a valid North Dakota teaching certificate license during the life of the credential, issued by the education standards and practices board in accordance with North Dakota Century Code sections ~~15.1-13-10~~ 15.1-13-08 and ~~15.1-13-08~~ 15.1-13-10 and North Dakota Administrative Code title 67.1;
2. Have at least three years of teaching experience, verified in a letter of recommendation by a supervisor or employer who has firsthand knowledge of the individual's professional work;
3. Have at least two years of administrative experience comprised of at least half time as an elementary or secondary principal, a central office administrator, or an administrator of an approved school with a twelve-year program. This experience is to be verified by a supervisor or employer who has firsthand knowledge of the individual's professional work; and
4. Have completed the requirements for the level I elementary or secondary principal credential and eight additional hours of coursework specific to the superintendency from the following content areas:
 - a. Field-based experience in the superintendency;
 - b. Seminar in the superintendency;
 - c. Advanced school law;
 - d. Advanced revenue, finance, and business management;
 - e. Facilities and facilities planning;
 - f. Policy, politics, and community relations; and

9. Personnel administration.

History: Effective February 1, 2000; amended effective May 16, 2000; November 1, 2002.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15.1-02-04, 15.1-02-11

67-11-07-06. Application process. The application process to obtain a credential under this chapter is:

1. **Provisional credential.** The applicant must submit:

- a. A completed SFN 51300 application form provided by the department of public instruction, including the applicant's name, social security number, date, address, telephone number, teaching certificate license type and number, employment information, academic preparation, and references;
- b. A photocopy copy of official transcripts;
- c. A letter of verification for applicants attending a North Dakota college with an approved program, attesting to the completion of the academic standard required for the level of the credential requested. Applicants providing a photocopy copy of official transcripts from an approved college in another state will have the academic standard verification made by the department of public instruction; and
- d. A letter of recommendation signed by a supervisor or employer who has firsthand knowledge of the individual's professional work, experience, and service.

2. **Professional credential.** The applicant must submit:

- a. Verification of graduate coursework by presenting a photocopy copy of official transcripts. Also accepted is verification of successful course completion or documentation pending transcript. If transcripts do not arrive, the credential will be revoked; ~~and~~
- b. A letter of recommendation signed by a supervisor or employer verifying years of experience in teaching and administration required in section 67-11-07-05; and
- c. If the applicant has not previously submitted an application on SFN form 51300, a completed SFN 51300 application form provided by the department of public instruction, including the applicant's name, social security number, date, address, telephone number,

teaching license type and number, employment information, academic preparation, and references.

History: Effective February 1, 2000; amended effective May 16, 2000; November 1, 2002.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15.1-02-04, 15.1-02-11

67-11-07-07. Renewal requirements. The applicant for renewal of a credential issued under this chapter must:

4. Fulfill fulfill one of the following:
 - a. 1. Provide a ~~photocopy~~ copy of official transcripts showing satisfactory completion of at least eight semester hours of graduate work in education, of which four semester hours are in the area of educational administration; or
 - b. 2. Provide a ~~photocopy~~ copy of official transcripts showing satisfactory completion of at least four semester hours of graduate work and verification of attendance or participation in at least six administrative educational conferences or workshops from the listing in this ~~subdivision~~ subsection. The verification must be a signed statement by the conference or workshop sponsors, the employer, or a school district business manager. Acceptable conferences or workshops are:
 - (1) a. North Dakota association of school administrators state and area conferences or workshops;
 - (2) b. American association of school administrators regional and national conferences or workshops;
 - (3) c. North central association annual or regional conferences or workshops;
 - (4) d. Department of public instruction conferences or workshops; and
 - (5) e. North Dakota council of educational leaders conferences or workshops; ~~and.~~
2. ~~Provide a letter of recommendation signed by a supervisor or employer who has firsthand knowledge of the individual's professional work, experience, and service.~~

History: Effective February 1, 2000; amended effective November 1, 2002.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15.1-02-04, 15.1-02-11

67-11-07-08. Reconsideration. If issuance or renewal of any credential under this chapter is denied, the denial must be in writing and must state all reasons for denial and notify the applicant of the opportunity for reconsideration. If an application for issuance or renewal of any credential under this chapter is denied, the applicant may request a reconsideration of the decision. A request for reconsideration must be ~~submitted to~~ in writing and must be received by the superintendent of public instruction within three weeks of the date of mailing by the department of public instruction. Late requests will not be considered. The reconsideration request must state the following:

1. The facts, law, or rule the applicant believes was erroneously interpreted or applied; and
2. The applicant's arguments on how the facts, law, or rule should have been applied, giving specific reasons and thorough analysis.

The superintendent of public instruction shall issue a final written response on the reconsideration request within three weeks after receiving a complete reconsideration request.

History: Effective February 1, 2000; amended effective November 1, 2002.

General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02

Law Implemented: NDCC 15.1-02-04, 15.1-02-11

CHAPTER 67-11-16
SPECIAL EDUCATION STRATEGIST CREDENTIAL

| | |
|--------------------|-------------------------------|
| <u>Section</u> | |
| <u>67-11-16-01</u> | <u>Credentials Required</u> |
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67-11-16-01. Credentials required. For purposes of school accreditation:

1. A school that educates a student with a specific learning disability shall employ a teacher holding a credential issued by the superintendent of public instruction to teach students with specific learning disabilities or be authorized by the education standards and practices board to teach students with specific learning disabilities at a level the department determines meets or exceeds the requirements of this chapter and is consistent with the North Dakota teacher education program approval standards 2000 with 2002 revisions adopted by the education standards and practices board on August 1, 2002.
2. A school that educates a student with emotional disturbance shall employ a teacher holding a credential issued by the superintendent of public instruction to teach students with emotional disturbance or be authorized by the education standards and practices board to teach students with emotional disturbance at a level the department determines meets or exceeds the requirements of this chapter and is consistent with the North Dakota teacher education program approval standards 2000 with 2002 revisions adopted by the education standards and practices board on August 1, 2002.
3. A school that educates a student with mental retardation shall employ a teacher holding a credential issued by the superintendent of public instruction to teach students with mental retardation or be authorized by the education standards and practices board to teach students with mental retardation at a level the department determines meets or exceeds the requirements of this chapter and is consistent with the North Dakota teacher education program approval standards 2000 with 2002 revisions adopted by the education standards and practices board on August 1, 2002.
4. A school may also employ a teacher that holds the North Dakota special education professional credential in special education strategist

as provided in this chapter to teach students with specific learning disabilities, emotional disturbance, or mental retardation.

History: Effective November 1, 2002.

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

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

67-11-16-02. Issuing agency. The North Dakota special education teaching credential in special education strategist issuing agency address is:

Superintendent of Public Instruction
Department of Public Instruction
600 East Boulevard Avenue, Dept. 201
Bismarck, ND 58505-0440

History: Effective November 1, 2002.

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

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

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

1. An applicant must hold a valid North Dakota educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15.1-13-17 and 15.1-13-23 and North Dakota Administrative Code title 67.1, based on a bachelor's degree with a certifiable major or minor or an endorsement in elementary or secondary education.
2. Areas of preparation of teachers in special education strategist include the coursework listed in this subsection. The coursework must be taken primarily at the graduate level, from a college or university with accreditation in this area and offering a major in special education that includes study in the areas listed in this subsection. Because not all of these are course titles, applicants must have their transcripts and course content evaluated by the department of public instruction staff. All candidates who are to be employed as special education strategists must hold either a general elementary or secondary educator's professional license. Special education strategists with a secondary educator's professional license must have an elementary mathematics methods course and an elementary reading methods course and must complete a practicum as outlined by the applicant's college or university and required in subsection 3. The credential requires at least thirty semester hours of graduate credit of which coursework must be taken in each of these areas:

- a. Exceptional children and youth:
 - b. Transition to adult life:
 - c. Assessment, program planning, special needs students:
 - d. Introduction to learning and behavior problems:
 - e. Practicum in school problems, special education:
 - f. Inclusive methods:
 - g. Behavior management for special needs students:
 - h. Collaborative relationships:
 - i. Special education law:
 - j. Assistive technology: and
 - k. Advanced assessment.
3. Each candidate for a credential must also fulfill each of the following:
- a. For specific learning disability:
 - (1) Advanced methods, specific learning disability.
 - (2) Practicum, specific learning disability, which must be taken after other qualifications are complete.
 - b. For emotional disturbance:
 - (1) Advanced methods, emotional disturbance.
 - (2) Practicum, emotional disturbance, which must be taken after other qualifications are complete.
 - c. For mental retardation:
 - (1) Advanced methods, mental retardation.

- (2) Practicum, mental retardation, which must be taken after other qualifications are complete.

History: Effective November 1, 2002.

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

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

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

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

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

History: Effective November 1, 2002.

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

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

67-11-16-05. Application process. The application process to obtain a credential under this chapter is:

1. A special education credential application form provided by the department of public instruction must be submitted for the special education strategist credential. Information including the date and applicant's name, social security number, address, telephone number, educator's professional license number and expiration date, signature, and academic preparation are required in the application.
2. A copy of official transcripts must be provided.

History: Effective November 1, 2002.

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

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

67-11-16-06. Renewal requirements. To renew the special education strategist credential, the teacher shall:

1. Complete the requirements established by the North Dakota education standards and practices board relative to renewal of the North Dakota educator's professional license. The special education credential follows the expiration date established by the education standards and practices board. No further action is required on the part of the teacher to renew a special education credential that is renewed on a continuing basis.
2. In those instances in which a lapse of the applicant's educator's professional license of more than ten years has occurred prior to renewal, the special education credential application will be reviewed to assure that all special education requirements have been met.

History: Effective November 1, 2002.

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

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

67-11-16-07. Notification of denial. If issuance of any credential is denied, the denial must be in writing and must state all reasons for denial. The written documentation must also include the specific requirements from section 67-11-17-03 which must be completed for reconsideration.

History: Effective November 1, 2002.

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

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

CHAPTER 67-24-01

67-24-01-01. Eligibility for summer school payments. ~~School districts that wish~~ A school district must apply for and receive approval from the department of public instruction for a remedial elementary summer school program to be eligible to receive proportionate payments for remedial elementary summer school programs shall make application to the department of public instruction for approval that program.

History: Effective February 1, 2000; amended effective November 1, 2002.

General Authority: NDCC 15.1-27-19

Law Implemented: NDCC 15.1-27-19

67-24-01-02. Applications. ~~Application forms provided by for a remedial elementary summer school program must be made on form SFN 52031, which is available from the department of public instruction. The application must require information including~~ include the name of the school; county; district number; the name of the person responsible for the summer program; telephone number; opening and closing dates of the summer program; schedule of courses; teachers' names, social security numbers, majors, minors, teaching certificate numbers with expiration dates, assignments, and schedules; and the school district superintendent's signature.

History: Effective February 1, 2000; amended effective November 1, 2002.

General Authority: NDCC 15.1-27-19

Law Implemented: NDCC 15.1-27-19

67-24-01-03. Courses. The delivery of the courses in the summer school program must be developmentally appropriate instruction in remedial reading and remedial ~~math~~ mathematics, which enables students to achieve challenging academic standards.

1. Each course must be part of the elementary curriculum as adopted by the school board and must be offered and available to all eligible elementary students.
2. Each course must be from approved courses listed in the department's manual of ~~K-12~~ kindergarten through grade 12 course codes and descriptions, ~~1998 revised~~.
3. Teachers must be qualified to teach in accordance with North Dakota Century Code section 15.1-18-02 or 15.1-18-03.

History: Effective February 1, 2000; amended effective November 1, 2002.

General Authority: NDCC 15.1-27-19

Law Implemented: NDCC 15.1-18-02, 15.1-18-03, 15.1-27-19

67-24-01-04. Scheduling. Summer remedial elementary programs must be conducted between the closing date and the beginning date of the regular school

term. ~~Minimum time requirement for length of the program is sixty hours. Minimum time requirement for individual course time is thirty hours~~ Students must be enrolled for sixty hours in either mathematics or reading or a minimum of thirty hours in mathematics and thirty hours in reading if a student takes both ~~math~~ mathematics and reading.

History: Effective February 1, 2000; amended effective November 1, 2002.

General Authority: NDCC 15.1-27-19

Law Implemented: NDCC 15.1-27-19

67-24-01-05. Students. Students must be in ~~kindergarten~~ grade one through grade eight to qualify for proportionate payments. Students to be served must score below the sixtieth percentile on a standardized or teacher-developed test or have a grade C or below in the previous school term, or both. No more than fifteen students may be served by one licensed teacher.

History: Effective February 1, 2000; amended effective November 1, 2002.

General Authority: NDCC 15.1-27-19

Law Implemented: NDCC 15.1-27-06(6), 15.1-27-19

67-24-01-06. Monitoring. The department of public instruction will monitor the programs by reviewing documentation and ~~some~~ conducting onsite visits or other appropriate activities.

History: Effective February 1, 2000; amended effective November 1, 2002.

General Authority: NDCC 15.1-27-19

Law Implemented: NDCC 15.1-27-19

67-24-01-08. Payments. The proportionate payment ~~must~~ will be calculated by multiplying average daily membership times the weighting factor for the elementary school determined under North Dakota Century Code section 15.1-27-07 times the educational support per student provided under North Dakota Century Code section 15.1-27-04. If necessary, the educational support per student must be reduced to stay within the total amount of funding made available for remedial elementary programs under North Dakota Century Code section 15.1-27-19. Average daily membership must be reported by course and must be computed based on the following formula:

1. ~~Total~~ The quotient of the total hours membership divided by one hundred twenty hours times ~~one-fourth~~ the product of .25 times one hundred eighty days equals the computed days membership.

Computed days membership = Total hours membership x .25 x 180 days

120

2. Aggregate The computed days membership for each class is totaled to obtain the aggregate computed days membership. The aggregate computed days membership is divided by one hundred eighty days equals to obtain the average daily membership.

Average daily membership = Σ Computed days membership

180

History: Effective February 1, 2000; amended effective November 1, 2002.

General Authority: NDCC 15.1-27-19

Law Implemented: NDCC 15.1-27-19

TITLE 67.1

EDUCATION STANDARDS AND PRACTICES BOARD

AUGUST 2002

CHAPTER 67.1-01-01

67.1-01-01-01. Organization of the education standards and practices board.

1. **History.** The autonomous education standards and practices board was established by legislation in 1993. The board came into existence effective January 1, 1995, and assumed its duties on July 1, 1995. The board has its origins in the teacher professional practices commission which served in an advisory capacity to the superintendent of public instruction for teacher certification, teacher preparation program approval, and professional development.
2. **Board organization.** The education standards and practices board consists of ~~nine~~ ten members appointed by the governor. The board membership includes four classroom teachers from public schools, one classroom teacher from a private school, ~~one~~ two school board ~~member~~ members, two school administrators, and one dean of a college of education. The superintendent of public instruction or designee serves as an ex officio, nonvoting member. The administrator's professional practices board is a subset of the education standards and practices board which includes the two school administrator members, ~~the~~ two school board ~~member~~ members, and two teacher members selected by the full board. The term of office of the board members is three years, commencing on ~~January~~ July first of the year of their appointment. Members may serve only two consecutive terms.
 - a. **Officers.** The officers are a chairperson, vice chairperson, and secretary, who will be the board executive director. The officers will be elected for one-year terms at the reorganization meeting, which will be the first meeting called following July first of each year.
 - (1) The duties of the chairperson include:
 - (a) Recognize members, state motions, and confine debate to the motion under discussion;

- (b) Call for special meetings upon the request of a majority of the board in writing;
 - (c) Assist the director in preparing an agenda to be sent with the announcement of the next meeting;
 - (d) Designate board members to attend special meetings at board expense;
 - (e) Appoint standing committees and subcommittees;
 - (f) Be responsible for communicating all statements on the actions of the board in the execution of its duties; and
 - (g) Perform other duties as deemed necessary by the board.
- (2) The duties of the vice chairperson include:
- (a) Preside when the chairperson is absent or when called to the chair by the chairperson;
 - (b) Perform the duties of the chairperson until a new chairperson is elected in case of a vacancy in the office of the chairperson;
 - (c) Be acquainted with the duties and responsibilities of the chairperson; and
 - (d) Perform other duties as deemed necessary by the board.
- (3) The duties of the executive director include:
- (a) Record attendance of the board members;
 - (b) Keep an accurate record of all proceedings and distribute them to the members;
 - (c) Assist the chairperson in the preparation and distribution of the agenda;
 - (d) Notify all board members ten days in advance of any meeting;
 - (e) Send out all mailings and notices required by the board;
 - (f) Prepare a financial statement for each regular meeting and coordinate vouchers;

- (g) Release statements to the media, subject to board approval; and
 - (h) In the absence of the chairperson and the vice chairperson, call the meeting to order and preside while a temporary chairperson is elected.
- b. Board members. Board members will have regular and functional attendance at all regular meetings. The chairperson will recommend to the governor that board members missing three consecutive meetings be replaced. Board members will send any materials for inclusion in mailings to the chairperson and director. Members will prepare input for each regular meeting. They will file a written report with the director after attending any subcommittee meetings.
3. **Meetings.** The education standards and practices board shall hold a minimum of four meetings annually. The year, for purposes of the board, begins July first and ends the last day of June during the ensuing calendar year. The meetings shall be scheduled by the membership at large, or at the call of the chairperson, or may be held upon the request in writing by a majority of the board members. The meetings may be held only after ten days' prior notice. A majority of the members constitutes a quorum that will have the authority to act upon any items of business properly placed before the board. Members should notify the secretary if unable to attend. Meetings will be conducted according to Robert's rules of order.
4. **Contact information.** Licensure application packets and additional information about the rules of licensure of the education standards and practices board may be obtained by writing or calling:

Education Standards and Practices Board
600 East Boulevard Avenue, Dept. 202
Bismarck, ND 58505-0080
Phone: 701-328-2264
Fax: 701-328-2815

Requests for initial application packets should be made in writing and accompanied by the twenty-five dollar initial application packet fee.

History: Effective July 1, 1995; amended effective October 1, 1998; June 1, 1999; March 1, 2000; August 1, 2002.

General Authority: NDCC ~~15-38-17, 28-32-02.1~~ 15.1-13-09, 28-32-02

Law Implemented: NDCC ~~15-38-17~~ 15.1-13-02, 15.1-13-04, 15.1-13-05, 15.1-13-06, 15.1-13-07, 15.1-13-29, 28-32-02

67.1-01-01-02. Duties of the education standards and practices board.

1. **Standards for professional ethics, performance, and practices.** The board continuously reviews the North Dakota educator's code of ethics and rules, standards, and procedures pertaining to licensure, teacher education program approval, and professional development of educators. As part of the education standards and practices board, the board will solicit input from the teaching profession and representatives of school administrators, school board members, teacher educator professors, and other interested citizens. The board will be responsible for the interpretation of the North Dakota educator's code of ethics with requests for interpretation being placed in writing.
2. **Consideration of written complaints relative to code violations.** Requests for an inquiry against any North Dakota licensed educator from any interested citizen will be heard by the board. The inquiry must be requested in writing. Any educator named in an inquiry will be notified and will be informed of the procedures that will be taken.
3. **Board-initiated complaints.** The education standards and practices board may initiate proceedings against any North Dakota licensed educator for cause as stated in North Dakota Century Code ~~section 45-36-15~~ sections 15.1-13-25 and 15.1-13-26 or for violations of the educator's code of ethics.
4. **Complaint process.** A complaint by a citizen against a teacher or administrator is made by submitting a request for inquiry form to the office of the education standards and practices board.
 - a. A patron, a professional, or a district representative may obtain the request for inquiry forms and procedural guidelines from the office of the education standards and practices board.
 - b. The formal complaint process will begin when the requesting party returns the completed request for inquiry form to the secretary of the education standards and practices board. The form must be signed by the complainant. Supporting documentation may be included as indicated in the procedural guidelines.
 - c. The education standards and practices board secretary, upon receipt of the request for inquiry form, shall transmit a copy with the supporting documentation to the affected educator by certified mail.
 - d. The affected educator may submit a clear and concise answer to the complaint within twenty calendar days from the day the certified mail is delivered. The answer must be sent to the secretary of the education standards and practices board and may include supporting documentation. If the affected educator fails to file an answer, the allegations in the complaint will be deemed admitted and the board shall proceed to a hearing pursuant to

North Dakota Century Code ~~section 15-36-16~~ sections 15.1-13-24 and 15.1-13-25.

- e. Upon receipt of the response from the affected educator, or passage of the deadline for a response, the education standards and practices board secretary will place the request for inquiry on the agenda of the next meeting of the education standards and practices board or administrator's professional practices board for preliminary discussion.
- f. At the education standards and practices board meeting, the education standards and practices board or administrator's professional practices board will review the written documents presented. No testimony will be heard at this time. Based upon the paper review, the board will determine the following:
 - (1) To dismiss the case.
 - (2) To seek additional information.
 - (3) To issue a warning or reprimand, or both.
 - (4) To initiate formal disciplinary action.
- g. If the application for licensure is denied, or if the board determines to initiate formal disciplinary action that may result in suspension, revocation, or other appropriate disciplinary action, the applicant may request, in writing, a hearing. The hearing will be conducted according to the Administrative Agencies Practices Act, North Dakota Century Code chapter 28-32. Parties may be represented and provide testimony at the administrative hearing.
- h. Denial and revocation of an educator's professional license for convictions of crimes against children or sexual offenses:
 - (1) Notwithstanding any other law, the education standards and practices board shall deny an application for a teaching license and the education standards and practices board or administrator's professional practices board shall revoke immediately the teaching license of an individual who has been found guilty of a crime against a child or a sexual offense.
 - (2) An individual who is denied an educator's professional license or who has had a license revoked under this section may file a request with the education standards and practices board office for a due process hearing in accordance with this section and the Administrative Agencies Practices Act, North Dakota Century Code chapter 28-32.

- (3) The education standards and practices board may impose a fee against a licenseholder to reimburse the education standards and practices board for all or part of the costs of the administrative actions that result in disciplinary action against the licenseholder under this ~~section~~ subdivision.

History: Effective July 1, 1995; amended effective October 1, 1998; March 1, 2000; August 1, 2002.

General Authority: NDCC ~~45-36-15, 45-38-17, 45-38-19, 28-32-02.4~~ 15.1-13-08, 15.1-13-09

Law Implemented: NDCC ~~45-38-18, 28-32-02.4~~ 15.1-13-08, 15.1-13-24, 15.1-13-25, 15.1-13-26, 15.1-13-29

67.1-01-01-03. Fine for practicing without a license. The education standards and practices board may impose a fine against any individual without a valid license who is under contract in any position requiring a valid professional educator's license.

1. The fine imposed will be fifty dollars per day the individual practices without a valid license, up to a total fine of ~~one thousand~~ two hundred fifty dollars.
2. The effective date of the fine will be the first day after the educator's license has expired or the first day practicing before obtaining a valid license.
3. The educator will have five days after notification from the board to submit to the education standards and practices board all required information for license renewal before additional disciplinary action will be taken.
4. The fine must be paid by the educator prior to receiving the educator's initial or renewed license.

History: Effective March 1, 2000; amended effective August 1, 2002.

General Authority: NDCC ~~45-36-15, 45-38-17, 28-32-02.4~~ 15.1-13-09, 15.1-13-17

Law Implemented: NDCC ~~45-38-18, 28-32-02.4~~ 15.1-13-17

CHAPTER 67.1-02-01

67.1-02-01-02. Cooperating teachers. A cooperating teacher is the teacher in the local situation who works with, helps, and advises the student teacher.

1. Every cooperating teacher must have acquired a minimum of two semester hours or three quarter hours in supervision of a student teaching course or an inservice requirement that meets the necessary essentials in preparing cooperating teachers to supervise student teachers. Those cooperating teachers who have served prior to July 1, 1976, may have this requirement waived at the discretion of the host college and cooperating school.
2. The cooperating teacher must have at least ~~two~~ three years of teaching experience. The cooperating teacher must have at least one year of teaching experience in the school system in which the student teacher is being supervised.
3. Before being accepted and approved as a cooperating teacher, the teacher must be recommended by the administration of the school in which student teaching is performed.
4. A cooperating teacher who cannot recommend a student teacher for teaching or licensure shall have a conference with the college supervisor and the student teacher prior to the student teaching evaluation and recommendation.

History: Effective July 1, 1995; amended effective October 1, 1998; March 1, 2000; August 1, 2002.

General Authority: NDCC ~~15-36-01, 28-32-02~~ 15.1-13-08, 15.1-13-09, 15.1-13-10

Law Implemented: NDCC ~~15-36-01, 15-38-18, 15-47-41~~ 15.1-13-08, 15.1-13-10

67.1-02-01-04. Program approval of teacher education for licensure.

The education standards and practices board shall set procedures for and implement a system of program approval for teacher education programs for state licensure of educators. The program approval process shall include the federal requirement of identifying and reporting for title II of the Higher Education Act.

1. The education standards and practices board may enter into approval agreements with national accrediting agencies.
2. The procedures for program approval must be reviewed and revised at least every five years with input from state-approved institutions. Public hearings must be provided in accordance with North Dakota Century Code chapter 28-32.

3. New procedures become mandatory two years after their ~~adoption by the education standards and practices board~~ publication by the office of the legislative council in accordance with North Dakota Century Code section 28-32-19. During the two-year transition period following publication, institutions may elect to be reviewed either under the previously published procedures or the newly published procedures.
4. The education standards and practices board shall gather information through the program approval process to determine whether institutions and individual preparation programs meet the North Dakota standards for the preparation of educators for state licensure. The board shall issue decisions of approval, ~~approval with stipulations~~ provisional approval, continuing approval, approval with conditions to be met, approval with probation, or denial or revocation of approval.
5. Full text of the North Dakota procedures for program approval may be reviewed in North Dakota Administrative Code title 67.1 or at the office of the education standards and practices board.

History: Effective July 1, 1995; amended effective October 1, 1998; March 1, 2000; August 1, 2002.

General Authority: NDCC ~~45-36-01, 28-32-02~~ 15.1-13-08, 15.1-13-09

Law Implemented: NDCC ~~45-38-18~~ 15.1-13-08

67.1-02-01-05. Program approval standards. The education standards and practices board shall adopt a set of North Dakota teacher education program approval standards.

1. The standards will be the criteria used to evaluate undergraduate and graduate education programs leading to North Dakota educational licensure.
2. The standards must be reviewed and revised at least every five years with input from the state-approved institutions and ~~K-12~~ kindergarten through grade twelve educators and with consideration of recommendations from professional organizations. Public hearings must be provided in accordance with North Dakota Century Code chapter 28-32.
3. New standards become mandatory two years after their ~~adoption by the education standards and practices board~~ publication by the office of the legislative council in accordance with North Dakota Century Code section 28-32-19. During the two-year transition period following publication, institutions may elect to be reviewed either under the previously published standards or the newly published standards.
4. Full text of the North Dakota standards for program approval may be reviewed in North Dakota Administrative Code title 67.1 or at the office of the education standards and practices board.

5. Graduates successfully completing all the requirements of programs approved by the education standards and practices board must be recommended by their degree granting institution for North Dakota licensure on that basis. Graduates of programs other than those approved by the North Dakota education standards and practices board are subject to meeting the same standards criteria through the review of official transcripts.

History: Effective July 1, 1995; amended effective October 1, 1998; March 1, 2000; August 1, 2002.

General Authority: NDCC ~~45-36-01, 28-32-02~~ 15.1-13-08, 15.1-13-09, 15.1-13-10

Law Implemented: NDCC ~~45-38-18~~ 15.1-13-08, 15.1-13-10

CHAPTER 67.1-02-02

67.1-02-02-01. Life certificates.

1. First grade and second grade professional life certificates issued prior to July 1, 1976, are valid for life. However, it is recommended that teachers show professional gain by college attendance, workshops, conferences, travel, and other professional activities.
2. A life license will be issued to those teachers who have been licensed to teach in North Dakota for a period of thirty years. The application for the life license must be accompanied by a fee as pursuant to the five-year renewal fee in section 67.1-02-02-04.

History: Effective July 1, 1995; amended effective August 1, 2002.

General Authority: NDCC ~~45-36-04, 28-32-02~~ 15.1-13-09, 15.1-13-10

Law Implemented: NDCC ~~45-36-04~~ 15.1-13-10, 15.1-13-11, 15.1-13-12.1

67.1-02-02-02. Initial licenses.

1. Initial teacher licensure for in-state graduates or graduates of out-of-state programs requires a minimum of a bachelor's degree from a state agency-approved teacher education program. The approved program must include a general studies component, a North Dakota recognized program area major, and a professional pedagogy core as defined in this section and the North Dakota standards for teacher education program approval:
 - a. The general studies component includes liberal arts preparation in the areas of the humanities, fine arts, mathematics, natural sciences, behavioral sciences, and symbolic systems as prerequisite to entrance into the professional education program.
 - b. North Dakota recognized program area majors are printed on the application form and include content-specific majors at the secondary level, content-specific kindergarten through grade twelve majors as listed below, majors in middle level education, or majors in elementary education. Majors that are transcribed by state-approved teacher education programs using terminology not appearing on the application form must be compared to the North Dakota standards for teacher education program approval to determine whether they meet the same criteria as the listed recognized majors. Majors must include a minimum of thirty-two semester hours of coursework specific to the major beyond the introductory level.
 - (1) The secondary content-specific major must include a minimum of four semester hours in special methods of

teaching at the secondary level and special methods of teaching in the specific content area.

- (2) The middle level major must include study of middle level foundations, adolescent development, reading in the content areas, and special methods of teaching at the middle level. Study of these areas must total a minimum of ten semester hours with at least two semester hours of special methods of teaching at the middle level.
 - (3) The elementary major must include special methods of teaching elementary content areas with a minimum of twelve semester hours specific to teaching elementary school mathematics, science, social studies, reading, and language arts.
 - (4) Kindergarten through grade twelve preparation programs in special education, foreign language, art, music, physical education, business education, and computer education must include a minimum of four semester hours of special methods of teaching inclusive of kindergarten through grade twelve and special methods of teaching in the specific content area.
 - (5) The early childhood major must include study of child development, birth through age eight, and include special methods of teaching at the early childhood level.
- c. The professional education component includes a minimum of twenty-two semester hours of pedagogical study of teaching and learning in addition to the program-specific major. This coursework must be from the areas of educational foundations, educational psychology, child development, teaching and learning theory, educational diagnosis and assessment, inclusive education, educational technology, classroom and behavioral management, and human relations specific to teaching. The professional education component must also include classroom professional experience prior to student teaching and a minimum of ten weeks of full-time successful participation in student teaching at appropriate grade levels. The professional education component, including student teaching, must be completed under the supervision of a teacher training institution approved by the education standards and practices board in North Dakota or the appropriate state, provincial, or similar jurisdictional authority for out-of-state institutions.
- d. Student teaching exception - Internship. An applicant who graduated from a state-approved teacher education program prior to January 1, 1988, which did not include a minimum of

ten weeks of full-time student teaching may qualify under one of the two options under this subdivision. These options are available only if the applicant has met all other requirements for licensure of the education standards and practices board and North Dakota Century Code sections ~~15-47-46~~ 15.1-18-02 and ~~15-41-25~~ 15.1-18-03, except the requirement of ten weeks of student teaching.

- (1) The applicant must document a minimum of eight full weeks of student teaching at the appropriate level in the major field of study under the supervision of a state-approved teacher education program and document five years of successful teaching within the last ten years; or
 - (2) An applicant who can document a minimum of eight weeks of successful student teaching but cannot document a minimum of five years of successful teaching experience must either complete the additional student teaching hours or may choose to complete an internship under the supervision of a state-approved college of teacher education to fulfill the additional hours.
 - (a) The internship contact hours in the classroom must consist of classroom time blocks not less than one-half day and when added to the applicant's existing student teaching hours total a minimum of ten weeks of full-time equivalent student teaching and supervised internship experience.
 - (b) The internship must occur in a regular kindergarten through grade twelve classroom setting and allow the intern to experience the full range of curriculum and classroom operations.
 - (c) The internship must be approved by the education standards and practices board and transcribed through a state-approved teacher education institution.
- e. Teaching minors. A teaching minor may only be earned or added to a teaching major. An individual may not be licensed or change grade levels of licensure with only a teaching minor unless the individual has met the requirements in section 67.1-02-03-03.3.

A teaching minor is defined as a minimum of sixteen semester or twenty-four quarter credit hours in a single designated academic area. These sixteen semester or twenty-four quarter credit hours must be in courses for which the institution gives credit toward graduation in the major.

2. An applicant must have a minimum overall grade point average of 2.50. The education standards and practices board will use the college-figured grade point average if all previous college coursework is on the transcript. If the student has transferred from another institution, and the grade point average calculated by the institution granting the degree is only for those credits at that institution, the education standards and practices board will refigure the grade point average using all previous college coursework.
3. An applicant shall provide three positive recommendations. Two of the recommendations must be secured from the most recent employing board, credentialed supervisors, ~~and~~ or administrators. One of the recommendations may be a person of the applicant's choice with knowledge of the applicant's teaching potential and character. If the applicant has not taught in the last three years or it is impossible to secure recommendations from supervisors or administrators, the recommendations must be secured from individuals who can speak with regard to the teaching potential and character of the applicant.
4. Verification of eligibility for home state licensure may be requested.
5. Acceptable translations for preparations received in foreign institutions will be requested at the applicant's expense.
6. An application fee of twenty-five dollars must accompany a request for an initial application form.
7. A fee of sixty dollars must accompany the application for initial licensure for in-state and out-of-state graduates. An additional fee of one hundred seventy-five dollars for transcript review from out-of-state graduates must also accompany the licensure application.
8. All initial licenses are valid for only two consecutive years.
9. Fingerprinting. In addition to completing the licensure application process outlined in this section, an applicant applying for licensure in North Dakota for the first time after August 1, 1997, must submit to a fingerprint screening for criminal records in accordance with North Dakota Century Code section ~~15-38-18.2~~ 15.1-13-14.
 - a. An applicant graduating from a North Dakota teacher preparation program may obtain the fingerprinting materials from college officials. Previous graduates and out-of-state graduates must contact the education standards and practices board directly for the fingerprinting materials. Fingerprint screening reports from other agencies are not available to the education standards and practices board. Applicants must complete the process with cards and release forms designating the education standards and practices board as the agency to receive the report.

- b. The applicant must have the fingerprinting done by an authorized law enforcement agency such as a sheriff's office, police department, or campus police. Both cards are to be completed with a ten-finger check. The criminal record inquiry authorization form must also be completed, including an original signature. The fingerprint cards and authorization form must be returned directly to the education standards and practices board office.
 - c. Unofficial, incomplete, altered, or damaged cards and forms will not be accepted.
 - d. The applicant is responsible for all local, state, and federal law enforcement agency fees related to the fingerprint background check.
 - e. The applicant is advised to allow a minimum of eight weeks for the fingerprint screening process. An applicant must hold a valid North Dakota license to be employed or permitted to teach in North Dakota. Individuals who have completed all requirements for the professional educator's license except final completion of the fingerprint background check may obtain a provisional license under section 67.1-02-04-04.
 - f. Fingerprint screening reports must be recent and may only be used for licensure for six months from the date the report is received by the education standards and practices board.
10. Reeducation for initial licensure. Applicants who hold nonteaching degrees in content areas taught in public schools may receive initial licensure by completing the professional education requirements at a state-approved program authorized to recommend applicants for licensure in that area. This reeducation may be completed at the undergraduate or graduate level. The institution with the approved program must document that the applicant's specialty area degree is equivalent to its approved program's specialty area requirements in subdivisions b and c of subsection 1, and recommend the applicant for licensure. Applicants applying under this section must file a completed application form as other initial applicants, comply with the fingerprint background check in subsection 9, and pay all applicable fees.
11. Preprofessional skills test. On July 1, 2002, all initial applicants for licensure will be required to submit their test scores for the PPST in reading, writing, and mathematics. Beginning July 1, 2003, all applicants for initial licensure will need to submit their test scores for

the PPST in reading, writing, and mathematics which meet or exceed the state cut score.

History: Effective July 1, 1995; amended effective October 1, 1998; October 16, 1998-April 14, 1999; June 1, 1999; March 1, 2000; August 1, 2002.

General Authority: ~~NDCC 15-36-01, 15-36-18, 28-32-02~~ 15.1-13-08, 15.1-13-09, 15.1-13-10

Law Implemented: ~~NDCC 15-36-01, 15-36-08, 15-38-18, 15-38-18.2, 15-47-52~~ 15.1-13-08, 15.1-13-10, 15.1-13-11, 15.1-13-12, 15.1-13-14

67.1-02-02-04. Two-year and five-year renewals.

1. **a. Two-year renewal license.**

a. A two-year ~~license~~ renewal license will be issued to applicants with less than eighteen months of successful contracted teaching in North Dakota who meet the renewal requirements and pay the required fees. The two-year renewal fee is forty dollars.

b. A two-year reentry ~~license~~ renewal will be issued to an applicant reentering the profession after an absence of five years. An applicant reentering the profession must complete eight semester hours of reeducation credit during the applicant's first two years of contracted employment as stated in this section and in section 67.1-02-02-09. The fee for the reentry license is sixty dollars.

c. A two-year reentry ~~license~~ renewal will be issued to an ~~initial~~ applicant from out of state who has had an absence from the profession of more than five years, or to an applicant who cannot submit four semester hours of credit taken during each of the past two five-year periods if employed in education out of state. Such an applicant must meet the requirements of North Dakota initial licensure as stated in section 67.1-02-02-02 and must also complete the requirements for reentry education as stated in this section and in section 67.1-02-02-09. The fee for the reentry license is sixty dollars.

d. A two-year ~~certificate~~ renewal license will be issued for substitute teaching. A substitute teacher must maintain a valid teaching license using the two-year renewal cycle, but is not required to submit reeducation hours unless the person signs a contract. The fee for this two-year renewal is forty dollars.

2. **Five-year renewal license.**

a. The initial five-year renewal will be issued to those applicants who have successfully taught eighteen months in the state on a valid North Dakota license.

- (1) All five-year license applications must be accompanied by a fee of one hundred dollars.
 - (2) Succeeding five-year renewals require evidence of thirty teaching days of contracted service and completion of a minimum of four semester hours of reeducation credit to avoid reverting to entry status.
 - (3) Three recommendations are required. Two of the recommendations must be secured from the most recent employing board, credentialed supervisors, and administrators. One of the recommendations may be a person of the applicant's choice with knowledge of the applicant's teaching potential and character. If the applicant has not taught in the last three years or it is impossible to secure recommendations from credentialed supervisors or administrators, then recommendations must be secured from individuals who can speak with regard to the teaching potential and character of the applicant.
- a. b. A renewal applicant who has completed the four semester hours of credit but has not been contracted for at least thirty days under the five-year license will revert to the two-year renewal cycle.
- b. ~~A renewal applicant who has failed to complete the four semester hours of reeducation credit, whether the applicant has been contracted or not, will either not be renewed or may agree to be placed on two-year probation. Eight semester hours of reeducation credit must be supplied as a condition of the two-year probationary license, four semester hours the first year and four semester hours the second year. An applicant who is employed under contract during the probationary license and fails to complete the probation credit requirements will not be renewed. An applicant who is not employed under contract at any time under the probationary license may renew on the two-year cycle and may substitute teach, but must begin completing the reeducation requirements immediately if the applicant accepts a full-time or part-time contract.~~
- c. Probationary license. An applicant who has failed to complete the four semester hours of reeducation credit, whether the application has been contracted or not, will either not be renewed, or may agree to be placed on a two-year probationary license. Eight semester hours of reeducation semester credit must be supplied as a condition of the two-year probationary license. A second probationary license will not be issued.
- d. If recommendations are not adequate to issue a five-year license, the education standards and practices board shall provide a

hearing following North Dakota Century Code chapter 28-32. The procedure must be as provided in North Dakota Century Code section 28-32-05. Following the hearing procedure, the education standards and practices board shall make a determination whether to issue a renewal to the applicant or deny relicensure.

History: Effective July 1, 1995; amended effective October 1, 1998; October 16, 1998-April 14, 1999; June 1, 1999; March 1, 2000; August 1, 2002.

General Authority: NDCC ~~15-36-01, 28-32-02~~ 15.1-13-09, 15.1-13-10

Law Implemented: NDCC ~~15-36-01, 15-36-08, 15-38-18~~ 15.1-13-09, 15.1-13-10, 15.1-13-11

67.1-02-02-07. Indian studies Multicultural education and Native American studies. Any teacher who graduated from a teacher education program after September 1, 1980, is required to meet the North Dakota Native American studies requirement which is two semester hours or three quarter hours of college credit in North Dakota Native American studies, or the equivalent in inservice pursuant to approval by the education standards and practices board. The two-year license will be used for compliance for reentry and out-of-state applicants. Substitute teachers are exempt from the Indian studies requirement until a contracted position is accepted. The course must be completed within the time period of the first two-year license under which the educator becomes contracted in North Dakota. If this requirement is not met, the license may not be renewed until the course is completed. North Dakota education standards and practices board licensure requires a minimum of two semester hours in multicultural education, including Native American studies and strategies for teaching and assessing diverse learners.

1. North Dakota graduates applying for licensure meet these requirements through completion of education standards and practices board-approved programs that include coursework addressing the multicultural education and Native American studies standard. Teacher preparation programs may meet these requirements through general education, specific content major, professional education requirements, or a combination thereof.
2. Out-of-state applicants must provide evidence documenting successful completion of the requirement to the education standards and practices board within two years of contracted employment in North Dakota.
3. Substitute teachers may defer completion of the requirement until a contracted position is accepted. Individuals who graduate prior to September 1, 1980, are exempt from muticultural requirements under North Dakota Century Code section 15.1-13-10.

History: Effective July 1, 1995; amended effective October 1, 1998; March 1, 2000; August 1, 2002.

General Authority: NDCC ~~15-36-01, 28-32-02~~ 15.1-13-09, 15.1-13-10

Law Implemented: NDCC ~~15-36-01~~ 15.1-13-10

67.1-02-02-09. Reentry. An applicant who has been out of teaching for a period of more than five years must earn a total of eight semester hours or twelve quarter hours of college or university credit in the area in which the teacher wishes to renew licensure during the first two years of reentry contracted service. ~~One-half of the required credit hours must be earned before entering the second year of employment.~~ Substitute teachers are exempt from the eight semester hour requirement until the individual accepts a contracted position. The fee for the two-year reentry license is sixty dollars. Reentry applicants should also refer to information in subsection 1 of section 67.1-02-02-04, regarding two-year and five-year renewals.

History: Effective July 1, 1995; amended effective October 1, 1998; June 1, 1999; March 1, 2000; August 1, 2002.

General Authority: NDCC ~~15-36-01, 15-36-18, 28-32-02~~ 15.1-13-09, 15.1-13-10

Law Implemented: NDCC ~~15-36-01~~ 15.1-13-09, 15.1-13-10, 15.1-13-11

CHAPTER 67.1-02-03

67.1-02-03-01. Elementary endorsement. Reeducation of a licensed teacher for elementary schoolteaching may be accomplished by completing a ~~college-approved~~ state-approved elementary teacher education program of twenty-six semester hours or forty quarter hours, including a regular classroom student teaching experience of six quarter hours or a minimum of five consecutive weeks between kindergarten through grade six. The coursework must include special methods of teaching elementary content areas with a minimum of twelve semester hours specific to teaching elementary school reading, language arts, mathematics, science, and social studies along with additional appropriate elementary education coursework. Reeducation for the elementary endorsement must be completed prior to or within two years of assignment to teach at the elementary level.

A verified successful college-supervised internship with credit may be substituted for student teaching under this section. The internship option within the elementary endorsement is available only:

1. To an individual who has graduated from a state-approved teacher education program that has as part of its approved preparation a year of college-supervised internship at the elementary level; or
2. To an individual licensed by the North Dakota education standards and practices board to teach kindergarten through grade twelve in accordance with North Dakota Century Code sections ~~15-41-25~~ 15.1-18-03 and ~~15-47-46~~ 15.1-18-02 who has already successfully completed a minimum of five weeks of full-time student teaching at the elementary level in the individual's specialty area. The total internship contact hours in the classroom must be equivalent to a minimum of five weeks of full-time student teaching and consist of classroom time blocks not less than one-half of one day.

The internship must occur in a regular kindergarten through grade six classroom setting and allow the intern to experience the full range of curriculum and classroom operations. Individuals performing elementary endorsement internships work under the supervision of licensed teachers and must not be assigned in lieu of regularly employed teachers. Individuals completing the internship option who are doing so to meet the requirements for elementary principalship must not intern with classroom teachers they would be supervising or evaluating in their role as principal. The internship must be approved by the education standards and practices board and transcribed through a state-approved teacher education institution.

History: Effective July 1, 1995; amended effective June 1, 1999; March 1, 2000; August 1, 2002.

General Authority: NDCC ~~15-36-01, 28-32-02~~ 15.1-13-09, 15.1-13-10

Law Implemented: NDCC ~~15-36-01, 15-47-46~~ 15.1-13-10, 15.1-18-02

67.1-02-03-03. Secondary endorsement. Reeducation for secondary schoolteaching may be accomplished in one of the following ~~two~~ ways:

1. By completing the minimum requirements for a degree in secondary education, including student teaching in grades seven through twelve and a North Dakota-recognized content area major; or
2. An individual who already has a North Dakota-recognized content area major may complete the secondary endorsement by presenting a minimum of eight semester hours or twelve quarter hours of secondary education professional courses for the endorsement in addition to the major or minor field. The applicant must have a minimum of one year successful teaching experience in grades seven through twelve or have supervised student teaching as part of the above program.
3. An individual who has a bachelor's degree in elementary education with a transcribed recognized content minor may complete the secondary methods coursework and a minimum of five weeks of student teaching in grades seven through twelve or the interim licensure clinical practice option under section 67.1-02-04-07.

Reeducation for the secondary endorsement must be completed prior to assignment to teach in the secondary content area.

History: Effective July 1, 1995; amended effective October 1, 1998; June 1, 1999; March 1, 2000; August 1, 2002.

General Authority: NDCC ~~15-36-01, 28-32-02~~ 15.1-13-09, 15.1-13-10

Law Implemented: NDCC ~~15-36-01, 15-41-25~~ 15.1-13-10, 15.1-18-03

67.1-02-03-04. Middle school endorsement for grades five through eight. The middle school endorsement is mandatory for teachers licensed for grades seven through twelve to qualify for work with grades five and six in the subject fields of their licensure and voluntary for work with students in grades seven and eight. Elementary teachers licensed to teach grades one through six must complete the middle school endorsement to teach in grades seven and eight. Endorsement for teaching in middle school is available on a voluntary basis to teachers licensed to teach elementary grades one through eight or to specialty areas licensed to teach grades one through twelve under paragraph 1, 3, or 4 of subdivision b of subsection 1 of section 67.1-02-02-02. A review of past coursework will be conducted and a program of studies needed for completion will be established. The middle school endorsement requires a minimum of ten semester hours, including all of the following:

1. Development of young adolescents.
2. Philosophy and curriculum (foundations) of middle school education.
3. Reading Teaching reading and other study or learning skills in the content areas.

4. Methods or strategies of teaching in the middle grades, two semester hours minimum.
5. Reeducation for the middle level endorsement must include a twenty clock-hour field experience in grades five through eight in a school setting where middle level philosophy has been implemented, or successful teaching in grades five through eight in a school setting where middle level philosophy has been implemented.

Reeducation for the middle school endorsement must be completed prior to or within two years of assignment to teach at the middle level, grades five through eight.

History: Effective July 1, 1995; amended effective June 1, 1999; March 1, 2000; August 1, 2002.

General Authority: NDCC ~~15-36-01, 28-32-02~~ 15.1-13-09, 15.1-13-10

Law Implemented: NDCC ~~15-36-01, 15-47-46~~ 15.1-13-10, 15.1-18-02

67.1-02-03-05. Bilingual education or English as a second language endorsement. Reeducation for a "bilingual education or English as a second language" endorsement for any licensed teacher may be accomplished by presenting at least sixteen semester hours or twenty-four quarter hours of college coursework in all of the following areas:

1. **Foundations.** Four semester hours or six quarter hours of college coursework, including the following:
 - a. Multicultural education, which involves a knowledge of ethnic groups in North Dakota and the United States, and different instructional methods to use with different ethnic and language groups.
 - b. Foundations of bilingual education, which involves models of bilingual education; research on the effectiveness, or lack thereof, of bilingual education; history of bilingual education; and significant laws and court decisions affecting language minority students.
2. **Linguistics.** Six semester or nine quarter hours of college coursework, including the following areas:
 - a. Linguistics, which involves the nature of language, organizational principles of language (phonology, morphology, syntax, and semantics), principles of language change, and development of language families.
 - b. Psycholinguistics, which involves first and second language, oral and written acquisition processes, and learning theories.

- c. Sociolinguistics, which involves basic sociocultural variables in language use and language learning, types of bilingual and multilingual educational situations, and social determinants of dialect and style.
3. **Methods.** Two semester or three quarter hours of college coursework, including the following:
 - a. Methods of teaching English as a second language to students, which involves an exploration of historical and current instructional approaches in teaching English as a second language, from the grammar-translation method to the natural method.
 - b. Methods of teaching bilingual education, which involves an understanding of instructional programs in bilingual education, such as immersion, transitional, early entry, and late entry.
 4. **Assessment.** Two semester hours or three quarter hours of college coursework from assessment and testing of culturally diverse students, which involves a study of culturally appropriate assessment tools and methods of identifying and assessing limited English proficient students.
 5. **Field experience.** Two semester or three quarter hours of college coursework in field teaching experience with limited English proficient students in a bilingual or English as a second language setting.

Reeducation for the bilingual education or English as a second language endorsement must be completed prior to within two years of assignment to teach bilingual education or English as a second language. The applicant shall file a plan with the education standards and practices board upon becoming employed as a bilingual or English as a second language teacher, outlining how the endorsement will be completed within the two-year period. The bilingual or English as a second language endorsement enables the applicant to teach bilingual or English as a second language grades kindergarten through twelve. Applicants teaching other content material must hold licensure appropriate to the teaching of that content at the assigned grade levels in compliance with North Dakota Century Code sections 15.1-18-03 and 15.1-18-02 and this article.

History: Effective July 1, 1995; amended effective October 1, 1998; June 1, 1999; March 1, 2000; August 1, 2002.

General Authority: ~~NDCC 45-36-01, 28-32-02~~ 15.1-13-09, 15.1-13-10

Law Implemented: ~~NDCC 45-36-04~~ 15.1-13-10

67.1-02-03-06. Minor equivalency endorsement.

1. Nothing in this section may be interpreted to affect the validity of minor equivalencies issued by the department of public instruction prior to September 1, 1998.

2. The applicant wishing to apply under the minor equivalency endorsement option must be licensed by the education standards and practices board to teach under North Dakota Century Code section ~~15-47-46~~ 15.1-18-02 or ~~15-41-25~~ 15.1-18-03. The minor equivalency endorsement will be issued for the same grade levels as the individual's primary licensure, the same as for minors transcribed by colleges of teacher education. Those whose primary licensure is secondary may use the endorsement to teach the new content area in grades seven through twelve. Those whose primary licensure is elementary (grades one through six or one through eight) or middle school (grades five through eight) may use the endorsement for additional content expertise at those levels but may not use it to teach at the high school level without a complete secondary endorsement.
3. The applicant must request a minor equivalency endorsement form from the education standards and practices board, complete it, and return it to the education standards and practices board with official transcripts and the review fee of fifty dollars.
4. Once the transcripts have been reviewed, if all requirements have been met, the minor equivalency endorsement will be added to the teaching license. A new teaching license will be issued.
5. If the requirements have not been met, the education standards and practices board will return the minor equivalency endorsement form listing the additional requirements to be completed. No additional fee will be charged when the requirements have been met and the minor equivalency endorsement is added to the teaching license.
6. Two levels of content area endorsements are available to be added to the existing North Dakota professional educator's license. A listing of all the minor equivalency endorsement content areas available and specific areas of study required within each equivalency can be obtained by contacting the office of the education standards and practices board.
 - a. The ME16 level requires a minimum of sixteen semester hours of content-specific coursework, including the areas of study approved and required by the education standards and practices board. The ME16 level will be reviewed when the applicant applies for renewal licensure. The coursework for the ME24 level must be completed within five years of the application date for the ME16 level. If the ME24 level coursework is not completed within five years, the ME16 level will be removed from the license.
 - b. The ME24 level requires a minimum of twenty-four semester hours of content-specific coursework, including the areas of study approved and required by the education standards and practices board. The ME24 level also must include the special methods

of teaching in the content area. The ME24 level is considered equivalent to a full teaching minor.

7. All coursework for the minor equivalency endorsement must be beyond the introductory level general studies courses as defined in section 67.1-02-02-02 and be transcribed by an approved teacher education program.
8. All coursework must be transcribed by a state-approved college of teacher education program.
9. The minor equivalency endorsement must be completed prior to contracted teaching in the content area.

History: Effective March 1, 2000; amended effective August 1, 2002.

General Authority: NDCC ~~45-36-01, 28-32-02~~ 15.1-13-09, 15.1-13-10

Law Implemented: NDCC ~~45-36-01, 15-41-25~~ 15.1-13-08, 15.1-13-10, 15.1-13-11, 15.1-18-03

CHAPTER 67.1-02-04

67.1-02-04-03. Interim school counselor. School counselor monitoring under the seven-year option provided in North Dakota Century Code section ~~45-36-18~~ 15.1-13-23, which took effect August 1, 1997, will be conducted as follows:

1. An applicant wishing to apply under the seven-year option provided in North Dakota Century Code section ~~45-36-18~~ 15.1-13-23 must first contact the guidance and counseling office at the department of public instruction to confirm that the counseling degree the applicant currently holds is eligible. The department of public instruction counseling office will forward a letter confirming its decision to the education standards and practices board.
2. Eligible counselors entering through the seven-year program must be fingerprinted at the beginning of the process and clear the background check under section 67.1-02-02-02 in the same manner as other initial licensure applicants.
3. An applicant must show documentation that the applicant has been formally admitted both:
 - a. To a college or university with a state-approved teacher education program; and
 - b. To the approved teacher education program at that institution.
4. Once formally admitted, an applicant must file with the education standards and practices board:
 - a. The applicant's approved teacher education program plan; and
 - b. A timeline showing how the applicant will complete at least one-seventh of that program each year.
5. A counselor entering through the seven-year option must complete the requirements within seven years of the counselor's first entrance into the program. A counselor in this program must submit an annual progress report to the education standards and practices board with transcripts verifying that the counselor has completed the agreed-upon one-seventh of the program requirements.
6. An applicant entering under the seven-year program must receive a letter of approval granting the applicant permission for employment while working toward full licensure and must make a satisfactory annual progress report to the education standards and practices board.

7. An applicant cannot be employed or permitted to perform the duties of a licensed school counselor until the education standards and practices board formally approves the applicant's program and timeline and issues the letter.
8. Individuals performing the duties of a school counselor under an education standards and practices board letter of approval must be under the supervision of a licensed teacher since they do not yet hold a regular teaching license.

History: Effective March 1, 2000; amended effective August 1, 2002.

General Authority: NDCC ~~45-36-04~~ 15.1-13-09, 15.1-13-10, 15.1-13-23

Law Implemented: NDCC ~~45-36-18~~ 15.1-13-10, 15.1-13-14, 15.1-13-23

67.1-02-04-05. Interim reciprocal licensure. North Dakota has conditional reciprocity with other states. To receive interim reciprocal licensure, an applicant must first hold a valid, current regular teaching certificate or license from another state, province, or similar jurisdiction.

1. **Interim reciprocal entrance requirements.** Those who apply to the education standards and practices board, meet the minimum reciprocity requirements, and submit a satisfactory plan for completing the remaining North Dakota requirements will be issued a two-year interim reciprocal license which has a fee of sixty dollars. The minimum reciprocity qualifications are:
 - a. A bachelor's degree that includes a major that meets the issuing jurisdiction's requirements in elementary education, middle level education, or a content area taught in public high school;
 - b. Completion of a professional education sequence from a state-approved teacher education program, including supervised student teaching;
 - c. Fingerprint background check as required of all initial applicants; and
 - d. Submission and education standards and practices board approval of a plan to complete all remaining requirements for full North Dakota licensure as stated in section 67.1-02-02-02.
2. **Remaining North Dakota requirements.** An applicant will be notified of remaining requirements for full North Dakota licensure by the education standards and practices board. All out-of-state applicants shall submit transcripts for review by the same criteria as North Dakota applicants. The applicant must provide official copies of transcripts from all the institutions of higher education the applicant has attended. The nonrefundable fee for the transcript review process is one hundred seventy-five dollars.

- a. The transcript review fee may be deferred for the two-year substitute license. The fee is due upon application for the initial license and signing a North Dakota teaching contract.
 - b. The school district where the applicant will be a substitute must apply in writing for the deferment.
3. **Renewals.** The interim reciprocal license is renewable once, provided adequate progress toward completing the remaining requirements is documented and approved by the education standards and practices board. Individuals who are only substituting may hold and renew the interim reciprocal license and defer the remaining requirements until they come under part-time or full-time contract.

History: Effective March 1, 2000; amended effective August 1, 2002.

General Authority: NDCC ~~15-36-04~~ 15.1-13-09, 15.1-13-10

Law Implemented: NDCC ~~15-36-18~~ 15.1-13-10, 15.1-13-11, 15.1-13-14, 15.1-13-20, 15.1-13-21

67.1-02-04-06. Trade, industry, technical, and health occupations interim license. Applicants entering the profession of teaching in the areas of trade, industry, technical, and health occupations in compliance with the standards prescribed by the state board for vocational and technical education under North Dakota Century Code section 15-20.1-03.8 are issued restricted trade, industry, technical, and health occupations interim licensure by the education standards and practices board under North Dakota Century Code section 15.1-13-10. Applicants for the initial trade, industry, technical, and health occupations interim license pay the twenty-five dollar initial application fee and a sixty dollar fee for the first two-year license, and must also submit to a fingerprint screening for criminal records in accordance with North Dakota Century Code section 15.1-13-14. The trade, industry, technical, and health occupations interim license is renewable upon satisfactory completion of reeducation requirements prescribed and verified by the state board for vocational and technical education, submission of a completed application for renewal, positive recommendations, and payment of the license fee. Subsequent two-year or five-year renewal licenses will be issued in accordance with the renewal requirements in section 67.1-02-02-04. An applicant issued a restricted trade, industry, technical, and health occupations license may teach or substitute teach only in that licensed area and may move into a regular teaching license by completing the requirements for regular licensure under section 67.1-02-02-02.

History: Effective August 1, 2002.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10, 15.1-13-11, 15.1-13-14

67.1-02-04-07. Interim licensure clinical practice option. Applicants who have entered the profession of teaching through interim or emergency licensure under section 67.1-02-04-01, secondary endorsement under section 67.1-02-03-03, or trade, industry, technical, and health occupations interim

licensure under section 67.1-02-04-06 and are seeking to complete the requirements for regular licensure under section 67.1-02-02-02 may meet the student teaching requirement through a supervised clinical practice option meeting the following conditions:

1. The applicant requesting the clinical practice option must hold a valid regular elementary license, a valid interim or emergency license or a valid trade, industry, technical, and health occupations interim license and be employed under contract by an approved school during the clinical practice. The clinical practice option is not intended to be used by applicants who are not under contract and would not need release time from those contracts to complete a regular student teaching experience.
2. The clinical practice option must be approved by the education standards and practices board before it begins as part of the applicant's program of study toward regular licensure and must be conducted under the supervision of a state-approved college of teacher education. Criteria and evaluations for successful completion of the clinical experience must parallel and meet or exceed those the college of teacher education applies to student teaching experiences and the clinical practice must be at the appropriate grade levels for the licensure sought.
3. The school employing the applicant and the applicant must submit letters to the education standards and practices board requesting the clinical practice option and verifying their support of the agreement.
4. The clinical practice option must require a minimum of ten weeks of close supervision, which includes an equitable combination of daily meetings with or observations of the applicant at the beginning of the experience, by an onsite teacher meeting the qualifications for cooperating teachers under section 67.1-02-01-02 and by the school building principal or other supervisor responsible for evaluations of teachers under North Dakota Century Code sections 15.1-15-01 and 15.1-15-04 and must include onsite visits by college supervisors which meet or exceed the requirements for student teacher supervision under section 67.1-02-01-03.
5. The clinical practice option includes mentoring of the applicant for at least one school year by the onsite cooperating teacher and may also include mentoring by an offsite content area specialist. The mentoring occurs outside of the applicant's regular teaching assignment time and meets or exceeds the contact that would occur in a ten-week, full-time student teaching experience.
6. Upon completion of the clinical practice option, documentation of evaluations and transcripts verifying successful completion of the

clinical practice will be provided through the college of teacher education to the education standards and practices board.

7. Applicants holding valid interim or emergency licensure under section 67.1-02-04-01 or trade, industry, technical, and health occupations interim licensure under section 67.1-02-04-06 who have successfully completed all of the other requirements for regular two-year initial licensure under section 67.1-02-02-02, except for ten weeks of supervised student teaching, may use the successful clinical practice meeting the conditions of this section to fulfill the student teaching requirement.

History: Effective August 1, 2002.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10

CHAPTER 67.1-02-05

67.1-02-05-04. Endorsements, added degrees, and restrictions. The North Dakota educator's professional license is issued as described in section 67.1-02-02-02. This license qualifies the holder for regular classroom teaching or for functioning in areas with the proper endorsements and restrictions as assigned. Added degrees and endorsements must be obtained through state-approved teacher education programs.

1. **Endorsements.** An individual holding a valid North Dakota teaching license may request endorsements in kindergarten, elementary, middle school, bilingual, secondary, or content area minor equivalency endorsements or any other endorsement issued by the education standards and practices board. Specific requirements appear in chapter 67.1-02-03, regarding reeducation. A one-time, nonrefundable review fee of fifty dollars must accompany the request to add an endorsement.
2. **New degrees.** A newly acquired major, minor, or new degree may be added between renewal periods by submitting official transcripts and paying the regular renewal fee of forty dollars for those renewing to two-year licenses or one hundred dollars for those renewing to five-year licenses. An additional two-year or five-year extension, respectively, is added to the license expiration date at the time of the addition of the new major, minor, or degree.
3. **Added qualifications on life certificates.** An individual who holds a life certificate under section 67.1-02-02-01 may add degrees or endorsements to the education standards and practices board licensure records by submitting official transcripts and paying the review fee of fifty dollars. An official duplicate of the life certificate showing the added degree will be issued to the life certificate holder at the time of the addition.

Official duplicate copies of lost life certificates or renewable licenses will be provided at a cost to the holder of twenty dollars.

4. **Restricted licenses.** Programs that include a specialized rather than a regular professional education core are issued licenses that restrict the holder to teaching in that specialty area.
 - a. ~~Restricted licenses are issued to applicants with master's degrees in school psychology or speech therapy. Restricted licenses are issued to applicants with degrees in mental retardation, deaf education, visually impaired, or preschool or kindergarten handicapped. All other special education categories require regular elementary or secondary qualifications. Restricted licenses are also issued for baccalaureate level programs in vocational technical education and for reserve officers' training~~

~~corps and Native American language instruction. Teachers with restricted licenses may teach or substitute teach only in the specified area.:~~

- (1) School psychology. The kindergarten through grade twelve school psychology restricted license will be issued to those applicants who have a master's degree in school psychology from a national association of school psychology-accredited institution.
 - (2) Speech-language pathology. The kindergarten through grade twelve speech-language pathology restricted license will be issued to those applicants who have a master's degree in speech-language pathology or communication disorders, one hundred hours of school-based practicum, and have graduated from a program accredited by the council on academic accreditation of the American speech and hearing association.
- b. Restricted licenses are issued to applicants with baccalaureate degrees in the following areas who do not also meet qualifications for regular early childhood, elementary, middle level, secondary, or kindergarten through grade twelve licenses as stated in section 67.1-02-02-02:
- (1) Mental retardation education. The mental retardation kindergarten through grade twelve restricted license will be issued to those people qualifying for a valid North Dakota teaching license in special education, have a minimum of nineteen semester or twenty-eight quarter hours in mental retardation coursework and a practicum from an institution offering a major in special education.
 - (2) Hearing-impaired education. The hearing-impaired kindergarten through grade twelve restricted license will be issued to those applicants who have a bachelor of science degree major in education of the deaf with thirty-two hours of hearing-impaired qualifying coursework.
 - (3) Visually impaired education. The visually impaired kindergarten through grade twelve restricted license will be issued to those applicants who have a bachelor of science degree with a major in visually impaired and twenty-one through twenty-three semester hours in qualifying visually impaired coursework.
 - (4) Preschool and kindergarten handicapped. The prekindergarten handicapped restricted license will be

issued to those applicants who have a baccalaureate degree in early childhood special education.

- (5) All other special education categories require regular elementary or secondary qualifications.
- (6) Vocational and technical education. The trade, industry, technical, and health occupations restricted license will be issued to applicants holding a baccalaureate level degree in vocational and technical education if that degree does not include the general education or regular professional education core as required for regular licensure under section 67.1-02-02-02, and is restricted to teaching in grades seven through grade twelve.
- (7) Reserve officers training corps. The reserve officers training corps license will be issued pursuant to section 67.1-02-05-03.
- (8) Native American language instruction. The Native American language restricted license will be issued to those applicants holding a baccalaureate level degree in Native American language if that degree does not include the general education or regular professional education core as required for regular licensure under section 67.1-02-02-02.

c. Restricted licenses are issued to those nondegreed applicants in:

- (1) Vocational and technical education. Restricted licenses are issued for trade, industry, technical, and health occupations in accordance with section 67.1-02-04-06 and are restricted to teaching in grades seven through twelve.
- (2) North Dakota American Indian language instructors as pursuant to North Dakota Century Code section 15.1-13-22.

d. Teachers with restricted licenses may teach or substitute teach only in the restricted specified area.

5. National board certification.

a. As a prerequisite, the applicant must:

- (1) Have acquired a baccalaureate degree from a state-approved or accredited teacher education program;
- (2) Hold a valid North Dakota educator's professional license;

- (3) Have successfully completed three years of teaching at one or more elementary, middle, or secondary schools in North Dakota; and
 - (4) Currently be a North Dakota kindergarten through grade twelve public classroom instructor.
- b. The applicant may apply:
- (1) For the guide to national board certification, which includes the application process by contacting the education standards and practices board; and
 - (2) For one-half of the application fee by submitting the completed application to the education standards and practices board by ~~November~~ December first. Based upon availability of state funds, applications will be accepted and funded on a first-come, first-served basis.
- c. Upon documented successful completion:
- (1) The national board for professional teaching standards certification may be added between renewal periods for a fee of one hundred dollars; ~~and~~
 - (2) An additional ten years is also added to the license expiration date at the time of the addition of national board for professional teaching standards certification; and
 - (3) Effective August 1, 2001, at the conclusion of each of the first four full school years after the individual obtains the national teacher certification, the applicant is entitled to receive an additional one thousand five hundred dollars subject to available appropriations if:
 - (a) The individual served during the school year as a full-time classroom teacher in a public school in North Dakota; and
 - (b) The individual participated in any efforts of the employing school district to develop and implement teacher mentoring programs and teacher evaluation programs.

History: Effective July 1, 1995; amended effective October 1, 1998; June 1, 1999; March 1, 2000; August 1, 2002.

General Authority: ~~NDCC 45-36-01, 45-36-08, 28-32-02~~ 15.1-13-09, 15.1-13-10

Law Implemented: ~~NDCC 45-36-04~~ 15.1-13-08, 15.1-13-10, 15.1-13-11, 15.1-13-12.1, 15.1-13-22, 15.1-18-02, 15.1-18-03; S.L. 2001, ch. 173, § 16

67.1-02-05-06. Levels of licensure. North Dakota professional educator's licenses are categorized into three levels, based upon educational preparation and employment experience, as follows:

1. Level I indicates that the licenseholder still has educational or employment requirements to meet before receiving the regular level II license, or that they are not currently maintaining contracted employment. The licenses in this category include the initial license, provisional license, interim emergency license, interim reciprocal license, reentry license, and the two-year renewal or substitute license with less than eighteen months of contracted teaching experience. Life certificates as described in section 67.1-02-02-01 will appear as level I licenses since they do not report their status through renewals.
2. Level II indicates that the licenseholder has met all of the educational and employment requirements in sections 67.1-02-02-02, 67.1-02-02-04, and 67.1-02-02-07 for a regular five-year North Dakota educator's professional license.
3. Level III indicates that the licenseholder either:
 - a. Meets all of the requirements for level II regular five-year licensure and has earned advanced degrees beyond the bachelor's level (master's, specialist, or doctoral);
 - b. Holds national board for professional teaching standards advanced licensure as stated in subsection 5 of section 67.1-02-05-04.

History: Effective August 1, 2002.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10

CHAPTER 67.1-03-01

67.1-03-01-01. Professional beliefs Preamble. The educator believes in the worth and dignity of each human being and strives to help each student realize the student's potential as a worthy, effective member of society. The educator, therefore, works to stimulate the spirit of inquiry, the acquisition of knowledge and understanding, and the thoughtful formulation of worthy goals. The profession is vested by the public with a trust and responsibility requiring the highest ideals of professional service. The quality of the services of the education profession directly influences the nation and its citizens. The educator shall exert every effort to raise professional standards, to promote a climate that encourages persons worthy of trust to exercise careers in education, and to assist in preventing the practice of the profession by unqualified persons. The educator believes that patriotism in its highest form requires dedication to the principles of our democratic heritage and assumes full political and citizenship responsibility. The educator shares with all other citizens the responsibility for the development of educational programs and policies and for interpreting these to the public. The professional educator regards the employment agreement as a solemn pledge to be executed both in spirit and in fact in a manner consistent with the highest ideals of professional service. The educator recognizes that education preserves and promotes the principles of democracy. The educator shares with all other citizens the responsibility for the development of educational policy. The educator acts on the belief that the quality of the services of the education profession directly influences the nation and its citizens. The educator promotes the worth and dignity of each human being and strives to help each student realize the student's potential as a worthy, effective member of society. The educator, therefore, works to stimulate the spirit of inquiry, the acquisition of knowledge and understanding, and the thoughtful formulation of worthy goals. The educator measures success by the progress each student makes toward the realization of his or her potential as an effective citizen. The educator regards the employment agreement as a solemn pledge to be executed both in spirit and in fact in a manner consistent with the highest ideals of professional service. The educator accepts the responsibility to practice the profession according to the highest ethical standards. The educator strives to raise professional standards to improve service and achieve conditions which attract highly qualified persons to the profession.

The following code of professional conduct of the education standards and practices board governs all members of the teaching profession. A violation of this section constitutes grounds for disciplinary action which includes the issuance of a warning or reprimand or both, suspension or revocation of the license of the affected educator, or other appropriate disciplinary action.

History: Effective July 1, 1995; amended effective August 1, 2002.

General Authority: NDCC ~~45-38-18, 28-32-02~~ 15.1-13-08, 15.1-13-09, 15.1-13-10

Law Implemented: NDCC ~~45-38-18~~ 15.1-13-08, 15.1-13-10

67.1-03-01-02. Principle I - Commitment to the student. ~~In fulfillment of the obligation to the student, the educator shall~~ In fulfilling obligations to students, the North Dakota educator:

1. ~~Deal justly and considerately with each student. Shall not, without just cause, deny the student access to varying points of view;~~
2. ~~Share the professional responsibilities for improving educational opportunities. Shall not intentionally suppress or distort subject matter relevant to a student's academic program;~~
3. ~~Provide reasonable opportunity for the student to study varying concepts and respect the student's right to form one's own views. Shall protect the student from conditions detrimental to learning or to physiological or psychological well-being;~~
4. ~~Disperse information about the student obtained in the course of professional service only as prescribed by law. Shall not engage in physical abuse of a student or sexual conduct with a student and shall report to the education standards and practices board knowledge of such an act by an educator;~~
5. ~~Avoid using professional relationships with students for private advantage. Shall not harass, discriminate against, or grant a discriminatory advantage to a student on the grounds of race, color, creed, sex, national origin, marital status, political or religious beliefs, physical or mental conditions, family, social, or cultural background, or sexual orientation; shall make reasonable effort to assure that a student is protected from harassment or discrimination on these grounds; and may not engage in a course of conduct that would encourage a reasonable student to develop a prejudice on these grounds;~~
6. Shall not use professional relationships with a student for personal advantage or gain;
7. Shall disclose confidential information about individuals, in accordance with state and federal laws, only when a compelling professional purpose is served or when required by law; and
8. Shall accord just and equitable treatment to all students as they exercise their educational rights and responsibilities.

History: Effective July 1, 1995; amended effective August 1, 2002.

General Authority: NDCC ~~45-38-18, 28-32-02~~ 15.1-13-08, 15.1-13-09, 15.1-13-10

Law Implemented: NDCC ~~45-38-18~~ 15.1-13-08, 15.1-13-10

67.1-03-01-03. Principle II - Commitment to the profession. In fulfillment of the obligation to the profession, the educator shall In fulfilling obligations to the profession, the North Dakota educator:

1. ~~Recognize that the profession must accept responsibility for the professional conduct of its members and understand that their own conduct may be regarded as representative.~~ Shall accord just and equitable treatment of all members of the profession in the exercise of their professional rights and responsibilities;
2. ~~Evaluate conditions within a district or an institution of learning and make known serious deficiencies by taking action deemed necessary and proper through established professional, legal, or legislative channels.~~ Shall not, on the basis of race, color, creed, sex, national origin, marital status, political or religious beliefs, physical condition, family, social or cultural background, or sexual orientation, deny to a colleague a professional benefit, advantage, or participation in any professional organization, nor discriminate in employment practice, assignment, or evaluation of personnel;
3. ~~Not knowingly misrepresent one's own or another's professional qualifications or competencies.~~ Shall not sexually harass a fellow employee;
4. ~~Refrain from assigning professional duties to unqualified personnel.~~ Shall withhold and safeguard information acquired about colleagues in the course of employment, unless disclosure serves a compelling professional purpose;
5. ~~Disclose information about colleagues obtained in the course of professional service only when such disclosure serves a compelling purpose or is required by law.~~ Shall present complete and accurate information on the application for licensure and employment;
6. ~~Not accept any gratuity, gift, or favor that might impair or appear to influence professional decisions or actions.~~ Shall present complete and accurate information on any document in connection with professional responsibilities;
7. ~~Study and adhere to the terms and conditions of a contract.~~ Shall present evaluations of and recommendations for colleagues fairly, accurately, and professionally;
8. ~~Present only factual information regarding the assignment or conditions of employment to an applicant.~~ Shall cooperate with the education standards and practices board in inquiries and hearings and shall not file false complaints or shall not seek reprisal against any individuals involved with the complaint;

9. Shall not knowingly distort, withhold, or misrepresent information regarding a position from an applicant or misrepresent an assignment or conditions of employment;
10. Shall not breach a professional employment contract;
11. Shall not knowingly assign professional duties for which a professional educator's license is required;
12. Shall not accept a gratuity, gift, or favor that might influence or appear to influence professional judgement, nor offer a gratuity, gift, or favor to obtain special advantage; and
13. Shall exhibit professional conduct in safeguarding and maintaining the confidentiality of test materials and information.

History: Effective July 1, 1995; amended effective August 1, 2002.

General Authority: NDCC ~~45-38-18, 28-32-02~~ 15.1-13-08, 15.1-13-09, 15.1-13-10

Law Implemented: NDCC ~~45-38-18~~ 15.1-13-08, 15.1-13-10

67.1-03-01-04. Principle III - Commitment to the community. ~~In fulfilling this obligation to the community, the educator shall~~ In fulfilling these obligations to the public, the North Dakota educator:

1. ~~Acknowledge and encourage the right and responsibility of the public to participate in the formulation of educational policy. Shall distinguish between personal views and the views of the employing educational agency;~~ Shall distinguish between personal views and the views of the employing educational agency;
2. ~~Recognize that each educational institution may have a person authorized to interpret its official policies. Shall not distort or misrepresent the facts concerning educational matter; and~~ Shall not distort or misrepresent the facts concerning educational matter; and
3. ~~Assume full political and citizenship responsibilities, but refrain from exploiting the institutional privileges of one's professional position to promote political candidates or partisan activities. Shall not interfere in the exercise of political and citizenship rights and responsibilities of others.~~ Shall not interfere in the exercise of political and citizenship rights and responsibilities of others.

History: Effective July 1, 1995; amended effective August 1, 2002.

General Authority: NDCC ~~45-38-18, 28-32-02~~ 15.1-13-08, 15.1-13-09, 15.1-13-10

Law Implemented: NDCC ~~45-38-18~~ 15.1-13-08, 15.1-13-10

TITLE 74
STATE SEED DEPARTMENT

SEPTEMBER 2002

CHAPTER 74-01-01

74-01-01-01. Organization of seed commission.

1. **History.** The state seed department was established by the 1931 legislative assembly. The main office was designated to be at North Dakota state university. Branch offices are maintained in ~~Grand Forks~~ and Grafton to more efficiently serve the potato industry with official grade inspection services. The department is governed by the state seed commission.
2. **Commission.** The state seed commission consists of a representative of the North Dakota crop improvement association, a representative of the North Dakota certified seed potato growers association, a representative of the North Dakota dry edible bean seed growers association, a representative of the North Dakota agricultural association, an elected member of the North Dakota potato council selected by the North Dakota potato council, a representative of the ~~Red River valley~~ northern plains potato growers association who is a North Dakota resident, a representative of the North Dakota grain dealers association who also operates a state-approved seed conditioning plant, selected by the board of directors of the North Dakota grain dealers association, and the ~~commissioner~~ commissioner of agriculture or the commissioner's designee, who shall serve as chairman. The dean and director of the experiment station, or the director's designee, of the college of agriculture of the North Dakota state university of agriculture and applied science is ~~an advisory, nonvoting~~ a voting member of the commission.
3. **Functions.** The seed department enforces state seed laws, inspects and analyzes seed offered for sale, provides a public laboratory service for examining and analyzing seed and commercially produced crops for planting and consumption purposes, maintains a seed certification system for field seeds and potatoes, inspects and grades potatoes and other produce, regulates wholesale potato dealers, and establishes

grade standards and grades commodities not in the federal grain standards.

4. **Seed commissioner.** The commission appoints the seed department manager, who is the state seed commissioner.
5. **Inquiries.** Inquiries regarding the seed department may be addressed to the commissioner:

State Seed Commissioner
State Seed Department
State University Station
Fargo, ND 58105

History: Amended effective December 1, 1981; November 1, 1985; October 1, 1989; September 1, 2002.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

CHAPTER 74-03-00.1

74-03-00.1-01. Definitions. As used in this article, unless the context or subject matter otherwise requires:

1. "Bulk seed" means seed stored in bins and may mean seed stored in containers larger than one hundred sixty pounds [72.72 kilograms].
2. "Conditioning" includes all activities performed on seed between harvest and marketing. Other terms associated with conditioning could include cleaning, processing, sizing, grading, storing, and seed treating.
- ~~2:~~ 3. "Field inspection" means physical examination or observation of a field by an authorized state seed employee.
- ~~3:~~ 4. "Grower" means any person that is complying with all the certification rules and regulations in the production of field-inspected seed.
- ~~4:~~ 5. "None" means none found during the normal inspection process (both field and seed standards). None is not a guarantee to mean the lot inspected or analyzed is free of the factor.
- ~~5:~~ 6. "Other varieties and off-types" means plants or seeds which do not conform to the characteristics of a variety as described by the breeder. They do not include variations which are characteristic of the variety.
7. "Variant" means any seed or plant that:
 - a. Is distinct but occurs naturally within a variety;
 - b. Is stable and predictable with a degree of reliability comparable to other varieties of the same kind, within recognized tolerances, when the variety is reproduced or reconstituted; and
 - c. Was originally a part of the variety as released.

A variant is not an off-type.

- ~~6:~~ 8. "Variety" means a subdivision of a kind characterized by growth, yield, plant, fruit, seed, or other characteristic by which it can be differentiated from other plants of the same kind and a subdivision of a kind which is distinct, uniform, and stable; "distinct" in the sense that the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics which are describable, and "stable" in the sense that the variety will remain unchanged to a reasonable degree of reliability in its essential and

distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories or varieties.

History: Effective May 1, 1986; amended effective September 1, 2002.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

CHAPTER 74-03-01

74-03-01-03. Eligibility requirement for certification of crop varieties.

As used in this chapter, "variety" includes hybrids and breeding lines.

1. Only those varieties that are accepted by the North Dakota state seed department as meriting certification in accordance with the criteria established by the association of official seed certifying agencies shall be eligible for certification. A variety will normally be considered eligible for certification if it has received favorable action by a national variety review board, the plant variety protection office, or an official seed certifying agency. For those crops where national certified review boards exist, it is required that varieties be submitted to such boards for review to determine their merit for certification. Contact the state seed commissioner for varieties not covered by one of the above categories on questions regarding eligibility. In the absence of a national review board, a state or regional variety review committee may determine the eligibility for certification, if operating under similar criteria and approved by the seed commissioner.
2. The following must be made available by the originator, developer, owner, or agent when eligibility for certification is requested by the applicant.
 - a. The name of the variety. This name must be the established name if the variety has previously been marketed.
 - b. A statement concerning the variety's origin and the breeding procedure used in its development.
 - c. A detailed description of the morphological, physiological, and other characteristics of the plants and seed that distinguish it from other varieties.
 - d. Evidence of performance of the variety, such as comparative yield data, insect and disease resistance, or other factors supporting the identity of the variety.
 - e. A statement delineating the geographic area or areas of adaption of the variety.
 - f. A statement on the plans and procedures for the maintenance of stock seed classes, including the number of generations through which the variety may be multiplied.
 - g. A description of the manner in which the variety is constituted when a particular cycle of reproduction or multiplication is specified.

- h. Any additional restrictions on the variety, specified by the breeder, with respect to geographic area of seed production, age of stand, or other factors affecting genetic purity.
- i. A sample of seed representative of the variety that will be planted for certified seed production.

History: Amended effective May 1, 1986; September 1, 2002.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-06. Seed eligibility.

1. Eligible seed stocks shall be those which have met the requirements for foundation, registered or, in special cases, approved lots of the certified class. Eligible seed obtained from another person must have been ~~tagged with the official tags~~ accompanied by the official tag or bulk certificate from an approved certifying agency, which will be the documentary evidence of acceptance for field inspection.
2. Certified seed growers may plant seed from their own fields which passed field inspection in previous years if the field passed inspection and if the class of seed (generation) is eligible to be certified. Carryover reports must be filed annually on unconditioned seed produced prior to the previous crop year.
3. Growers should check with the state seed department regarding approved lots of the certified class eligible for recertification.

History: Amended effective May 1, 1986; September 1, 2002.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-07. Field eligibility and requirements.

1. A crop will not be eligible for the production of foundation, registered, or certified class seed if planted on land on which the same kind of crop was grown previously for the number of years as stated in the specific crop standards contained in other chapters of this article. Exceptions will be made if the previous crop was the same variety and passed field inspection for certification.
2. A grower may establish field eligibility history for the upcoming year by planting certified seed on the field, requesting field inspection, and

having the field declared eligible in the ensuing year for production of seed of the same variety.

History: Amended effective May 1, 1986; September 1, 2002.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-08. Field management and isolation. The production unit for certification shall be a field. No field or part of a field will be accepted unless field boundaries are clearly defined and properly isolated as provided in the specific crop standards contained in other chapters of this article. Isolation distances may be extended at the request of the seed commissioner or the commissioner's agents for reasons including the production of transgenic or genetically modified crops in proximity to fields being grown for the purpose of seed certification.

History: Amended effective September 1, 2002.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-09. Field inspection.

1. Applications. Applications for field inspection, accompanied by the correct fees, past-due accounts, and proof of seed eligibility, must be ~~mailed or~~ received at the state seed department office in Fargo not later than June fifteenth. The penalty fee will apply after that date. Applications ~~may not be accepted after July fifth except for later planted crops.~~ Soybean for soybeans, millet, field peas, and buckwheat will be accepted until July fifteenth without late penalty. In case of an emergency or unusual circumstances due to weather and crop conditions, the deadline may be extended at the discretion of the seed commissioner. ~~Application blanks are available at all county extension offices and the seed department offices at Fargo, Grand Forks, and Grafton.~~
2. Information required on application. The application ~~blank shall be filled out~~ completed by the ~~grower~~ applicant and returned to the ~~office~~ seed department. It is important that all questions be answered completely and correctly. ~~Information is required regarding the variety of the crop, number of acres [hectares] seeded, and source of seed.~~ The location of the farm and field shall be given clearly so that the inspector will be able to find the farm and field readily without waste of time and extra travel. ~~A diagram of the field location shall be made on the bottom of the application blank.~~ Field maps must be provided by the applicant. If the seed is purchased, an official certified seed tag must accompany the application or be made available to the seed department prior to field inspection.
3. Roguing and spraying fields. Roguing fields prior to inspection is desirable to remove undesirable plants from fields which are intended

for seed certification. Plants that should be removed include off-type plants, other crop plants, prohibited and restricted noxious weeds, ~~other crop plants such as sweet clover in alfalfa, oats in barley, winter rye in winter wheat,~~ and other impurities which may be growing in the field.

Roguing is usually done by pulling out other crop plants or weeds and removing them from the field. In the case of small grain, roguing should be done after heading as foreign plants are seen most easily at this time. In hybrid seed production, off-type and undesirable plants should be removed before pollen is shed. Roguing is very essential in maintaining the purity of varieties and high standards of certified seed.

~~Wherever~~ Whenever practical and advisable, seed fields should be sprayed with ~~herbicides~~ pesticides according to the best recommendations for the control of undesirable weeds. Growers must follow posting requirements as specified by state and federal agencies responsible for the regulation and use of pesticides.

4. Weeds and diseases.

- a. Prohibited noxious weeds under North Dakota seed laws and rules are: leafy spurge, field bindweed (creeping jenny), Canada thistle, perennial sow thistle, Russian knapweed, and hoary cress (perennial peppergrass), absinth wormwood, hemp having more than three-tenths of one percent tetrahydrocannabinol, musk thistle, ~~and spotted knapweed, and yellow starthistle.~~
- b. Restricted noxious weeds under North Dakota seed laws and rules are: dodder species, ~~wild mustard, field pennycress (frenchweed),~~ hedge bindweed (wild morning glory), wild oats, and quackgrass.
- c. A field may be rejected if it is the opinion of the field inspector that the amount and kind of common weeds present ~~materially affect its appearance or~~ make it difficult to give adequate inspection, or the condition is such that the quality of the cleaned seed may be questionable.
- d. Objectionable weed seeds are restricted noxious weeds under North Dakota seed laws and rules and may include some common weeds which cause a specific problem in the conditioning of some individual crops.
- e. Diseases not governed by specific crop standards may be cause for rejection if it is the opinion of the inspector that the quality of the cleaned seed may be affected or if results of tests made on the seed indicate a disease condition which will affect the crop produced from such seed.

5. Cancellation of field inspection. An application may be canceled by the grower before the field inspection is made and the application fee minus ten dollars will be refunded. The request for cancellation, however, must reach the state seed department before the inspector arrives in the general locality of the field or before inspection expense has been incurred. Refunds will not be made after fields are inspected or because fields have been rejected.
6. Appeal inspection of rejected fields will be considered, provided application for appeal allows a reasonable amount of time for reinspection prior to harvest.

History: Amended effective May 1, 1986; May 1, 1988; December 18, 1989; September 1, 2002.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-10. Fees. Charges for fees and services are subject to change. For current fees contact the state seed department.

4. Field inspection fees:

~~Each applicant for field seed certification must pay a grower fee of five dollars once annually plus:~~

| | To June 15 | After June 15-July 5 |
|---|---|---|
| Small grains, grasses, legumes, flax, and other annual and perennial crops | \$1.50 per acre for the first 100 acres \$1.25 per acre for additional acreage (per field) | \$2.00 per acre for the first 100 acres \$1.75 per acre for additional acreage (per field) |
| Sunflower open pollinated hybrids | \$2.25 per acre \$3.50 per acre | \$2.75 per acre \$4.00 per acre |
| Dry field bean | \$2.50 per acre | \$3.00 per acre |
| | To July 15 | After July 15-August 1 |
| Late crops - soybean, millet, field peas, buckwheat | \$1.50 per acre for the first 100 acres \$1.25 per acre for additional acreage (per field) | \$2.00 per acre for the first 100 acres \$1.75 per acre for additional acreage (per field) |
| Minimum all crops \$20.00 per farm - \$10.00 per field | | |

EXAMPLE

| | |
|--------------------------------------|---------------------------------|
| 185-acre wheat field: | |
| 100-A x \$1.50 = \$150.00 | Grower fee |
| 85-A x \$1.25 = 106.25 | (once annually) 5.00 |
| _____ | _____ |
| \$256.25 | \$261.25 |

2. Final certification fees:

~~Minimum fee is two dollars. Two cents per bushel [35.24 liters] plus four cents per tag for annual crops including grains, flax, and row crops.~~

~~Six cents per one hundred pounds [45.36 kilograms] plus four cents per tag for alfalfa, clovers, and perennial grasses:~~

~~(The two cents for each bushel [35.24 liters] and six cents for each hundred pounds [45.36 kilograms] of alfalfa, clovers, and perennial grasses will be used to promote North Dakota certified seed.)~~

~~Bulk certification: ten dollars per lot plus four cents per bushel [35.24 liters].~~

~~Organization for economic cooperation and development (OECD) certification fees: a ten dollar processing fee and final certification fees. An additional twelve dollar growout fee on all crops where required by organization for economic cooperation and development (OECD) standards.~~

3. Carryover seed tagging. ~~New certification tags will be furnished for carryover seed at a cost of four cents per tag. All carryover seed must be retested for germination before new certified tags will be issued.~~

4. Carryover bulk seed. ~~All carryover bulk seed must be retested for germination before new bulk certificates will be issued at ten dollars per lot (four certificates - extra copies twenty-five cents per copy). Carryover bulk seed cannot be recertified in bags unless new samples are submitted for analysis.~~

History: Amended effective May 1, 1986; May 1, 1987; May 1, 1988; December 18, 1989; May 1, 2001; September 1, 2002.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16, 28-32-01

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-11. Seed sampling and laboratory inspection.

1. **Identification in storage.** Field-inspected seed must be positively identified by lot number (field inspection number) at all times. ~~Bins of bulk lots of uncleaned or cleaned seed should be marked. Bags should be identified by a stenciled lot number or an identification tag securely sewn or fastened to the bag~~ identified at all times. Identification must be traceable to field inspection numbers from the crop year in which the seed was produced. Conditioned seed in storage must be identified by kind, variety, and lot number displayed on the bin or storage container.

2. **Germination Preconditioned sample testing.** To speed up tagging and determine suitability of seed prior to conditioning a representative sample of seed from each field which has passed field inspection may be submitted to the state seed department soon after the crop is harvested for the purpose of germination and disease testing. A special seed envelope for this sample is furnished the grower. This sample should be cleaned on a small mill or hand sieve to correspond as nearly as possible to the condition of the entire lot after cleaning or conditioning. Only a germination test and embryo test in the case of susceptible barley varieties is made on this sample. This germination test and embryo test (in the case of barley) can be used in the final tagging of the lot and all sublots. A grower may, however, request a new test on each lot after final conditioning or delay the germination test and embryo test until after conditioning. The labeler is responsible for the germination stated on the seed label. Disease tests required on preconditioned samples may be used for final certification purposes. A grower may request new tests after conditioning to be used for labeling purposes. Fragile crops such as soybeans, field beans, and field peas must be tested for germination after the final conditioning of the seed lot to assure correctness of label claims. The labeler is responsible in all cases for information provided or stated on seed labels.

3. **Sampling procedures.**
 - a. All seed lots for final certification should be sampled during conditioning by taking representative samples from the mills at periodic intervals throughout the process of conditioning the seed lot.

 - b. Specific instruction to samplers are found on the reverse side of the samplers report.

4. **Maximum lot size and numbering.**
 - a. The maximum lot size for bagged cereal grain and flax seed is two thousand bushels [704.78 dekaliters] except for small seeded legumes and grasses which is twenty-two thousand five hundred pounds [10000 kilograms]. ~~The maximum lot size for all bagged other crops is five hundred bags.~~ For all crops, one sample for each lot is required, except small seeded legumes and grasses.

~~Small~~ For small seeded legumes and grasses, one sample for ~~fifteen thousand pounds [6803.85 kilograms]~~ twenty-two thousand five hundred pounds [10000 kilograms] is required. Bulk certified and registered class lots do not have a maximum size limit except bin capacity. Bulk certified class seed requires one sample per lot. ~~Bulk registered class requires one sample per two thousand bushels [704.78 dekaliters].~~

- b. ~~The lot number should be preceded by the initials of both the variety and kind of seed. When large lots of seed are broken up into smaller lots and conditioned at different times, a subplot number should be used. For example, the seed from a field of Larker barley, which has field inspection number eight hundred ninety-seven, will be designated as lot lb 897. If only a part of the entire lot is conditioned at one time, the subplot will be designated lb 897-1. When another portion of the lot is conditioned, this subplot will be designated lb 897-2 shall be designated by the labeler. The lot number used the previous year for the seed may not be used as the new lot number for the seed being certified during the current crop year.~~

5. **Bulking Commingling (mixing) of inspected seed lots fields.** Seed from different fields of the same kind and variety, which have passed field inspection, may be ~~bulked~~ commingled if the seed is of the same class, generation, or and general quality. If the seed of different classes or generations is ~~bulked~~ commingled, the seed becomes eligible for the lowest class only.

6. **Conditioning.**

- a. All field-inspected seed which is to be ~~tagged and sealed~~ labeled must be conditioned and must meet the minimum seed standards and conditioning requirements for the crop and class.
- b. Field-inspected seed may be conditioned either by the grower or at an approved seed conditioning plant.

7. **Conditioning by farmer/grower - Procedure.**

- a. Condition the seed. A farmer/grower does not need an approved conditioning plant permit if the farmer/grower conditions seed on the farmer's/grower's premises with the farmer's or grower's equipment.
- b. ~~Meets farmer/grower requirements for equipment and management:~~
- c. ~~Complete section A of the grower's declaration, and sampler's report, sign, and mail to the state seed department at Fargo. The~~

farmer or grower must complete a samplers report in its entirety, attach the report to a two pound [.907 kilogram] sample which is representative of the entire seed lot, and deliver to the state seed department in Fargo.

8. Conditioning at an approved plant.

- a. Growers must ~~fill in~~ complete a grower's declaration - section B or C if ownership of the seed lot has been transferred to a different individual or entity. Transfer of ownership of field-inspected seed is limited to an approved conditioner or bulk retailer unless the transfer has been approved by the commissioner or the commissioner's agent.
- b. ~~The completed grower's declaration should be presented to the manager of the approved conditioning plant~~ shall be completed and signed when ownership of the seed lot has changed and the seed is delivered for conditioning.
- c. ~~After~~ While conditioning, all seed is must be sampled at regular intervals by the authorized sampler ~~in the plant and submitted to the state seed department with a completed samplers report.~~

9. Regulatory sampling. The state seed department may resample any lot of seed either before final certification or after the seed is ~~tagged and sealed~~ labeled.

10. Laboratory analysis.

- a. All laboratory testing shall be done by qualified personnel of the state seed department. Analysis and tests of seed samples and definition of analysis terms shall be in accordance with the rules of the association of official seed ~~analysis analysts.~~ In certain cases when time constraints are critical to the efficient movement of certified quality seed, the commissioner may accept germination or other test results from another association of official seed analysts-approved laboratory, through the certification agency of the state of origin.
- b. If more than one sample of seed is tested for purity from the same lot without additional conditioning, an average shall be taken of all tests made. Results from the most recent germination or disease test, or both tests, on the seed lot shall be used as the final result.

- c. The test results from samples drawn by state seed department personnel shall supersede all other test results from submitted samples.

History: Amended effective May 1, 1986; May 1, 1988; December 18, 1989; August 1, 1991; September 1, 2002.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-12. Tagging Labeling.

1. Bagged seed.

- a. All bagged seed represented or sold as foundation, registered, and certified must be bagged in new bags and the official certification tag properly affixed on the bag ~~with the exception of seed under a bulk certified certificate.~~ Certification tags are void if improperly used or not ~~on~~ attached to the bag. Containers or tote bags larger than one hundred sixty pounds [72.77 kilograms] may be considered bulk seed.
- b. The responsibility for properly ~~tagging~~ labeling foundation, registered, or certified seed rests with the grower or first distributor.
- c. The use of two tags, the official certification tag and a separate analysis tag, on foundation, registered, and certified seed is optional. When two tags are used, the certification tag, will not carry the seed analysis. An additional seed analysis tag must be used or the analysis printed on the bag.
- d. Certified seed will be considered mislabeled unless the seed analysis is on either the certification tag or on an additional tag or printed on the bag.
- e. Certification tags are not valid when they are transferred in any manner other than attached to the eligible seed bag.
- f. ~~Official metal seals are not required except on cloth or burlap bags when the tag is not sewn on the bag.~~

2. Bulk certification. All rules for production, conditioning, and testing of certified seed shall apply except that seed does not have to be in bags.

- a. All field and seed standards applying to bagged seed shall also apply to bulk certified seed.

- b. Certified seed may be sold in bulk by an approved retail seed facility or by the applicant producer. A maximum of two ~~sales is~~ physical transfers are permitted after final certification:
 - (1) From the applicant ~~producer~~ labeler to an approved retailer or consumer.
 - (2) From an approved retailer to consumer.

- c. The foundation and registered class may be sold in bulk. To be eligible for recertification, bulk foundation or registered seed must be sold by the applicant producer or by an approved conditioner directly to the consumer. Approved bulk handlers may be allowed to handle bulk registered seed on a case-by-case basis as authorized by state seed department personnel.

- d. It is the seller's responsibility to:
 - (1) Handle seed in a manner to prevent mixtures and contamination.
 - (2) Supply seed that is representative of the seed tested and approved for certification.
 - (3) See that all bins, augers, conveyors, and other equipment are adequately ~~conditioned~~ cleaned before handling certified seed.
 - (4) Determine that the vehicle receiving bulk certified seed is clean. If it is not clean, this is to be noted on the bill of sale or transfer certificate.
 - (5) ~~Keep~~ Maintain possession, for a one-year period, of a sample identified by variety, kind, and lot number of each lot of bulk certified seed sold.

- e. It is the buyer's responsibility to maintain purity of the seed after it has been loaded into the buyer's vehicle.

- f. The bulk certified seed certificate takes the place of the certified seed tag. The complete seed analysis will be printed on the certificate. The buyer must receive a bulk certificate at the time of delivery for each load of bulk certified seed. ~~Additional copies of the certificates will be issued to the grower if the grower requests them on the sampler's report.~~

- g. ~~Retail~~ Bulk retail seed facilities must be approved annually before certified seed can be handled in bulk. Such facilities may be part of a seed conditioning plant or may be approved only for handling

bulk certified seed. Before approval, all procedures for receiving, storing, dispensing, and recordkeeping must be inspected. The applicant must demonstrate acceptable procedures for maintaining purity and identity of bulk certified seed.

h. For all bulk certified seed:

- (1) A separate storage bin must be available for each variety lot that will be sold in bulk.
- (2) All bins, augers, conveyors, and other equipment must be cleaned before storage or handling certified seed.
- (3) All bins must be clearly and prominently marked to show crop and, variety, seed class, and lot number.
- (4) All bin openings must be closed to prevent contamination, except when seed is being put in or removed from the bin.

i. The following records must be maintained:

- (1) Amount of seed grown and conditioned or purchased for bulk sale.
- (2) Amount of bulk certified seed sold by variety and lot number.
- (3) A current inventory of seed available for sale for each variety.

History: Amended effective May 1, 1986; September 1, 2002.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-13. Preissued certification tags. Registered or certified tags may be issued before conditioning if prior approval has been granted by the state seed department. Tags will be preissued only under the following conditions:

1. Tags will be issued only to approved conditioning plants.
2. ~~Cleaned~~ Final samples, along with the grower's declaration, sampler's report, and printed analysis tag must be submitted after each lot is ~~cleaned~~ conditioned.
3. The ~~cleaned~~ conditioned lot shall not be moved from the premises of the approved conditioning plant or labeler's facility until the sample has been ~~checked~~ tested by the state seed department laboratory and shows that the lot is eligible for certification. If the seed lot is rejected, the approved plant or labeler must assume responsibility for removing certification tags and returning them to the state seed department.

4. The use of a certification label preprinted on bags will be permitted if prior approval by the state seed department is granted. Analysis information may also be printed on the bag. The approved conditioning plant must submit a preprinted analysis tag from the bags used with the sample for final certification.

History: Amended effective May 1, 1986; September 1, 2002.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-14. Carryover seed.

1. All carryover seed eligible for certification must be reported to the state seed department by October fifteenth of each year. Growers must report all field-inspected seed that was not ~~conditioned or tagged with the certification label~~ submitted for final certification. Failure to report will disqualify the seed for certification.
2. Carryover bagged seed. New certification tags will be furnished for carryover bagged seed. All carryover seed must be retested for germination before new certified tags will be issued.
3. Carryover bulk seed. All carryover bulk seed must be retested for germination before new bulk certificates will be issued. Carryover bulk seed cannot be recertified in bags unless new samples are submitted for analysis.

History: Amended effective May 1, 1986; September 1, 2002.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-15. Misuse of certification privileges. Any seed grower, conditioner, or seedsman who is found guilty of misusing certification tags, misrepresenting seed, or who violates any of the rules governing the growing, conditioning, and marketing of foundation, registered, or certified seed, or who is guilty of violations of the North Dakota seed laws and rules with respect to any seed which the grower, conditioner, or seedsman sells, may at the discretion of the state seed commissioner or the commissioner's agents be denied the right to produce, condition, or market seed under certification. Violators may be subject to fines by administrative action of the state seed department.

History: Amended effective May 1, 1986; May 1, 1988; September 1, 2002.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-16. Approved conditioners. Any seed conditioning plant ~~in North Dakota conditioner~~ may be designated as an "approved conditioning plant conditioner" to condition field-inspected seed for final certification if, after inspection, it is the opinion of the inspector for the state seed department that the

plant is properly managed and equipped, and facilities are such that seed will, with usual care, not become mixed during conditioning. The managers and the designated samplers in these plants are under agreement to handle all seed and seed records and to draw representative samples of all seed lots for certification according to the certification rules and regulations.

1. Approved conditioners of small grains are required to have the following operational equipment: length grading machine - either a disc or indent cylinder or combination machine which removes long and short fractions; width grading - either an air screen machine or precision graders with aspiration in line. ~~Rotary screen scalp~~ers are not allowed unless demonstrated to the inspector that they are routinely cleaned.
2. ~~Permission to operate as an approved conditioning plant to condition field inspected seed is granted on a yearly basis only. An annual fee is charged for each permit~~ conditioner is granted on a yearly basis. All approved ~~conditioning plants~~ conditioners must condition and complete final certification on at least one lot of certified seed every two years before renewal of a permit will be granted. A ~~twenty-five dollar~~ fee will be charged for each reinspection. An approved conditioner is required to have a separate inspection and permit for each fixed facility or mobile conditioning unit.
3. The commissioner may approve specialized equipment and facilities utilized for the purpose or repackaging, treating, or inoculating certified seed.

History: Amended effective May 1, 1986; December 18, 1989; September 1, 2002.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-17. Interagency certification.

1. Upon the request of an officially recognized certification agency of another state, the state seed department will act as agent in making inspections, drawing samples, ~~bagging, tagging, or sealing~~ labeling of seed to be certified.
2. For certified seed carrying the certification tag or label of an official certifying agency, no official request from a recognized agency of another state is required to recondition, ~~retag~~ relabel, or rebag certified seed under interagency certification. Application for interagency certification shall be made directly to the state seed department and the following documentary evidence shall be supplied:
 - a. Variety and kind.
 - b. Class of certified seed.

- c. Number of bags or bulk bushels.
 - d. Weight of each bag.
 - e. Complete original label with purity analysis, germination, and other required tests.
 - f. Name and address of grower or the inspection or lot number traceable to the records of the agency making the field inspections.
3. A lot of seed which has passed field inspection, or is completely certified by another officially recognized certification agency, may be sold or moved into North Dakota for further conditioning or completion of certification provided:
 - a. Prior arrangements for moving the seed is made with and approved by the cooperating certification agency and the state seed department.
 - b. A grower's ~~declaration~~ transfer certificate is filed by the original applicant for certification of such seed.
 4. Interagency certification tags shall show the certification agencies involved, the lot number, variety, kind, and class of seed.
 5. Interagency seed lots not meeting North Dakota labeling standards may require resampling or retesting to ensure compliance with North Dakota labeling laws.

History: Amended effective May 1, 1986; September 1, 2002.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-18. Exclusion of warranty. Field seeds certified in accordance with this chapter have been field inspected and laboratory tested as specified in this chapter. The state seed department and inspection services function and serve only in an official regulatory manner and do not relieve the grower or owner of the grower's or owner's responsibility. Neither the producer, the seller, the North Dakota seed commission, the seed commissioner, or the commissioner's employees make any warranty of any kind, express or implied, as the quantity or quality of the crop produced from certified seed, including merchantability, fitness for a particular purpose, or absence of disease. The only representation is that the seed was produced, graded, and inspected under the seed certification rules and regulations of the North Dakota state seed department.

History: Effective September 1, 2002.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18, 4-09-20.1

CHAPTER 74-03-02

74-03-02-03. Field standards.

1. Isolation.

- a. At the time of inspection, the field must be separated from other fields by a fence row, natural boundaries, or by a strip at least five feet [1.52 meters] wide which is either mowed, uncropped, or planted to some other separable crop.
- b. When it is necessary to remove a strip to obtain proper isolation, a part of the strip to be removed must be cut into the field to be inspected.
- c. All rye fields producing certified seed must be isolated by at least six hundred sixty feet [201.17 meters] from rye fields of any other variety or fields of the same variety that do not meet the varietal purity requirements for certification.

2. Roguing.

- a. All roguing to remove undesirable plants must be done before field inspection is made. Rogued plants must not be left in the field to be harvested.
- b. Patches of prohibited weeds must be either removed by cutting or must be controlled by other means so that no seed is produced.

3. Specific field standards(wheat - barley - oats - rye - triticale).

| Factor | Maximum Tolerance | | |
|-----------------------------|---------------------------------|------------|-----------|
| | Foundation | Registered | Certified |
| Other varieties * | 1:10,000 | 1:5,000 | 1:2,000 |
| Inseparable other crops | 1:10,000 1:30,000 | 1:10,000 | 1:5,000 |
| Prohibited noxious weeds ** | none | none | none |

* Other varieties shall be considered to include plants that can be differentiated from the variety that is being inspected. However, other varieties shall not include variations which are characteristic of the variety.

** ~~Includes only leafy spurge and Russian knapweed.~~ The tolerance for other prohibited noxious weeds in the field will be determined by the inspector on the basis of stages of development of both the crop and the weed.

4. Specific field standards (flax).

| Factor | Maximum Tolerance | | |
|-----------------------------|-------------------|------------|-----------|
| | Foundation | Registered | Certified |
| Other varieties * | 1:10,000 | 1:5,000 | 1:2,000 |
| Prohibited noxious weeds ** | none | none | none |

* Other varieties shall be considered to include off-type and plants that can be differentiated from the variety that is being inspected. However, other varieties shall not include variations which are characteristic of the variety.

** ~~Includes only leafy spurge and Russian knapweed.~~ The tolerance for other prohibited noxious weeds in the field will be determined by the inspector on the basis of stages of development of both the crop and the weed.

History: Amended effective May 1, 1986; ~~September 1, 2002.~~

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-02-04. Seed standards (wheat - oats - barley - rye - triticale).

Seed count required on wheat, barley, and durum.

| Factor | Standards for Each Class | | |
|---------------------------------------|--------------------------|----------------|--------------|
| | Foundation | Registered | Certified |
| Pure seed (minimum) * | 99.0 percent | 99.0 percent | 99.0 percent |
| Total weed seeds (maximum) | 2 per pound | 5 per pound | 10 per pound |
| Other varieties ** | 1 per 2 pounds | 1 per pound | 3 per pound |
| Other crop seeds (maximum) | 1 per 2 pounds | 1 per pound | 3 per pound |
| Inert matter (maximum) *** | 1.0 percent | 1.0 percent | 1.0 percent |
| Prohibited noxious weed seeds + | none | none | none |
| Objectionable weed seeds (maximum) ++ | 1 per 4 pounds | 1 per 2 pounds | 1 per pound |
| Germination +++ | 85.0 percent | 85.0 percent | 85.0 percent |

* The standard for durum and rye shall be 98.0 percent minimum.

** Other varieties shall not include variations which are characteristic of the variety.

*** For all crops foreign matter other than broken seed shall not exceed 0.2 percent. Durum, triticale, and rye may contain 2.0 percent maximum inert matter.

- + Prohibited noxious weed seed, including the seeds of quackgrass.
- ++ Objectionable weed seeds shall include the following: dodder, ~~wild mustard~~, wild oats, hedge bindweed (wild morning glory), ~~field pennycress (frenchweed)~~, giant ragweed (kinghead), falseflax, and dragonhead.
- +++ Winter wheat, durum, and rye minimum 80.0 percent.

Note: A barley grower is responsible for having a loose smut test, by an official ~~lab~~ laboratory, on the harvested seed of each field of barley. If seed from more than one field is blended without having a test for each field, a loose smut test must be made on each seed lot or subplot. The percentage of loose smut will be printed on the certification certificate or ~~labeled with an approved seed treatment. Any seed lot that exceeds two percent loose smut, that is not treated with an approved seed treatment must carry a statement on the certification certificate that seed is recommended to be treated~~ label. The foundation class of barley has a zero tolerance for barley stripe mosaic virus.

History: Amended effective May 1, 1986; May 1, 1988; December 18, 1989; August 1, 1991; September 1, 2002.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-02-05. Seed standards (flax).

| Factor | Standards for Each Class | | |
|--------------------------------------|--------------------------|----------------|--------------|
| | Foundation | Registered | Certified |
| Pure seed (minimum) | 99.0 percent | 99.0 percent | 98.5 percent |
| Total weed seeds (maximum) | 15 per pound | 15 per pound | 30 per pound |
| Other varieties (maximum) * | 2 per pound | 8 per pound | 16 per pound |
| Other crop seeds (maximum) | 2 per pound | 5 per pound | 10 per pound |
| Inert matter (maximum) ** | 1.0 percent | 1.0 percent | 1.5 percent |
| Prohibited noxious weed seeds *** | none | none | none |
| Objectionable weed seeds (maximum) + | 1 per 2 pounds | 1 per 2 pounds | 3 per pound |
| Germination (minimum) | 85.0 percent | 85.0 percent | 85.0 percent |

* Other varieties shall not include variations which are characteristic of the variety. For golden or yellow varieties the figures should be multiplied by two.

** May not exceed two-tenths percent foreign matter.

*** Prohibited noxious weed seeds, including seeds of quackgrass.

- + Objectionable weed seeds shall include the following: dodder species, ~~wild mustard~~, wild oats, ~~field pennycress (frenchweed)~~, hedge bindweed (wild morning glory), giant ragweed (kinghead), small seeded falseflax, and American dragonhead.

History: Amended effective May 1, 1986; May 1, 1987; May 1, 1988; September 1, 2002.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

CHAPTER 74-03-03

74-03-03-04. Seed standard (alfalfa).

| Factor | Standards for Each Class | | |
|--------------------------------------|--------------------------|--------------|--------------|
| | Foundation | Registered | Certified |
| Pure seed (minimum) | 99.0 percent | 99.0 percent | 99.0 percent |
| Total weed seeds (maximum) | 0.1 percent | 0.2 percent | 0.5 percent |
| Other varieties (maximum) * | 0.1 percent | .25 percent | 1.00 percent |
| Other crop seeds (maximum) | 0.2 percent | .35 percent | 1.00 percent |
| Sweetclover seed (maximum) | none | 18 per pound | 45 per pound |
| Inert matter (maximum) | 1.0 percent | 1.0 percent | 1.0 percent |
| Prohibited noxious weed seeds ** | none | none | none |
| Objectionable weed seeds *** | none | 9 per pound | 13 per pound |
| Germination and hard seeds (minimum) | 85.0 percent | 85.0 percent | 85.0 percent |

* Including sweetclover.

** Includes the seeds of quackgrass and dodder species.

*** Objectionable weed seeds shall include the following: ~~wild mustard,~~ wild oats, dragonhead, hedge bindweed (wild morning glory), giant ragweed, (kinghead), ~~field pennycress (frenchweed),~~ nightflowering catchfly, hoary alyssum, white cockle, buckhorn plantain, small seeded falseflax, and dragonhead.

History: Amended effective May 1, 1986; September 1, 2002.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

CHAPTER 74-03-07

74-03-07-04. Specific seed standards (non-chaffy seeded species).

| Other Varieties (Maximum) | | | | Foundation 0.1% | | Registered 1.0% | | Certified 1.0% | | | | | | | |
|---------------------------|----------------------|--------------------------|----|-------------------------|----|------------------------|-----|-------------------------|-----|-------------------|------|------------------------------------|-----|---|----|
| Species | Minimum | | | Maximum | | | | | | | | | | | |
| | Type of Reproduction | Percent of Pure Seed F&R | C | Percent Germination F&R | C | Percent Other Crop F&R | C | Percent Other Grass F&R | C | Percent Inert F&R | C | Percent Weed Seed ¹ F&R | C | Objectionable Weed Seeds ² Per Pound F&R | C |
| Smooth Bromegrass | C | 90 | 85 | 80 | 80 | 0.2 | 0.5 | 0.1 | 0.5 | 10.0 | 15.0 | 0.25 | 0.5 | 9 | 13 |
| Timothy | C | 99 | 99 | 80 | 80 | 0.2 | 0.5 | 0.1 | 0.2 | 1.0 | 1.0 | 0.20 | 0.5 | 9 | 13 |
| Crested Wheatgrass | C | 90 | 90 | 80 | 80 | 0.2 | 1.0 | 0.1 | 0.5 | 10.0 | 10.0 | 0.25 | 0.5 | 9 | 13 |
| Intermediate Wheatgrass | C | 90 | 90 | 80 | 80 | 0.2 | 1.0 | 0.1 | 0.5 | 10.0 | 10.0 | 0.25 | 0.5 | 9 | 13 |
| Pubescent Wheatgrass | C | 90 | 90 | 80 | 80 | 0.2 | 1.0 | 0.1 | 0.5 | 10.0 | 10.0 | 0.25 | 0.5 | 9 | 13 |
| Slender Wheatgrass | S | 90 | 90 | 80 | 80 | 0.2 | 1.0 | 0.1 | 0.5 | 10.0 | 10.0 | 0.25 | 0.5 | 9 | 13 |
| Tall Wheatgrass | C | 90 | 90 | 80 | 80 | 0.2 | 1.0 | 0.1 | 0.5 | 10.0 | 10.0 | 0.25 | 0.5 | 9 | 13 |
| Western Wheatgrass | C | 85 | 85 | 60 | 60 | 0.2 | 1.0 | 0.2 | 0.5 | 15.0 | 15.0 | 0.25 | 0.5 | 9 | 13 |
| Canada Wildrye | S | 90 | 85 | 70 | 70 | 0.2 | 1.0 | 0.1 | 0.5 | 10.0 | 15.0 | 0.25 | 0.5 | 9 | 13 |
| Russian Wildrye | C | 90 | 90 | 80 | 80 | 0.2 | 1.0 | 0.1 | 0.5 | 10.0 | 10.0 | 0.25 | 0.5 | 9 | 13 |
| Green Needlegrass | S | 90 | 80 | 65 | 65 | 0.2 | 1.0 | 0.1 | 0.5 | 10.0 | 20.0 | 0.25 | 0.5 | 9 | 13 |
| Creeping Foxtail | C | 80 | 80 | 80 | 80 | 0.2 | 1.0 | 0.1 | 0.5 | 20.0 | 20.0 | 0.25 | 0.5 | 9 | 13 |
| Switchgrass | C | 95 | 90 | 60 | 60 | 0.2 | 1.0 | 0.2 | 0.5 | 5.0 | 10.0 | 0.50 | 1.0 | 9 | 13 |

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Specific Seed Standards (Chaffy Seeded Species).

| Other Varieties (Maximum) | | | | Foundation 0.1% | | Registered 1.0% | | Certified 1.0% | | | | | | | |
|---------------------------|----------------------|--------------------------|-----|-------------------------|---|------------------------|-----|-------------------------|-----|-------------------|---|------------------------------------|-----|---|----|
| Species | Minimum | | | Maximum | | | | | | | | | | | |
| | Type of Reproduction | Percent of Pure Seed F&R | C | Percent Germination F&R | C | Percent Other Crop F&R | C | Percent Other Grass F&R | C | Percent Inert F&R | C | Percent Weed Seed ¹ F&R | C | Objectionable Weed Seeds ² Per Pound F&R | C |
| Sideoats Grama | C & A | 50* | 30* | - | - | 0.2 | 1.0 | 0.1 | 0.5 | - | - | 0.5 | 1.0 | 9 | 13 |
| Big Bluestem | C | 50* | 25* | - | - | 0.2 | 1.0 | 0.1 | 0.5 | - | - | 0.5 | 1.0 | 9 | 13 |
| Sand Bluestem | C | 40* | 20* | - | - | 0.2 | 1.0 | 0.1 | 0.5 | - | - | 0.5 | 1.0 | 9 | 13 |
| Little Bluestem | C | 12* | 12* | - | - | 0.2 | 1.0 | 0.1 | 0.5 | - | - | 0.5 | 1.0 | 9 | 13 |
| Indiangrass | C | 50* | 25* | - | - | 0.2 | 1.0 | 0.1 | 0.5 | - | - | 0.5 | 1.0 | 9 | 13 |

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* Pure Live Seed Index

¹ Prohibited noxious weed seeds, including seeds of quackgrass, horsenettle, Johnsongrass, wild garlic, and dodder, are not allowed.

² Objectionable weed seeds shall contain the following:

- | | | |
|-------------------------------|-------------------------------------|-------------------|
| Wild Mustard | hedge bindweed (wild morning glory) | dragonhead |
| wild oats | giant ragweed (kinghead) | buckhorn plantain |
| Field Pennycress (Frenchweed) | | |

Percent germination or pure live seed includes percent germination plus percent dormant for North Dakota certification purposes on those kinds of grasses where for which the association of official seed analysts (AOSA) rules specifically prescribe that dormancy be determined.

History: Amended effective December 18, 1989; September 1, 2002.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

CHAPTER 74-03-07.1

74-03-07.1-03. Field standards.

1. Isolation.

- a. At the time of inspection, the field must be separated from other fields by a fence row, natural boundaries, or by a strip at least five feet [1.52 meters] wide which is either mowed, uncropped, or planted to some other separable crop.
- b. When it is necessary to remove a strip to obtain proper isolation, a part of the strip to be removed must be cut into the field to be inspected.
- c. All buckwheat fields producing certified seed must be isolated by at least six hundred sixty feet [201.17 meters] from buckwheat fields of any other variety or fields of the same variety that do not meet the varietal purity requirements for certification.

2. Roguing.

- a. All roguing must be done before field inspection is made. Rogued plants must not be left in the field to be harvested.
- b. Patches of prohibited weeds must be either removed by cutting or must be controlled by other means so that no seed is produced.

3. Specific field standards.

| Factor | Maximum Tolerance | | |
|--------------------------|-------------------|------------|-----------|
| | Foundation | Registered | Certified |
| Other varieties * | 1:10,000 | 1:5,000 | 1:2,000 |
| Inseparable other crops | 1:10,000 | 1:10,000 | 1:5,000 |
| Prohibited weed seeds ** | none | none | none |

- * Other varieties shall be considered to include plants that can be differentiated from the variety that is being inspected. However, other varieties shall not include variations which are characteristic of the variety.

** ~~Includes only leafy spurge and Russian knapweed.~~ The tolerance for other prohibited weeds in the field will be determined by the inspector on the basis of stages of development of both the crop and the weed.

History: Effective May 1, 1986; amended effective May 1, 1988; September 1, 2002.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-07.1-04. Seed standards.

| Factor | Standards for Each Class | | |
|---|--------------------------|----------------|--------------|
| | Foundation | Registered | Certified |
| Pure seed (minimum) | 99.0 percent | 99.0 percent | 99.0 percent |
| Total weed seeds (maximum) | 2 per pound | 5 per pound | 10 per pound |
| Other varieties * | 1 per 2 pounds | 1 per pound | 3 per pound |
| Other crop seeds (maximum) | 1 per 2 pounds | 1 per pound | 3 per pound |
| Inert matter (maximum) noxious ** | 1.0 percent | 1.0 percent | 1.0 percent |
| Prohibited weed seeds *** | none | none | none |
| Objectionable weed seeds (maximum) **** | 1 per 4 pounds | 1 per 2 pounds | 2 per pound |
| Germination | 85.0 percent | 85.0 percent | 85.0 percent |

* Other varieties shall not include variations which are characteristic of the variety.

** For all crops foreign matter other than broken seed may not exceed 0.2 percent.

*** Prohibited noxious weed seed, including the seeds of quackgrass.

**** Objectionable weed seeds shall include the following: dodder, ~~wild mustard~~, wild oats, hedge bindweed (wild morning glory), ~~field pennycress (frenchweed)~~, giant ragweed (kinghead), falseflax, and dragonhead.

History: Effective May 1, 1986; amended effective September 1, 2002.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

CHAPTER 74-03-08

74-03-08-04. Seed standards (millet).

| Factor | Standards for Each Class | | |
|----------------------------------|--------------------------|--------------|--------------|
| | Foundation | Registered | Certified |
| Pure seed (minimum) | 99.0 percent | 99.0 percent | 98.0 percent |
| Total weed seeds (maximum) | .01 percent | .01 percent | .04 percent |
| Total other crop seeds (maximum) | none | none | .04 percent |
| Other varieties (maximum) | none | none | .02 percent |
| Other kinds (maximum) | none | none | .02 percent |
| Inert matter | 1.0 percent | 1.0 percent | 2.0 percent |
| Prohibited noxious weed seeds | none | none | none |
| Objectionable weed seeds * | none | 1 per pound | 3 per pound |
| Germination | 70.0 percent | 70.0 percent | 70.0 percent |

* Objectionable weed seeds are: dodder, ~~wild mustard~~; wild oats, quackgrass, ~~field pennycress (frenchweed)~~; hedge bindweed (wild morning glory), nightflowering catchfly, giant foxtail, hoary alyssum, wild radish, wild vetch species, buckhorn plantain, and horsenettle.

History: Amended effective May 1, 1986; September 1, 2002.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

CHAPTER 74-03-09

74-03-09-01. Land requirements. Foundation seed of mustard, crambe, canola, and rape shall be on land which did not produce mustard, crambe, canola, or rape during the previous five years. Certified seed of mustard, crambe, canola, and rape shall be on land which did not produce mustard, crambe, canola, or rape during the previous three years. Registered and certified seed of crambe must be on land which did not produce crambe during the previous three years.

History: Amended effective December 18, 1989; September 1, 2002.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-09-03. Field standards.

1. General.

- a. Isolation. A field producing any class of certified seed must have the minimum isolation distance from fields of any other variety of the same kind, or from a noncertified crop of the same variety as follows:

- (1) Producing foundation seed - one thousand three hundred twenty feet [402.34 meters]. All foundation fields of mustard, canola, or rape must be isolated by three hundred thirty feet [100.58 meters] from fields of the other kind (rape from mustard or canola; mustard from rape or canola; or canola from rape or mustard).
- (2) Producing registered crambe seed - six hundred sixty feet [201.17 meters].
- (3) Producing certified seed - six hundred sixty feet [201.17 meters].

Required isolation between classes of the same variety - ten feet [3.05 meters].

- b. Unit of certification. The field shall be considered the unit of certification. A portion of a field may be accepted for certification provided that the rejected portion in no way impairs the genetic purity of the portion accepted.

2. Specific field standards.

| | Maximum Permitted in Each Class | | |
|--------|---------------------------------|-------------|-----------|
| | Registered | | |
| Factor | Foundation | Crambe Only | Certified |

| | | | |
|----------------------------|---------|---------|-------|
| Other varieties * | 1:2,000 | 1:2,000 | 1:500 |
| Inseparable other crops ** | 1:2,000 | 1:2,000 | 1:500 |

* Other varieties shall include off-type plants that can be differentiated from the variety being inspected.

** Inseparable crops and weed seeds are any other crops and weed seeds of similar size which are difficult to remove in the usual cleaning process.

History: Amended effective May 1, 1986; December 18, 1989; September 1, 2002.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-09-04. Seed standards.

| Factor | Foundation | Registered | |
|---|----------------------|----------------------|----------------------|
| | | Crambe Only | Certified |
| Pure seed (minimum) | 99.00 percent | 99.00 percent | 99.00 percent |
| Inert matter (maximum) | 1.00 percent | 1.00 percent | 1.00 percent |
| Prohibitive <u>Prohibited</u> noxious weed seeds \pm | none | none | none |
| Objectionable weed seeds * | 1 per pound | 3 per pound | 5 per pound |
| Other weeds | 5 per pound | 10 per pound | 15 per pound |
| Total other crop seeds (maximum) | 0.05 percent | 0.10 percent | 0.25 percent |
| Other varieties (maximum) | 0.05 percent | 0.10 percent | 0.25 percent |
| Other kinds (maximum) ** | 0.01 percent | 0.01 percent | 0.01 percent |
| Germination (minimum) | 85.00 percent | 85.00 percent | 85.00 percent |
| Sclerotia (maximum) *** | 4 <u>7</u> per pound | 4 <u>7</u> per pound | 4 <u>7</u> per pound |

\pm Prohibited noxious weed seeds include the seeds of cleavers or bedstraw.

* Objectionable weed seeds are: dodder, wild mustard, wild oats, quackgrass, ~~field pennycress (frenchweed)~~, and hedge bindweed (wild morning glory).

** Shall not exceed one per pound for foundation; and six per pound for certified.

*** ~~One~~ Seven sclerotium per pound is all that is allowed in North Dakota certified seed of mustard, crambe, rape, and canola to prevent the

dissemination to areas not previously infected with sclerotia (sclerotinia sclerotiorum).

History: Amended effective May 1, 1986; May 1, 1988; December 18, 1989; September 1, 2002.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

CHAPTER 74-03-10

74-03-10-03. Field standards.

1. General.

- a. Isolation. Fields of safflower planted to produce the registered or certified class of seed shall be at least one thousand three hundred twenty feet [402.34 meters] from any other variety or noncertified field of safflower. When certified classes of seed of the same variety are planted in close proximity, no isolation requirement applies, except to maintain field borders.
- b. Unit of certification. The field shall be considered the unit of certification. A portion of a field may be accepted for certification provided that the rejected portion in no way impairs the genetic purity of the portion accepted.
- c. Roguing. Off-type plants or identifiable mixtures shall be removed prior to bloom or before pollination occurs.

2. Specific field standards.

| Factor | Maximum Permitted in Each Class | | |
|------------------------------|---------------------------------|------------|-----------|
| | Foundation | Registered | Certified |
| Other varieties * | none | 1:2,000 | 1:1,000 |
| Inseparable other crops ** | none | 1:10,000 | 1:3,000 |
| Prohibited noxious weeds *** | none | none | none |

* Other varieties shall include off-type plants that can be differentiated from the variety being inspected.

** Inseparable crops may include wheat, barley, or oats and any other crops of similar size which are difficult to remove in the usual cleaning process.

*** Prohibited noxious weeds for the purpose of field inspection include field bindweed, leafy spurge, yellow starthistle, and Russian knapweed. The tolerance for other noxious and common weeds will be determined by the inspector, based on the amount and separability of the seed from the crop being considered and the development of the crop and the weed.

History: Amended effective May 1, 1986; September 1, 2002.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-10-04. Seed standards (safflower).

| Factor | Foundation | Registered | Certified |
|------------------------------------|----------------------|----------------------|----------------------|
| Pure seed (minimum) | 98.0 percent | 98.0 percent | 98.0 percent |
| Inert matter (maximum) | 2.0 percent | 2.0 percent | 2.0 percent |
| Other crops or varieties (maximum) | 1 per 2 pounds | 1 per pound | 3 per pound |
| Weed seeds (maximum) | 2 per pound | 5 per pound | 10 per pound |
| Prohibited noxious weed seed | none | none | none |
| Objectionable weed seeds * | none | 1 per 2 pounds | 2 per pound |
| Germination (minimum) | | 80 percent | 80 percent |
| Sclerotia (maximum) ** | + <u>5</u> per pound | + <u>5</u> per pound | + <u>5</u> per pound |

* Objectionable weed seeds shall include the following: dodder, ~~wild mustard~~; wild oats, hedge bindweed (wild morning glory), ~~field pennycress (frenchweed)~~; giant ragweed (kinghead), falseflax, and dragonhead.

** ~~One~~ Five sclerotium per pound [454 grams] is all that is allowed in North Dakota certified seed to prevent the dissemination to areas not previously infected with sclerotia (sclerotinia sclerotiorum).

History: Amended effective May 1, 1986; September 1, 2002.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

CHAPTER 74-03-11

74-03-11-05.1. Seed standards (sunflower).

| Factor | Standards for Each Class | | |
|-------------------------------|--------------------------|----------------------|----------------------|
| | Foundation | Registered | Certified |
| Pure seed (minimum) | 98.0 percent | 98.0 percent | 98.0 percent |
| Total weed seeds (maximum) | none | none | 3 per pound |
| Other varieties (maximum) * | 1 per pound | 1 per pound | 5 per pound |
| Other crop seeds (maximum) | 1 per pound | 1 per pound | 3 per pound |
| Inert matter (maximum) | 2.0 percent | 2.0 percent | 2.0 percent |
| Objectionable weed seeds ** | none | none | none |
| Prohibited noxious weed seeds | none | none | none |
| Germination (minimum) | 85.0 percent | 85.0 percent | 85.0 percent |
| Sclerotia *** | + <u>5</u> per pound | + <u>5</u> per pound | + <u>5</u> per pound |

* To include not more than two purple seeds; or two white seeds per pound. Other varieties shall not include variations which are characteristic of the variety.

** Objectionable weed seeds shall include the following: buckhorn plantain, dodder, wild oats, ~~wild mustard~~, nightflowering catchfly, ~~field pennycress (frenchweed)~~, giant foxtail, hoary alyssum, horsenettle, quackgrass, wild vetch species, wild radish, hedge bindweed (wild morning glory).

*** ~~One~~ Five sclerotium per pound is all that is allowed in North Dakota certified seed to prevent the dissemination to areas not previously infected with sclerotia (*sclerotinia sclerotiorum*).

History: Effective May 1, 1988; amended effective September 1, 2002.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

CHAPTER 74-03-12

74-03-12-01. Land requirements. A In soybeans, a crop will not be considered for certification if planted on land which produced the same kind of crop the previous year unless the previous crop was ~~grown from an equal or higher certified class~~ the same variety and passed field inspection. In peas, lentils, and chickpeas, a crop will not be considered eligible for certification if planted on land which produced any class of dry field bean, green bean, soybean, or pulse crop the preceding year.

History: Amended effective May 1, 1986; September 1, 2002.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-12-02. Field inspection. Field inspection shall be made on ~~soybean~~ soybeans prior to harvest when the crop is approaching maturity preferably after the leaves have dropped or at a time when varietal purity can be determined. Field inspection on field peas, chickpeas, or lentils shall be made prior to harvest when the crop is in bloom or at such a time as the varietal purity of the crop can be determined.

History: Amended effective May 1, 1986; September 1, 2002.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-12-03. Field standards.

- 1. Isolation.** A strip at least five feet [1.52 meters] wide which is either mowed, uncropped, or planted to some other separable crop shall constitute a field boundary for the purpose of isolation.
- 2. Specific requirements (~~soybean soybeans, chickpeas, lentils~~).**

| Factor | Maximum Tolerance | | |
|--|-------------------|-------------|-------------|
| | Foundation | Registered | Certified |
| Other varieties * | 0.1 percent | 0.2 percent | 0.2 percent |
| Corn and sunflower plants bearing seed | none | none | none |
| Prohibited noxious weeds ** | none | none | none |
| Objectionable weeds *** | none | none | none |

* Other varieties shall not include variations which are characteristic of the variety inspected.

** Prohibited noxious weeds include only field bindweed, leafy spurge, yellow starthistle, and Russian knapweed. The tolerance for other noxious and common weeds will be determined by the inspector based on the amount and separability of the seed from the crop being considered and the development of the crop and the weed.

*** Objectionable weeds include nightshade species and cocklebur.

3. **Specific requirements (field peas).**

| Factor | Maximum Tolerance | | |
|-----------------------------|-------------------|--------------|--------------|
| | Foundation | Registered | Certified |
| Other varieties * | 0.01 percent | 0.01 percent | 0.01 percent |
| Other crops (inseparable) | none | none | none |
| Prohibited noxious weeds ** | none | none | none |

* Other varieties shall not include variations which are characteristic of the variety inspected.

** Prohibited noxious weeds include only field bindweed, leafy spurge, and Russian knapweed. The tolerance for other noxious and common weeds will be determined by the inspector based on the amount and separability of the seed from the crop being considered and the stage development of the crop and the weed.

History: Amended effective May 1, 1986; August 1, 1991; September 1, 2002.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-12-04. Seed standard standards (soybean soybeans, chickpeas, lentils, and field peas).

Seed count required on ~~soybean~~ soybeans.

| Factor | Standard for Each Class | | |
|-------------------------------|-------------------------|--------------|--------------|
| | Foundation | Registered | Certified |
| Pure seed (minimum) | 98.0 percent | 98.0 percent | 98.0 percent |
| Total weed seeds (maximum) | none | 1 per pound | 2 per pound |
| Other varieties (maximum) * | 0.1 percent | 0.2 percent | 0.2 percent |
| Other crop seeds (maximum) | none | none | 1 per pound |
| Inert matter | 2.0 percent | 2.0 percent | 2.0 percent |
| Prohibited noxious weed seeds | none | none | none |
| Objectionable weed seeds ** | none | none | none |
| Germination and hard seeds | 85.0 percent | 85.0 percent | 85.0 percent |

* Other varieties shall not include variations which are characteristic of the variety.

** Objectionable weed seeds are: dodder, ~~wild mustard, field pennycress (frenchweed)~~; hedge bindweed (wild morning glory), wild oats,

buckhorn, hoary alyssum, horsenettle, quackgrass, wild vetch species, giant foxtail, wild radish, nightshade species, and cocklebur.

Chickpea and lentil seed labelers shall have an aschochyta test performed on the harvested seed of each field or lot. The test results shall appear on the label for each seed lot.

History: Amended effective May 1, 1986; May 1, 1988; December 18, 1989; September 1, 2002.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

CHAPTER 74-03-13

74-03-13-03. Specific field standards (dry field beans).

| Factor | Maximum Tolerance | | |
|------------------------------|---------------------|---------------------|---------------------|
| | Foundation | Registered | Certified |
| Other varieties or classes * | 0.03 percent | 0.05 percent | 0.1 percent |
| Inseparable other crops | none | none | none |
| Prohibited noxious weeds ** | none | none | none |
| Objectionable weeds *** | none | none | none |
| Bacterial bean blights | <u>.01 percent</u> | <u>.01 percent</u> | <u>.01 percent</u> |
| (leaves) | <u>:005 percent</u> | <u>:005 percent</u> | <u>:005 percent</u> |
| (pods) **** | none | none | none |
| Anthraxnose | none | none | none |
| Wilt | none | none | none |
| Common bean mosaic | none | 0.5 percent | 1.0 percent |

* Other varieties shall not include variations which are characteristic of variety.

** Prohibited noxious weeds include only field bindweed, leafy spurge, yellow starthistle, and Russian knapweed. The tolerance for other noxious and common weeds will be determined by the inspector based on the amount and separability of the seed from the crop being considered and the development of the crop and the weed.

*** Objectionable weeds include nightshade species and cocklebur.

~~**** During second inspection, the inspector will use the following procedures to isolate bacterial blighted area of a field. Using these procedures will allow the inspector to try to save as much of the field as possible. It is understood that when blighted spots are found throughout the field, it becomes impractical to try to isolate and save portions of the field. This decision to isolate or not in such cases will be made by the inspector.~~

1. The grower shall isolate and not thresh within a one hundred foot [30.5 meter] radius of all staked (flagged) plants. Leave flag by plants with blight infected pods.

2. ~~Blight infected areas of field should be isolated. Each corner of the area to be left isolated and unthreshed should be marked by flags. Isolated area should not be threshed within one hundred feet [30.5 meters] of flags.~~

3. Areas to be isolated must be mapped out on field inspection report.

- 4- 3. In any case, it is important that blighted areas be clearly defined by flags. These blighted areas must be left unthreshed while the rest of the field is threshed. The inspector may recheck the field to ensure that these blighted areas were indeed left. Failure to leave the rejected area will result in total field being rejected.

History: Amended effective May 1, 1986; May 1, 1988; December 18, 1989; August 1, 1991; September 1, 2002.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-13-04. Seed standards (dry field beans) - Seed count required on dry field beans.

| Factor | Standards for Each Class | | |
|-------------------------------|--------------------------|--------------|----------------|
| | Foundation | Registered | Certified |
| Pure seed (minimum) * | 98.5 percent | 98.5 percent | 98.5 percent |
| Inert matter (maximum) ** | 1.5 percent | 1.5 percent | 1.5 percent |
| Total weed seeds (maximum) | none | none | 2 per pound |
| Other varieties or classes | 0.01 percent | 0.05 percent | 0.1 percent |
| Other crops (maximum) | none | none | 1 per 2 pounds |
| Prohibited noxious weed seeds | none | none | none |
| Objectionable weed seeds *** | none | none | none |
| Germination (minimum) | no standard | 85.0 percent | 85.0 percent |
| Bacterial blight test **** | pass | pass | pass |

* Foreign matter other than broken seed may not exceed 0.50 percent.

** Splits and cracks cannot exceed 1.0 percent.

*** Objectionable weed seeds include those of buckhorn, dodder, hedge bindweed (wild morning glory), ~~field pennycress, (frenchweed);~~ hoary alyssum, horsenettle, quackgrass, wild oats, ~~wild mustard;~~ wild vetch species, giant foxtail, wild radish, nightshade species, and cocklebur.

**** The grower shall be responsible for having a bacterial blight test and anthracnose test on the harvested seed of each field or seed lot of dry field beans.

A seed treatment to reduce surface bacterial contamination of the seed coat is recommended.

History: Amended effective May 1, 1986; December 18, 1989; August 1, 1991; September 1, 2002.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

CHAPTER 74-04-01

74-04-01-01. Definitions. As used in this chapter:

1. "Basic seed" means seed potatoes produced by means of meristem, stem cutting, or other techniques for increase by certified growers.
2. "Certification" is strictly limited to the act of endorsing that the potatoes have met the standards or requirements specified in this chapter for seed potatoes. Certification does not mean or constitute any warranty that the potatoes are merchantable, disease free, fit for a particular purpose or anything other than that the potato crop was inspected and that at the time of inspection did meet the standards set forth in this chapter.
3. "Damaged by soil" means that the individual potato has more than fifty percent of its surface affected by light caked soil, or more than fifteen percent of its surface badly caked with soil.
4. "Dry land type", as allowed for long varieties only, means not seriously misshapen.
5. "Except for shape", as allowed for long varieties only, means the potatoes may be seriously misshapen.
6. "Field year" means the time which is required for the potato plant to complete the growing cycle from planting in the field until maturity.
7. "Foundation seed" means a primary source of a genetically identified variety from which increases are made.
8. "Grade" refers to the tuber quality, condition, and size factors as specified in this chapter.
9. "Inspection" means visual examination or observation of sample plants or tubers.
10. "Latent diseases" means diseases not detectable by visual inspection.
11. "Lightly caked with soil" means approximately one-eighth of an inch [3.18 millimeters] in depth.
12. "Micropropagation" means the aseptic production of aseptical micropropagation potato plantlets, tubers, or sprouts utilizing meristem culture of potato tubers or sprouts.
13. "Off type" means potato plants in a field that deviate in one or more characteristics from that which is usual in the variety being grown.

14. "Plant Variety Protection Act" means a federal Act passed in 1970 which gives the owner of a novel variety the exclusive right to produce and market that variety.
15. "Prenuclear seed" means plantlet propagation source resulting from the use of aseptic propagation techniques either in the laboratory or controlled environment.
16. "Seed potatoes" means Irish potato tubers to be used for planting.
17. "Seriously damaged by soil" means a potato having caked soil on more than one-half of the surface or an equivalent amount of soil in excessively thick chunks on a lesser area.
18. "Tag" refers to the state seed department's official certification tag used to identify certified seed.
19. "Tolerance" means a permissible allowance for such factors as disease, grade defects, and varietal mixture.
20. "Virus tested" means tested for latent viruses by methods established by the state seed department.
21. "Zero tolerance" means that no amount is permissible. It does not mean that the seed is absolutely free of a disease or disease-causing agent, grade defect, or varietal mixture, but that none was found during inspection.

History: Amended effective December 1, 1981; December 1, 1987; September 1, 1997; September 1, 2002.

General Authority: NDCC 4-10-03

Law Implemented: NDCC 4-10-04

74-04-01-04. Application fees and restrictions.

1. Application for field inspection must be received in the state seed department, university station, Fargo, North Dakota, not later than June fifteenth. There is a one dollar per acre [.40 hectare] cash penalty for later applications.
2. At least one-half the fees and all due accounts must accompany the applications.
3. Applications are subject to cancellation in the case of crop failure or other valid reason and the application fee, minus ~~twenty-five dollars~~ a cancellation fee will be returned if the request reaches the state seed department before the inspector arrives in the general locality of the field. However, in such a case, the crop must be plowed under or destroyed so as not to create a possible disease hazard.

4. Separate application forms are required for latent virus testing.
5. Loss by down outs, if over twenty-five percent of the field, will be allowed after the first inspection only. No adjustments will be made thereafter.
6. ~~Fees, which are subject to change, are:~~ Fee schedules for field inspection, grade inspection, latent virus testing, cancellation fees, and late penalties are subject to change and available at the state seed department.
 - a. ~~Field inspection, fifteen dollars per acre [.40 hectare] including tags and bulk fees; minimum fee per farm, one hundred dollars; and minimum fee per field, fifteen dollars.~~
 - b. ~~Late penalty, one dollar per acre [.40 hectare].~~
 - c. ~~Latent virus testing – single virus test, fifty cents per acre [.40 hectare]; minimum fee fifteen dollars per field.~~
 - d. ~~Grade inspection, seven cents per hundredweight [45.36 kilograms].~~
7. Prompt payment of all fees will be required at all times.
8. Additional testing such as laboratory tests will be assessed at costs to the grower.

History: Amended effective December 1, 1981; December 1, 1987; June 1, 1992; September 1, 1997; September 1, 2002.

General Authority: NDCC 4-10-03

Law Implemented: NDCC 4-10-04

74-04-01-05. Seed potato farm requirements.

1. All potato fields on the farm or in the farming operation must be eligible and entered for certification. A farming operation means all potato fields in the farming operation whether actually grown by the applicant or under growing agreements with common equipment and storages.
2. All equipment and storages in the potato operation must be used only on the acreage [hectarage] entered for certification.
3. Parts of fields will not be accepted or certified without the prior approval of the commissioner.
4. Boundaries of certified seed potato fields must be clearly defined. Adequate separation from uncertified fields must be maintained and are the responsibility of the certified seed potato grower. The definition

of adequate separation is at the discretion of the state seed department or its representative. Field separation of a certified field from an uncertified field must be established prior to the second inspection.

5. Seed potatoes will not be planted on ground that was cropped to potatoes the previous year, unless the ground is fumigated.
6. Strips or markers are required between seed lots and varieties.
7. Equipment and storages must be cleaned and disinfected at least once annually.
8. All cull piles in the farming operation must be properly destroyed.

History: Amended effective December 1, 1981; June 1, 1992; September 1, 1997; September 1, 2002.

General Authority: NDCC 4-10-03

Law Implemented: NDCC 4-10-04

74-04-01-06. Seed eligibility.

1. North Dakota seed stocks.
 - a. Seed lots of North Dakota origin to be eligible will have been grown under the seed certification program in the previous season passing field inspection and the winter test.
 - b. Seed stocks not having a winter test may be accepted on an observational basis but only after they have been laboratory tested and only with prior approval from the state seed department. The cost of laboratory testing will be borne by the applicant. The same field inspection fee structure will apply to this application.
2. Seed stocks from other sources. Seed lots from sources other than North Dakota will be of the foundation or approved classification and have passed a winter grow-out or laboratory test on a sample of the lot that is equal to or greater than the size of the winter test sample as outlined in this bulletin.
3. Purchase proof must accompany the application to provide sufficient evidence as to origin and quantity of seed. Shipping point certificates, affidavits, or sales receipts will be accepted.
4. Individual seed lots will be maintained separately at all times.
5. ~~Verification of genetically engineered varieties is the responsibility of the developer of such variety.~~

- 6- Any variety protected by patent or the Plant Variety Protection Act must have authorization from the owner.

History: Amended effective December 1, 1981; June 1, 1992; September 1, 1997; September 1, 2002.

General Authority: NDCC 4-10-03

Law Implemented: NDCC 4-10-04

74-04-01-07. Seed classification and limited generation.

1. All seed potatoes must be limited to seven years of reproduction in the field. Seed lots may be reproduced beyond this limit with prior approval of the state seed department providing the seed lot has been winter tested and eligible for recertification.
2. Prenuclear seed stocks must originate from tissue-culture derived plantlets, minitubers, microtubers, or pathogen-tested stem cuttings. Experimental breeding selections ~~may~~ shall originate from ~~disease-tested~~ pathogen-tested material. The first year of reproduction of these stocks will be regarded as nuclear seed stock (generation zero). Nuclear seed (first field year) is the progeny of prenuclear seed, generation 1 (second field year) is the progeny of nuclear seed, generation 2 (third field year) is the progeny of generation 1 seed, generation 3 (fourth field year) is the progeny of generation 2 seed, generation 4 (fifth field year) is the progeny of generation 3 seed, generation 5 (sixth field year) is the progeny of generation 4 seed, and certified generation (seventh field year) is the progeny of generation 5 seed. The certified designation will be granted to lots meeting the minimum standards outlined in section 74-04-01-08 and by approval of the commissioner.
3. Prenuclear seed stocks intended to be grown in the field as nuclear (GO) seed potatoes must be laboratory-tested, be demonstrated to be free of the following pathogens, and meet the following standards:
 - a. *Clavibacter michiganensis* subsp. *sepedonicus* (ring rot).
 - b. *Erwinia carotovora* (blackleg and soft rot).
 - c. Potato virus A.
 - d. Potato virus M.
 - e. Potato virus X.
 - f. Potato virus Y.
 - g. Potato leafroll virus.

- h. Potato spindle tuber viroid.
 - i. All micropropagation production must be approved by a certification agency.
 - j. Good records must be maintained on all tests and submitted with the application for field inspection.
 - k. A minimum of one percent of the plantlets must have been tested for the above pathogens using the most reliable testing techniques.
4. Basic seed must originate from sources described above and developed in seed plots ~~grown in tuber units~~ and have met specific field inspection and winter test standards established by the state seed department. Seed stocks will be grown a limited number of generations.
 5. Foundation seed must be seed meeting standards for recertification.
 - a. Foundation seed will be produced on farms found to be free of bacterial ring rot for three years. All seed stocks must be replaced on a farm in which bacterial ring rot has been found.
 - b. Excessive blackleg symptoms will be cause for rejection as foundation stock.
 6. The certified class must meet the minimum field tolerances described in section 74-04-01-08. The classification serves as a quality standard for commercial planting purposes only and must meet all the requirements and responsibilities of this chapter.
 7. Generation numbers increase with years of field reproduction from the original seed source. Generation five will be the final generation of seed eligible for recertification. The certified seed class is not eligible for recertification. If seed availability is low for a specific potato variety, seed lots with more advanced generation numbers may be eligible for recertification providing the seed lot has passed a winter test and prior approval of the state seed department has been obtained.
 8. Except for varietal mixtures, seed lots may be downgraded or advanced in generation if they do not meet the disease tolerances for that generation or they may be placed in the certified class and sold by their generation number as certified seed providing they meet the specifications for that class. Disease tolerances for each generation of seed are outlined in the section on field inspection standards.

History: Effective December 1, 1981; amended effective December 1, 1987; June 1, 1992; September 1, 1997; July 16, 2001; September 1, 2002.

General Authority: NDCC 4-10-03

Law Implemented: NDCC 4-10-04

74-04-01-08. Field inspection standards.

1. Each seed potato field will be visibly inspected based on sample inspection. The method of inspection and sample size will be at the discretion of the state seed department but a minimum of one hundred plants per acre [.40 hectare] will be inspected. For varieties that do not express readily visible symptoms of a disease, laboratory testing may be done for the pathogen.
2. The field tolerance established will be based on visible symptoms in the samples inspected. Diseases which cannot be observed visibly may be present.

| | First Inspection Tolerances (%) | | | | | | Certified |
|----------------------|---------------------------------|-----|-----|-----|--------------------|--------------------|--------------------|
| | Generation | | | | | | |
| | 0 | 1 | 2 | 3 | 4 | 5 | |
| Varietal mixture | 0.1 | 0.2 | 0.3 | 0.5 | 0.5 | 0.5 | 0.5 |
| Spindle tuber viroid | 0.0 | 0.0 | 0.0 | 0.0 | 0.1 0.0 | 0.1 0.0 | 0.1 0.0 |
| Severe mosaics (PVY) | 0.2 | 0.3 | 0.4 | 0.5 | 0.5 | 0.5 | 0.0-1.0 |
| Leaf roll (PLRV) | 0.2 | 0.3 | 0.4 | 0.5 | 0.5 | 0.5 | 0.0-1.0 |
| Total serious virus | 0.2 | 0.3 | 0.4 | 0.5 | 0.5 | 0.5 | 1.0 |
| *Bacterial ring rot | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | Second and all Subsequent Inspections Tolerances (%) | | | | | | Certified |
|----------------------|--|-----|-----|-----|-----|-----|-----------|
| | Generation | | | | | | |
| | 0 | 1 | 2 | 3 | 4 | 5 | |
| Varietal mixture | 0.1 | 0.1 | 0.2 | 0.3 | 0.3 | 0.3 | 0.3 |
| Spindle tuber viroid | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Severe mosaics (PVY) | 0.0 | 0.1 | 0.2 | 0.3 | 0.3 | 0.3 | 0.0-1.0 |
| Leaf roll (PLRV) | 0.0 | 0.1 | 0.2 | 0.3 | 0.3 | 0.3 | 0.0-1.0 |
| Total serious virus | 0.0 | 0.1 | 0.2 | 0.3 | 0.3 | 0.3 | 1.0 |
| *Bacterial ring rot | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Late blight found during field inspection must be confirmed by symptoms or laboratory diagnosis before being reported on the inspection report.

* The zero tolerance means that no amount is permissible when inspected. It does not mean that the seed is absolutely free of disease or disease-causing agents, but that none was found during inspection.

Varieties that do not express visible disease symptoms. Potato varieties that do not express visible disease symptoms of a specific pathogen may be subjected to a laboratory test to determine the levels of the pathogen in a seed lot. This testing may occur during the growing season or during the winter test, or both, and may affect eligibility of the seed lot.

Blackleg. Since the blackleg disease may be latent, the inspector will record only the percentage observed during the first and second inspection, and no tolerance will be established. However, any excessive amount can be cause for rejection. Blackleg observations shall be based upon sample plants exhibiting the characteristic black, inky, soft, slimy, decomposed tissue of the stem.

Wilt. Only the percentage noted will be recorded on the first and second inspection, and may include other factors such as maturity, drought, or alkali problems but any excessive amount may be cause for rejection.

There will be zero tolerance for potato wart, corky ring spot, gangrene, golden nematode, root knot nematode, tuber moths, or other such injurious pests that have never been found and confirmed in North Dakota seed potato fields.

Tolerances for potato virus x tested seed. All of the above tolerances will apply, including a requirement that bacterial ring rot must not have been found on the farm during the season. Seed lots with no more than two percent potato virus x infection may be identified as virus x tested on certification tags.

3. Field conditions.

- a. Insect control must be maintained early and until the vines are killed or matured. Fields suffering ~~under~~ excessive insect injury may be disqualified for certification. A grower will notify the inspector of the date of spraying and spray material applied.
- b. Vine killing. If a field has not received final inspection, the grower must obtain approval from the inspector before killing the vines. Furthermore, if the inspector deems it appropriate, strips of unkilld vines must be left in the seed fields to facilitate final inspections. When strips are left for inspection, the first twelve rows (if a six-row planter was used, eight rows if a four-row planter was used) must not be vine-killed. It will be the responsibility of the seed producer to identify where seed planting began. Approximately ten percent of the seed field acreage must be left in strips.
- c. Any condition such as excess weeds, hail injury, foreign plants, chemical damage, soil conditions, or insect damage that interferes with proper inspection may disqualify the seed for certification.
- d. Roguing is permitted and recommended in many cases but must be done before the inspector arrives in the field.
- e. Presence of disease or conditions not mentioned heretofore which may impair seed quality shall constitute cause for rejection or additional testing before final certification. Stocks which show an excessive percentage of total serious virus in official southern sample tests shall be considered ineligible for certification tags.

4. Appeal inspection of rejected fields will be considered, provided application is made within three days after rejection, the field is in good condition for inspection, and no additional roguing is done previous to reinspection.
5. Bacterial ring rot control.
 - a. All seed produced by a farming operation in which bacterial ring rot has been found will be ineligible for recertification the following year.
 - b. If the farming operation is found to be infected, all equipment and storages must be cleaned and disinfected.
 - c. A farming operation found to be infected on three consecutive years is required to repurchase all new seed, clean, and disinfect the operation under the supervision of the state seed department before being eligible to enter any seed for certification.
 - d. A farming operation found to be infected on three consecutive years shall be required to purchase all new seed, clean, and disinfect the operation under the supervision of the state seed department before entering any seed for certification.

History: Effective December 1, 1981; amended effective June 1, 1992; September 1, 1997; July 16, 2001; September 1, 2002.

General Authority: NDCC 4-10-03

Law Implemented: NDCC 4-10-04

74-04-01-11. Official North Dakota seed potato grades. Final grade determination shall be made based on physical defects, size, shape, and cleanliness. Two grades, first or blue tag, and second or yellow tag, are available for shipment outside the state. A white tag is available but restricted to shipments within the state. The potatoes will be packed in new burlap sacks or clean, disinfected containers identified by official tags attached as to variety, crop year, and grower and accompanied by an official state or federal grade certificate. United States department of agriculture revised standards, effective March ~~1987~~ 2002, for seed potatoes shall be the official guide for applying and interpreting all definitions and terms used in North Dakota seed potato grades. Grade inspection will be made on a sample basis.

1. First grade blue tag seed potatoes shall consist of unwashed potatoes of one variety which must meet the following requirements:
 - a. Shape. Fairly well-shaped except for long varieties.
 - (1) Dryland type (see definitions section 74-04-01-01).
 - (2) Except for shape (see definitions section 74-04-01-01).

- b. Free from:
 - (1) Freezing injury.
 - (2) Blackheart.
 - (3) Soft rot and wet breakdown.
 - (4) Late blight tuber rot.
 - (5) Bacterial ring rot.
 - (6) Nematode or tuber moth injury.
 - (7) Fresh cuts or fresh broken-off second growth.

- c. Free from serious damage caused by:
 - (1) Hollow heart.
 - (2) Vascular ring discoloration.
 - (3) Wireworm.
 - (4) Growth cracks.

- d. Free from damage by soil and other causes (see definitions section 74-04-01-01 and classification of defects, section 6, tables I and II of section 74-04-01-11).

- e. Size:
 - (1) Minimum size, unless otherwise specified, must be one and one-half inches [38.1 millimeters] in diameter.
 - (2) Maximum size may not exceed twelve ounces [340.2 grams] for ~~round~~ round-shaped or intermediate-shaped varieties and fourteen ounces [396.9 grams] for long varieties.
 - (3) For all varieties, size B must be from one and one-half inches [38.1 millimeters] to not more than two and one-quarter inches [57.1 millimeters] in diameter.

- f. Tolerances. In order to allow for variations incident to proper grading and handling in the foregoing grade, the following tolerances, by weight, are provided as specified:
 - (1) For defects:

- (a) Ten percent for potatoes in any lot which are seriously damaged by hollow heart.
- (b) Ten percent for potatoes in any lot which are damaged by soil. (see definitions section 74-04-01-01).
- (c) Five percent for potatoes in any lot which are seriously damaged by vascular ring discoloration.
- (d) Potatoes affected by silver scurf are not grade factors.
- (e) Not more than ten percent of the potatoes seriously damaged by wireworm.
- (f) Eleven percent for potatoes which fail to meet the remaining requirements of grade, including therein not more than six percent for external defects and not more than five percent for internal defects; provided that included in these tolerances not more than the following percentages shall be allowed for the defects listed:

| | Percent |
|---|---------|
| Bacterial ring rot | 0.00 |
| Late blight tuber rot | 1.00 |
| Damage by dry-type or moist-type fusarium tuber rot | 2.00 |
| Nematode or tuber moth injury | 0.00 |
| Frozen, soft rot, or wet breakdown | 0.50 |
| Varietal mixture | 0.50 |

(2) For off-size:

- (a) Undersize. Five percent for potatoes in any lot which fail to meet the required or specified minimum size.
- (b) Oversize. Ten percent for potatoes in any lot which fail to meet the required or specified maximum size.

2. Second grade yellow tag potatoes shall consist of unwashed potatoes that meet the requirements for blue tag grade except for defects caused by hollow heart, wireworm, internal discoloration, firmness, sprouts, and sunken, flattened, or depressed areas with or without underlying flesh discolored, and are not seriously damaged by soil and for increase in maximum size, and for increased tolerance for defects listed below:

Tolerances.

- a. For defects:
 - (1) Twenty percent for potatoes seriously damaged by hollow heart.
 - (2) Firmness, sprouts, wireworm, internal discoloration, sunken, flattened, or depressed areas with or without underlying flesh discolored and growth cracks are not grade factors.
 - (3) Twenty percent for potatoes which fail to meet the remaining requirements of the grade; provided, that included in this amount not more than six percent shall be seriously damaged and included therein not more than one-half of one percent shall be allowed for potatoes which are frozen or affected by soft rot or wet breakdown.
- b. Size. Maximum size, unless otherwise specified may not exceed fourteen ounces [396.90 grams] for ~~round~~ round-shaped or intermediate-shaped varieties and sixteen ounces [453.60 grams] for long varieties.
3. White tag. Official white identification tags will be furnished on request for potatoes which passed field inspection requirements and are being transferred for seed purposes, within the state of North Dakota only. Such stock shall meet United States number two grade requirements, except for defects caused by firmness, sunburn, hollow heart, wireworm, and sunken, flattened, or depressed areas with or without underlying flesh discolored. Not more than two percent shall be damaged by dry-type or moist-type fusarium tuber rot. Unless otherwise specified, the maximum size shall be fourteen ounces [396.60 grams] and one and one-half inches [38.1 millimeters] minimum. State seed department grade inspection on white tag lots is not compulsory, but may be obtained upon request.
4. Application of tolerances. Individual samples may not have more than double the tolerances specified, except that at least one defective and one off-size potato may be permitted in any sample; provided that en route or at destination, one-tenth of the samples may contain three times the tolerance permitted for potatoes which are frozen or affected by soft rot or wet breakdown; and provided, further, that the averages for the entire lot are within the tolerances specified for the grade.
5. Samples for grade and size determination. Individual samples shall consist of at least twenty pounds [9.06 kilograms]. The number of such individual samples drawn for grade and size determination will vary with the size of the lot.
6. Classification of defects.

a. Brown discoloration following skinning, dried stems, flattened depressed areas (showing no underlying flesh discoloration), greening, skin checks, and sunburn do not affect seed quality and may not be scored against the grade.

b. Table I - External defects.

| Defect | DAMAGE | |
|--|---|---|
| | When materially detracting from the appearance of the potato | OR When removal causes a loss of more than 5 percent of the total weight of the potato |
| Air cracks | | x |
| Bruises | | x |
| Cuts and broken-off second growth (healed) | x | x |
| Elephant hide (scaling) | x | |
| Enlarged, discolored, or sunken lenticels | x | |
| Folded ends | x | |
| Second growth | x | |
| Shriveling | When more than moderately shriveled, spongy, or flabby. | |
| Sprouts | When more than 20 percent of the potatoes in any lot have any sprout more than 1 inch [25.4 millimeters] in length. | |
| Surface cracking | x | x |
| Flea beetle injury | x | x |
| Grub damage | x | x |
| Rodent and/or bird damage | x | x |
| Wireworm or grass damage | Any hole more than 3/4 inch [19.1 millimeters] long or when the aggregate length of all holes is more than 1 1/4 inches [31.8 millimeters] ¹ . | |
| Dry-type or moist-type fusarium rot | | x |
| Rhizoctonia | x | |
| Scab, pitted | x | x |
| Scab, russet | When affecting more than 1/3 of the surface. | |

Scab, all surface

When affecting more than 5 percent of the surface.

Growth cracks

When seriously detracting from the appearance.

Pressure bruises and sunken areas with underlying flesh discolored

When removal causes a loss of more than 10 percent of the total weight.

¹ Definitions of damage and serious damage are based on potatoes that are two and one-half inches [63.5 millimeters] in diameter or six ounces [170.10 grams] in weight. Correspondingly lesser or greater areas are permitted on smaller or larger potatoes.

C. Table II - Internal defects.

| DAMAGE | | | |
|--|--|----|--|
| Defect | When materially detracting from the appearance of the potato | OR | When removal causes a loss of more than 5 percent of the total weight of the potato |
| Ingrown sprouts | | | x |
| Internal discoloration occurring interior to the vascular ring (such as, internal brown spot, mahogany browning, and heat necrosis). | When more than the equivalent of three scattered light brown spots 1/8 inch [3.2 millimeters] in diameter ¹ . | | |
| All other internal discoloration, excluding discoloration confined to the vascular ring. | | | x |
| SERIOUS DAMAGE | | | |
| Defect | When seriously detracting from the appearance of the potato | OR | When removal causes a loss of more than 10 percent of the total weight of the potato |

| | | |
|---|--|---|
| Internal discoloration confined to the vascular ring. | | x |
| Hollow heart or hollow heart with discoloration. | When affected area exceeds that of a circle 3/4 inch [19.1 millimeters] in diameter ¹ . | |

¹ Definitions of damage and serious damage are based on potatoes that are two and one-half inches [63.5 millimeters] in diameter or six ounces [170.10 grams] in weight. Correspondingly lesser or greater areas are permitted on smaller or larger potatoes.

7. Classification and serological tested stocks.

- a. Foundation seed classification may be indicated on the tag provided the lot meets foundation standards.
- b. Serologically tested stocks for potato virus x, potato virus s, or potato virus m may be so indicated on the tag if within the specified tolerance during the current growing season.

Blue and yellow tag shipments must be inspected and meet respective grade requirements.

History: Effective December 1, 1981; amended effective June 1, 1985; December 1, 1987; June 1, 1992; September 1, 1997; July 16, 2001; September 1, 2002.

General Authority: NDCC 4-10-03

Law Implemented: NDCC 4-10-04

CHAPTER 74-06-01

74-06-01-07. ~~Inspection fees and types~~ Types of analysis on rapeseed.

1. Grade determination - Official samples.

(Form CI-1) samples taken by North Dakota state seed department authorized inspectors or samplers licensed by the federal grain inspection service.

~~Grading -- not including sampling -- \$20.00~~

2. Grade determination - Submitted samples.

(Form CI-2) samples not officially taken under North Dakota state seed department supervision.

~~Grading -- \$20.00~~

3. Percentage of Admixtures.

(Form - Seed Analysis Report)

Percentage by weight, reported to the nearest one-tenth of one percent of the following:

Mustard, including all wild and domestic species, combined; and
Other seeds - all seeds other than the mustard group.

~~Analysis of five grams -- \$10.00~~

4. Percentage of Mustard Seed.

(Form - Seed Analysis Report)

Total mustard seed, reported to the nearest one-tenth of one percent by weight.

~~Analysis of five grams -- \$10.00~~

5. Factor Analysis.

~~Per factor -- \$ 6.00~~

| | |
|-----------------------|-------------|
| Completely rimed seed | Infestation |
| Conspicuous admixture | Moisture |
| Distinctly green seed | Odor |
| Dockage | Sclerotina |

Heat-damaged seed
Inconspicuous admixture

Stones
Total damaged seed

History: Effective September 1, 1979; amended effective May 1, 1988;
December 18, 1989; September 1, 2002.

General Authority: NDCC 4-09.1-03

Law Implemented: NDCC 4-09.1-03

CHAPTER 74-06-02

74-06-02-06. ~~Inspection fees and types~~ Types of analysis on buckwheat.

1. Grade determination for official samples.

(Form CI-1) samples taken by North Dakota state seed department authorized inspectors or samplers licensed by the federal grain inspection service.

~~Grading not including sampling -- \$14.00~~

2. Grade determination for submitted samples.

(Form CI-2) samples not officially taken under North Dakota state seed department supervision.

~~Grading -- \$14.00~~

History: Effective September 1, 1979; amended effective May 1, 1988; December 18, 1989; September 1, 2002.

General Authority: NDCC 4-09.1-03

Law Implemented: NDCC 4-09.1-03

CHAPTER 74-06-03

74-06-03-09. Grading and factor analysis fees.

1. Grade determination for official samples.

(Form CI-1) samples taken by North Dakota state seed department authorized inspectors or samplers licensed by the federal grain inspection service.

~~Grading not including sampling - \$18.00~~

2. Grade determination for submitted samples.

(Form CI-2) samples not officially taken under North Dakota state seed department supervision.

~~Grading - \$18.00~~

3. Factor analysis.

~~Per factor - \$ 6.00~~

| | |
|-----------------------|--------------------|
| Dockage | Heat damaged seed |
| Distinctly green seed | Total damaged seed |
| Moisture | Foreign material |

History: Effective May 1, 1980; amended effective May 1, 1988; December 18, 1989; September 1, 2002.

General Authority: NDCC 4-09.1-03

Law Implemented: NDCC 4-09.1-03

TITLE 75
DEPARTMENT OF HUMAN SERVICES

NOVEMBER 2002

CHAPTER 75-03-35
PROVISION OF MEDICAL FOOD AND LOW-PROTEIN MODIFIED FOOD
PRODUCTS TO INDIVIDUALS WITH PHENYLKETONURIA AND MAPLE
SYRUP URINE DISEASE

Section

75-03-35-01

Definitions

75-03-35-02

Provision of Medical Food at No Cost

75-03-35-03

Sale of Medical Food at Cost

75-03-35-04

Provision of Low-Protein Modified Food Products

75-03-35-05

Collaboration With State Department of Health

75-03-35-01. Definitions. For purposes of this chapter:

1. "At cost" means the actual cost of the medical food plus vendor shipping and handling charges and postage costs incurred by the department.
2. "Department" means the North Dakota department of human services.
3. "Government program" includes North Dakota medicaid, healthy steps, children's health insurance plan, and women, infants, and children nutrition program.
4. "Low-protein modified food product" means a food product that is specially formulated to have less than one gram of protein per serving and is intended to be used under the direction of a physician for the dietary treatment of a metabolic disease. The term does not include a food that is naturally low in protein.
5. "Maple syrup urine disease" means an inborn error of metabolism, referred to as MSUD.
6. "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. 1396(d)(a), to persons determined to be eligible.

7. "Medical food" means a food that is intended for the dietary treatment of a disease or condition for which nutritional requirements are established by medical evaluation and is formulated to be consumed or administered under the direction of a physician.
8. "Medically necessary" means use of low-protein modified food products for the treatment of phenylketonuria or maple syrup urine disease, which is recommended based on standards of accepted medical practice.
9. "Phenylketonuria" means an inborn error of metabolism, referred to as PKU.
10. "Qualified health care provider" means a physician who is licensed to practice medicine, a multidisciplinary metabolic clinic team, or a licensed, registered dietitian.
11. "Resident" means an individual with phenylketonuria or maple syrup urine disease who lives within the state of North Dakota with the intent to make it a fixed and permanent abode and manifests the genuineness of that intent by establishing an ongoing physical presence within the state with indicia that such presence is something other than merely transitory in nature.
12. "Treatment services" means provision of medical food and low-protein modified food products.

History: Effective November 1, 2002.

General Authority: NDCC 25-17-02

Law Implemented: NDCC 25-17-00.1, 25-17-03

75-03-35-02. Provision of medical food at no cost.

1. Subject to appropriations, the department shall provide medical food at no cost to males under age twenty-two and females under age forty-five who are diagnosed with phenylketonuria or maple syrup urine disease, regardless of income.
2. The department shall provide medical food only to an individual who is a resident of North Dakota.
3. If an individual meets the requirements of this chapter, the department shall provide to the individual an initial supply of medical food. Within thirty days of the initial request to the department for medical food, an individual or the parent or legal guardian of a minor must submit the following information to the department before additional medical food will be provided:
 - a. The diagnosis of a qualifying condition; the name, address, and telephone number of the individual's physician, metabolic clinic

team, or dietitian who has recommended use of the medical food; and written consent of the individual requesting medical food authorizing the physician, metabolic clinic team, or dietitian who has recommended use of the medical food to verify to the department in writing the diagnosis and recommended treatment; or

- b. Documentation from a physician that confirms the diagnosis of phenylketonuria or maple syrup urine disease and specifies recommended treatment.

History: Effective November 1, 2002.

General Authority: NDCC 25-17-02

Law Implemented: NDCC 25-17-03

75-03-35-03. Sale of medical food at cost.

1. The department shall offer for sale at cost medical food to males age twenty-two and over and females age forty-five and over who are diagnosed with phenylketonuria or maple syrup urine disease, regardless of income. The individual requesting medical food at cost must make payment to the department prior to delivery.
2. The department shall sell medical food at cost only to an individual who is a resident of North Dakota.
3. If an individual meets the requirements of this chapter, the department shall sell at cost to the individual an initial supply of medical food. Within thirty days of an initial request, an individual requesting medical food at cost must submit to the department the following before additional orders will be filled:
 - a. The diagnosis of a qualifying condition; the name, address, and telephone number of the physician, metabolic clinic team, or dietitian who has recommended use of the medical food; and written consent authorizing the physician, metabolic clinic team, or dietitian who has recommended use of the medical food to verify to the department in writing the diagnosis and recommended treatment; or
 - b. Documentation from a physician that confirms the diagnosis of phenylketonuria or maple syrup urine disease and specifies recommended treatment.

History: Effective November 1, 2002.

General Authority: NDCC 25-17-02

Law Implemented: NDCC 25-17-03

75-03-35-04. Provision of low-protein modified food products.

1. The department shall provide low-protein modified food products, if medically necessary as determined by a qualified health care provider, to males under age twenty-two and females under age forty-five who are eligible to receive medicaid benefits and are diagnosed with phenylketonuria or maple syrup urine disease.
2. An individual requesting low-protein modified food products must be eligible for medicaid benefits at the time of the request and must be a resident of North Dakota.
3. If an individual meets the requirements of this chapter, the department shall provide to the individual an initial supply of low-protein modified food products. Within thirty days of the initial request for low-protein modified food products, an individual or the parents or legal guardian of a minor must submit the following information to the department before additional orders will be filled:
 - a. The diagnosis of a qualifying condition; the name, address, and telephone number of the physician, metabolic clinic team, or dietitian who has recommended use of the low-protein modified food products, and written consent authorizing the physician, metabolic clinic team, or dietitian who has recommended use of the low-protein modified food products to verify to the department in writing the diagnosis and recommended treatment; or
 - b. Documentation from a physician that confirms the diagnosis of phenylketonuria or maple syrup urine disease and specifies recommended treatment.
4. The department may seek reimbursement from government programs for the cost of medical food and low-protein modified food products that are provided for individuals covered by those programs. The department shall encourage an individual who qualifies for the women, infants, and children nutrition program to enroll for access to medical food through that program.

History: Effective November 1, 2002.

General Authority: NDCC 25-17-02

Law Implemented: NDCC 25-17-03

75-03-35-05. Collaboration with state department of health. The department shall collaborate with the state department of health to implement the medical food program described in this chapter. The department may request information from and provide information to the state department of health

regarding individuals with positive screening results for metabolic diseases. The department shall treat such information as confidential as required by law.

History: Effective November 1, 2002.

General Authority: NDCC 25-17-02

Law Implemented: NDCC 25-17-03

CHAPTER 75-08-01

75-08-01-01. Definitions. In this chapter:

1. "Assistive technology device", also referred to as "rehabilitation technology device", means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, used to increase, maintain, or improve the functional capabilities of an individual with disabilities.
2. "Assistive technology service", also referred to as "rehabilitation technology service", means a service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device.
3. "Client assistance program" means the ~~federally mandated~~ program that informs and advises an individual of all available benefits under ~~federal vocational rehabilitation law~~ the Rehabilitation Act, as amended, and, if requested, ~~assists~~ may assist and ~~advocates~~ advocate for the individual in matters related to vocational rehabilitation decisions and services. Client assistance program services include assistance and advocacy in pursuing ~~legal~~ mediation, administrative, legal, or other appropriate remedies for the protection of the rights of an individual.
4. "Department" means the North Dakota department of human services.
5. ~~"Employment objective", also known as "employment outcome" and "vocational goal", means entering or retaining full-time employment, or, if appropriate, part-time competitive employment in the integrated labor market, supported employment, or other type of employment consistent with an eligible individual's abilities, capabilities, and interests as supported by an assessment for determining vocational rehabilitation needs.~~
6. "Employment outcome" means an employment objective or a vocational goal, in a manner consistent with this chapter:
 - a. Entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market;
 - b. Supported employment; or
 - c. Satisfying any other type of employment in an integrated setting that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including self-employment, telecommuting, business ownership, and homemaker services.

7. ~~6.~~ "Existing data" means information from any source that currently exists that describes the current functioning of the individual and may be available to the department vocational rehabilitation for a an eligibility determination. Example: vocational rehabilitation needs a neurological exam of an individual to make a determination, and the individual just had one the week before visiting vocational rehabilitation. Vocational rehabilitation will use the results of that neurological visit, if possible, rather than ordering a new visit. The school records of an individual are considered to be existing data; however, vocational rehabilitation may request additional information if there is an indication of changes in functioning or if there is conflicting information.
7. "Extended employment" means work in a nonintegrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act.
8. "Extended evaluation" means the process whereby vocational rehabilitation services are provided to an individual for no more than eighteen months for the limited and specific purpose of determining eligibility for services and the nature and scope of vocational rehabilitation services needed services provided under limited circumstances to determine eligibility when the individual cannot take advantage of trial work or when trial work has been exhausted and eligibility cannot yet be determined.
9. "Extreme medical risk" means a risk of increasing functional impairment or risk of death if medical services are not provided expeditiously.
10. "Homemaker" means an individual who has the skills to maintain a home and actively functions in that capacity; and, either enables another family member to engage in competitive employment, or does tasks in the home for another individual or himself or herself that would otherwise need to be done by an outside individual or agency for a fee. Homemaker tasks include some or all of the following activities: kitchen management and food preparation, child care, household management, and clothing care.
11. "Individual with a disability" means any individual who has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment and who can benefit in terms of an employment outcome from vocational rehabilitation services provided pursuant to this chapter.
12. "Individual with a most severe significant disability" means an individual:
- a. Who meets the criteria for a severe significant disability, and is seriously limited in two or more functional capacities, including mobility, communication, self-care, self-direction, interpersonal

skills, work tolerance, or work skills in terms of an employment outcome; and

- b. Who requires multiple core services over an extended period of time of six months or more.

44. 13. "Individual with a ~~severe~~ significant disability" means:

- a. An individual who is receiving social security disability insurance or supplemental security income; or

- b. An individual:

- (1) Who has severe physical or mental impairments that seriously limit the individual's functional capacity, including mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills in terms of an employment outcome;

- (2) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time of six months or more; and

- (3) Who has one or more physical or mental disabilities resulting from: amputation, arthritis, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia and other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitations.

14. "Informed choice" means a choice based on disclosure of facts and alternatives to allow a person to make decisions based on relevant information, options, and consequences.

15. "Mediation" means using an independent third party to assist vocational rehabilitation clients in settling differences or disputes prior to formal action regarding vocational rehabilitation decisions or services.

16. "Personal assistance services" means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have

a disability. The services must be necessary in order to achieve an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. Personal assistance services may include training in managing, supervising, and directing personal assistance services.

- 42: 17. "Postsecondary training" means training offered by institutions that qualify for federal financial student aid and is provided only when necessary to achieve a vocational goal consistent with an individual's capabilities and abilities.
- ~~13.~~ ~~"Rehabilitation technology device", also referred to as "assistive technology device", means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, used to increase, maintain, or improve the functional capabilities of an individual with disabilities.~~
- 14: 18. ~~"Rehabilitation technology service", also referred to as "assistive technology service", means a service that directly assists an individual with disabilities in the selection, acquisition, or use of an assistive technology device.~~ "Qualified rehabilitation professional" means a vocational rehabilitation counselor, consultant, or administrator who meets the standards established for qualified rehabilitation professionals.
- ~~19.~~ "Substantial impediment to employment" means that a physical or mental impairment in light of attendant medical, psychological, vocational, educational, communication, and other related factors hinders an individual from preparing for, entering into, engaging in, or retaining employment, consistent with the individual's abilities and capabilities.
- 15: 20. "Suitable" means consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individual.
- 16: 21. "Supported employment" means competitive work in an integrated work setting with ongoing support services for an individual with a most ~~severe~~ significant disability for whom competitive employment has not traditionally occurred; or, for whom competitive employment has been interrupted or intermittent because of ~~severe~~ a most significant disability; and, who, because of the nature and severity of the disability, needs intensive supported employment services and extended services to be gainfully employed. Supported employment also includes transitional employment for an individual with chronic mental illness. The following terms are defined concerning supported employment:
- a. "Competitive work" means work that, at the time of transition to extended services, is performed weekly on a full-time or part-time

basis, as determined in the individualized ~~written rehabilitation program~~ plan for employment, and for which an individual is compensated consistent with wage standards provided for in the Fair Labor Standards Act [29 U.S.C. 201, et seq.].

- b. "Extended services" means ongoing support services provided by a state agency, private nonprofit organization, or any other appropriate resource, from funds other than titles I, III-D, or ~~VI-C~~ VI-B of the Rehabilitation Act [29 U.S.C. 701, et seq.]. Extended services include natural supports, are provided once the time-limited services are completed, and consist of the provision of specific services needed by the individual to maintain employment.
 - c. "Integrated work setting" means jobsites where there is regular contact with other employees or the general public who do not have a disability. Supported employment requires that no more than eight individuals with disabilities be part of a workgroup.
 - d. "Ongoing support services" means services needed to support and maintain an individual with a most ~~severe~~ significant disability in supported employment. The individual may be provided necessary and appropriate supports, including jobsite training, transportation, followup family contact, or any services necessary to achieve and maintain the supported employment placement, throughout the term of employment. Ongoing support must include two monthly contacts with the supported employee at the worksite to assess job stability, unless it is determined that offsite monitoring is more appropriate for a particular individual. Offsite monitoring consists of at least two ~~face-to-face~~ meetings with the individual and one ~~monthly~~ employer contact each month.
 - e. "Time-limited services" means support services provided by vocational rehabilitation for a period not to exceed eighteen months, unless a longer period to achieve job stabilization has been established in the individualized ~~written rehabilitation program~~ plan for employment, before the individual ~~transition~~ transitions to extended services.
 - f. "Transitional employment services for an individual with chronic mental illness" means a series of temporary job placements in competitive work in an integrated work setting with ongoing support services for an individual with chronic mental illness.
22. "Trial work experiences" means those experiences designed to explore an individual's abilities, capabilities, and capacity to perform in work situations, including situations in which appropriate support and training are provided.

~~17- 23.~~ "Vocational goal" means an employment objective or an employment outcome.

History: Effective October 1, 1995; amended effective November 1, 2002.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06.1

75-08-01-02. General requirements of the vocational rehabilitation program.

1. The vocational rehabilitation program assists an eligible individual with physical or mental disabilities to prepare for and achieve an employment outcome. The vocational rehabilitation process is based upon an individualized ~~written rehabilitation program plan for employment~~ oriented to the achievement of a suitable vocational goal. An individual with disabilities must require the service provided to minimize and accommodate the impediment to employment. Services must be reasonable and provided as cost effectively as possible.
2. Vocational rehabilitation presumes that ~~the~~ an individual will benefit in terms of an employment outcome from vocational rehabilitation services, unless the counselor can document, on the basis of clear and convincing evidence and only after ~~an extended evaluation trial work experiences~~, that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome.
3. Auxiliary aids and services will be provided at no cost to applicants or clients when they are necessary to access the vocational rehabilitation program. The purpose of auxiliary aids and services is to provide effective communications for participants in determining eligibility, assessments, and plan development.
4. Unless otherwise specified in this chapter, eligibility to participate in the vocational rehabilitation program is governed by federal vocational rehabilitation statutes and the federal procedures embodied in the rehabilitation services administration notices and policy memos. The program must conform to lawfully issued regulations and policies of the rehabilitation services administration. Terms used in this chapter have the same meaning as the terms used in the regulations and policies of the rehabilitation services administration, unless this chapter specifically provides otherwise.
- ~~4- 5.~~ 5. The department must provide services without regard to sex, race, creed, age, color, national origin, political affiliation, or type of disability.
- ~~5- 6.~~ 6. There is no residency requirement, durational or other, that may exclude an otherwise eligible individual living present in the state from eligibility. For individuals who are not United States citizens, vocational

rehabilitation must verify that the individual is not prohibited from working.

History: Effective October 1, 1995; amended effective November 1, 2002.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: 29 USC 720, et seq.

75-08-01-03. Variance. Upon written application and good cause shown to the satisfaction of ~~the department~~ vocational rehabilitation, ~~the department~~ vocational rehabilitation may grant a variance from the provisions of this chapter upon terms prescribed by the department.

History: Effective October 1, 1995; amended effective November 1, 2002.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: 29 USC 720, et seq.

75-08-01-05. Expenditure authorization. Case service expenditures require written authorization prior to the initiation of ~~the purchase of~~ services. Oral authorizations are permitted in emergency situations, but must be confirmed promptly in writing.

History: Effective October 1, 1995; amended effective November 1, 2002.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: 29 USC 720, et seq.

75-08-01-07. Notification of appeals and mediation procedures.

1. Vocational rehabilitation shall inform each individual applying for or receiving vocational rehabilitation services of the availability of mediation services. An individual may request mediation through the counselor, vocational rehabilitation administrator, or client assistance. The results of mediation are not binding.
2. Vocational rehabilitation shall inform each individual applying for or receiving vocational rehabilitation services of the appeals procedure in chapter 75-01-03. An individual may ~~request a review of agency determinations~~ appeal vocational rehabilitation's decision concerning the furnishing or denial of services by filing a written notice of appeal with the department's appeals supervisor within thirty days of the date of the notice of the decision.
- ~~2.~~ 3. Vocational rehabilitation shall provide the name and address of the appeals supervisor with whom appeals may be filed and shall inform each individual of the availability of the client assistance program.

History: Effective October 1, 1995; amended effective November 1, 2002.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02, 50-06.1-06

75-08-01-08. Confidentiality. All information acquired by vocational rehabilitation about an individual applying for or receiving services must remain the property of ~~the department~~ vocational rehabilitation and must only be used and released for purposes directly connected with the administration of the vocational rehabilitation program. Departmental Information obtained from another agency or organization may be released only by or under the conditions established by the other agency or organization. Vocational rehabilitation use and release of personal information must conform with applicable state and federal regulations.

History: Effective October 1, 1995; amended effective November 1, 2002.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02, 50-06.1-05

75-08-01-10. Release of information within the department. Intradepartmental exchange of information may occur without informed written consent when the individual is served by other divisions if the information is directly related to the purpose of the vocational rehabilitation program.

History: Effective October 1, 1995; amended effective November 1, 2002.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02, 50-06.1-05

75-08-01-11. Release of information to the individual and others.

1. Upon informed written consent by the individual with disabilities or the individual's representative, all information in the record of service must be made available to the individual with disabilities or the individual's representative in a timely manner, except:
 - a. Medical, psychological, or other information ~~the department~~ vocational rehabilitation believes may be harmful to the individual and that may not be released directly to the individual, and must be provided through the individual's representative, physician, or licensed psychologist; and
 - b. Information obtained from outside ~~the department~~ vocational rehabilitation that may be released only under the conditions established by the outside agency, organization, or provider.
2. Upon informed written consent of the individual with disabilities or the individual's representative, vocational rehabilitation may release information that may be released under subsection 1 to the individual with disabilities to another agency or organization.
3. Vocation rehabilitation may release personal information, with or without consent of the individual:
 - a. If required by state or federal law;

- b. In response to investigations connected with law enforcement, fraud, or abuse (except where expressly prohibited by federal or state laws or regulations); or
 - c. In response to judicial order.
4. Vocational rehabilitation may release personal information, without informed written consent of the individual, in order to protect the individual or others when the information poses a threat to the individual's safety or the safety of others, except for human immunodeficiency virus test results that may not be released without informed written consent of the individual.
 5. Vocational rehabilitation and social security disability determination services may exchange information, without the informed written consent, ~~when social security also provides services to~~ of the individual.

History: Effective October 1, 1995; amended effective November 1, 2002.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02, 50-06.1-05

75-08-01-13. Subpoenas. An employee of vocational rehabilitation may testify in court or in an administrative hearing, but may not release information or records, without the consent of the individual with disabilities, unless ordered to do so by a judge or hearing officer.

History: Effective October 1, 1995; amended effective November 1, 2002.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02, 50-06.1-05

75-08-01-14. Administrative review procedures - Appeals.

1. An individual applying for or receiving vocational rehabilitation services, who is dissatisfied with any determination made by a rehabilitation ~~counselor~~ personnel concerning the furnishing or denial of services, may request a timely review of the determination. Vocational rehabilitation shall make reasonable accommodation ~~to~~ of the individual's disability in the conduct of the appeals process.
2. Pending a final determination of an appeal hearing, vocational rehabilitation may not suspend, reduce, or terminate services that are being provided under an individualized ~~written rehabilitation plan~~ for employment, unless:
 - a. The individual or individual's guardian so requests;
 - b. The services were obtained through misrepresentation, fraud, collusion, or ~~other~~ criminal conduct;

- b. ~~c.~~ The individual fails to substantially satisfy the terms of the individualized ~~rehabilitation~~ plan for employment. "Failure to substantially satisfy the terms of the individualized ~~rehabilitation~~ plan for employment" means the individual's failure to participate in a service that is instrumental to accomplish ~~a~~ the vocational objective goal; or
- e. ~~d.~~ The services are determined to be harmful to the individual.
3. Nothing in this chapter may be construed to forbid any informal, mutually consensual meetings or discussions between the individual and the department or the director. If the department or the director conducts an informal meeting under this section, the individual may still request a formal appeal pursuant to this chapter. An informal meeting will not suspend or extend the time for filing an appeal as set forth in this section. An individual may request a fair hearing through the department immediately without having to go through other appeal procedures.
4. A fair hearing must be conducted, and a recommended decision shall be issued in accord with North Dakota Century Code chapter 28-32 and chapter 75-01-03. Vocational rehabilitation shall consider the decision as final, unless the decision is based on error of law or is contrary to policy.

History: Effective October 1, 1995; amended effective November 1, 2002.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-04

75-08-01-15. Application for services. ~~An individual who applies for services shall undergo an assessment for determining eligibility. The results of the assessment must be shared with the individual. All individuals desiring vocational rehabilitation services must apply for services. An individual is considered to have applied for services when vocational rehabilitation receives a signed, written request for those services from the individual or the individual's representative.~~

History: Effective October 1, 1995; amended effective November 1, 2002.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-04; 29 USC 722

75-08-01-16. Period of time to determine eligibility. Vocational rehabilitation shall determine eligibility for services within a reasonable period of time not to exceed sixty days after the receipt of the application for services, unless:

1. The individual is notified that exceptional and unforeseen circumstances beyond the control of the counselor preclude the counselor from completing the determination within the prescribed timeframe, and the individual agrees ~~that an~~ to a specific extension of time is warranted; or

2. Vocational rehabilitation conducts trial work experiences to explore the individual's abilities, capabilities, and capacity to work in various situations; or
3. An extended evaluation is necessary.

History: Effective October 1, 1995; amended effective November 1, 2002.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-04

**75-08-01-17. ~~Eligibility criteria for vocational rehabilitation~~
Presumption of eligibility and significant disability. An individual is eligible for vocational rehabilitation if:**

1. ~~The individual has a mental or physical impairment, as determined under subdivision a or b;~~
 - a. ~~Social security presumption of disability. An individual who has a disability or is blind, as determined under title II or XVI of the Social Security Act [42 U.S.C. 301, et seq.], is considered to have a physical or mental impairment which constitutes or results in a substantial impediment to employment and which seriously limits one or more functional capacities in terms of an employment outcome.~~
 - b. ~~Use of other data to determine disability. The eligibility determination of an individual who is not determined to have a disability under subdivision a, must be based on existing data as the primary source of information to the maximum extent possible and appropriate. The information may be provided by the individual, the family of the individual, or other sources.~~
2. ~~The individual's physical or mental impairment constitutes or results in a substantial impediment to employment; and~~
3. ~~The individual requires vocational rehabilitation services to prepare for, enter into, engage in, or retain gainful employment.~~
 1. An individual who has a disability or is blind as determined under title II or title XVI of the Social Security Act [42 U.S.C. 301, et seq.] and who receives social security disability insurance benefits or supplemental security income benefits is presumed to be eligible for vocational rehabilitation services if the individual intends to achieve an employment outcome.
 2. An individual who receives supplemental security income benefits or social security disability insurance benefits is presumed to have a significant disability.

3. The presumption of eligibility described in this section shall be overcome if vocational rehabilitation can demonstrate by clear and convincing evidence that the individual cannot benefit from vocational rehabilitation services in terms of an employment outcome because of the severity of the individual's disability. The demonstration that the individual cannot benefit from vocational rehabilitation services may be determined only after conducting trial work experiences as described in section 75-08-01-20.

History: Effective October 1, 1995; amended effective November 1, 2002.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-04

75-08-01-18. Eligibility criteria for supported employment Eligibility criteria and documentation. An individual is eligible for supported employment services if:

- ~~1. The individual is eligible for vocational rehabilitation services;~~
- ~~2. The individual is determined to be an individual with a most severe disability; and~~
- ~~3. A comprehensive assessment of rehabilitation needs, including an evaluation of rehabilitation, career, and job needs identifies supported employment as the appropriate rehabilitation objective for the individual.~~
1. Vocational rehabilitation must base eligibility determinations on existing data as the primary source of information to the maximum extent possible and appropriate. The individual requesting services, the family of the individual, or other sources may provide the information. An individual is eligible for vocational rehabilitation if:
 - a. The individual has a mental or physical impairment;
 - b. The impairment constitutes or results in a substantial impediment to employment as determined by a qualified rehabilitation professional;
 - c. The individual can benefit from vocational rehabilitation services in terms of an employment outcome. An individual is presumed to be able to benefit from vocational rehabilitation services in terms of an employment outcome unless vocational rehabilitation can demonstrate by clear and convincing evidence that the individual cannot benefit due to the severity of the disability. This demonstration that the individual cannot benefit can be determined only after conducting trial work experiences as described in section 75-08-01-20; and

- d. The individual requires vocational rehabilitation services to prepare for, secure, retain, or regain employment.
2. In all cases in which vocational rehabilitation determines an individual eligible for services, the record of service must include documentation of eligibility, dated and signed by a qualified rehabilitation professional, which demonstrates that the individual:
 - a. Has a physical or mental impairment that constitutes or results in a substantial impediment to employment; and
 - b. Requires vocational rehabilitation services to prepare for, enter, retain, or regain employment.

History: Effective October 1, 1995; amended effective November 1, 2002.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-04

75-08-01-19. Eligibility determination Eligibility criteria for supported employment. ~~The counselor determines eligibility upon completion of the eligibility assessment. In all cases where the counselor determines the individual eligible for vocational rehabilitation services, the record of service must include a determination of the eligibility assessment, dated and signed by the counselor, which demonstrates that the individual:~~ An individual is eligible for supported employment services if:

1. ~~Has a physical or mental impairment that constitutes or results in a substantial impediment to employment; and~~ The individual is eligible for vocational rehabilitation services;
2. ~~Requires vocational rehabilitation services to prepare for, enter in, or retain gainful employment.~~ The individual is determined to have a most significant disability; and
3. A comprehensive assessment of rehabilitation needs, including an evaluation of rehabilitation, career, and job needs identifies supported employment as the appropriate employment outcome for the individual.

History: Effective October 1, 1995; amended effective November 1, 2002.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-04

75-08-01-20. Extended evaluation Trial work experiences and extended evaluation. ~~In all cases where the counselor concludes that the individual cannot benefit from services in terms of an employment outcome due to the severity of the individual's disability, the individual shall be provided extended evaluation services and an individualized written rehabilitation program must be developed. An individual may receive extended evaluation services for a period of time not to exceed eighteen months, but sufficient to determine if the individual can benefit~~

~~from services in terms of an employment outcome. A review of the case must be conducted as often as necessary, but at least every ninety days. In all cases where the counselor has determined that an extended evaluation is required, the record of service must document:~~

- ~~1. That the individual has a physical or mental impairment that constitutes or results in a substantial impediment to employment;~~
- ~~2. That the individual requires vocational rehabilitation services to prepare for, enter into, or retain gainful employment; and~~
- ~~3. That the individual cannot benefit from vocational rehabilitation services in terms of an employment outcome due to the severity of the disability.~~
1. Before an individual can be determined ineligible due to the severity of a disability, the individual must receive trial work experiences and there must be a written trial workplan. The trial work must:
 - a. Be sufficiently varied and over a sufficient period of time to determine eligibility or ineligibility;
 - b. Show by clear and convincing evidence that the individual cannot benefit due to the severity of the disability; and
 - c. Include support services such as assistive technology or personal assistance, which must be provided by vocational rehabilitation.
2. Trial work experiences shall explore the individual's abilities, capabilities, and capacity to perform in work situations, including experiences in which appropriate supports and training are provided.
3. Vocational rehabilitation must provide assessments periodically during the trial work experiences regarding the individual's abilities, capabilities, and capacity to perform the work.
4. Under limited circumstances, if an individual cannot take advantage of trial work experiences or if options for trial work experiences have been exhausted and an eligibility determination cannot be made, vocational rehabilitation will provide extended evaluation services. Extended evaluation services must:
 - a. Be identified in a written extended evaluation plan;
 - b. Be provided in the most integrated setting possible consistent with the informed choice and rehabilitation needs of the individual; and
 - c. Provide only those services that are necessary to determine if there is sufficient evidence to conclude the individual can benefit

from vocational rehabilitation services in terms of an employment outcome, or there is clear and convincing evidence the individual is incapable of benefiting from vocational rehabilitation services due to the severity of the disability.

History: Effective October 1, 1995; amended effective November 1, 2002.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-04

~~**75-08-01-21. Ineligibility determination.** In all cases where the counselor determines that an individual applying for or receiving vocational rehabilitation service does not meet the requirements for eligibility, the record of service must include the determination of ineligibility, dated and signed by the counselor, which documents the reasons for the ineligibility determination. Ineligibility decisions concerning the severity of a disability must be based on clear and convincing evidence and require an extended evaluation, pursuant to section 75-08-01-20, prior to closure.~~

1. Vocational rehabilitation may make a determination that an individual is ineligible for vocational rehabilitation services only after providing an opportunity for full consultation with the individual or the individual's representative, as appropriate.
2. When vocational rehabilitation determines that an individual is ineligible to receive vocational rehabilitation services, the individual or the individual's representative shall be informed of the ineligibility determination in writing, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual, of the ineligibility determination, including:
 - a. The reasons for the determination; and
 - b. A written description of the means by which the individual may express and seek a remedy for any dissatisfaction with the determination. This includes the procedures for appeal as provided in chapter 75-01-03, mediation, and the client assistance program.
3. When an ineligibility determination is based on a finding that the individual is incapable of benefiting in terms of an employment outcome due to the severity of the disability, that determination shall be reviewed by vocational rehabilitation:
 - a. Within twelve months and twenty-four months of the date of the determination of ineligibility; and
 - b. After that date only if such a review is requested by the individual or the individual's representative, as appropriate.

4. Ineligibility decisions concerning the severity of a disability must be based on clear and convincing evidence and require trial work experiences as described in section 75-08-01-20 prior to closure.

History: Effective October 1, 1995; amended effective November 1, 2002.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-04

**75-08-01-22. Comprehensive assessment of rehabilitation needs
Assessment for determining eligibility and vocational rehabilitation needs.**

~~For an individual who has been determined eligible for vocational rehabilitation services or for extended evaluation, a comprehensive assessment of rehabilitation needs must be conducted to determine the goals, objectives, nature, and scope of vocational services to be included in the individualized written rehabilitation program. The comprehensive assessment must include an assessment of the individual's unique strengths, resources, priorities, interests and needs, and must document the need for supported employment services.~~

1. ~~The comprehensive assessment will be limited to information necessary to identify the rehabilitation needs of the individual and to develop an individualized written rehabilitation program. The comprehensive assessment may use existing data collected for the determination of eligibility, and additional data, as necessary, provided by the individual or the individual's family.~~
2. ~~The comprehensive assessment must include, for the purpose of making a determination of vocational needs and developing an individualized written rehabilitation program, an assessment of:~~
 - a. ~~Personality;~~
 - b. ~~Interests;~~
 - c. ~~Interpersonal skills;~~
 - d. ~~Intelligence and related functional capacities;~~
 - e. ~~Educational achievements;~~
 - f. ~~Work experience, including trial work;~~
 - g. ~~Vocational aptitudes;~~
 - h. ~~Personal and social adjustment;~~
 - i. ~~Employment opportunities available to the individual;~~
 - j. ~~Medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental~~

~~factors that affect the employment and rehabilitation needs of the individual; and~~

- ~~k. An analysis of the patterns of work behavior and services necessary to acquire occupational skills, and to develop work attitudes, work habits, work tolerance, and social and behavioral patterns necessary for successful job performance, including situational assessments to assess and develop the capacities of the individual to perform adequately in the work environment.~~

1. An assessment for determining eligibility and vocational rehabilitation needs means, as appropriate in each case, a review of existing data to determine:

- a. Whether an individual is eligible for vocational rehabilitation services;
- b. The priority for an order of selection as described in section 75-08-01-23;
- c. The necessity of appropriate assessment activities to obtain necessary additional data to make such determination and assignment;
- d. Referral, for the provision of assistive technology services to the individual, to assess and develop the capacities of the individual to perform in a work environment; and
- e. An exploration of the individual's abilities, capabilities, and capacity to perform in realistic, integrated work situations, which shall be assessed periodically during trial work experiences, including experiences in which the individual is provided appropriate supports and training.

2. To the extent additional data is necessary for vocational rehabilitation to make a determination of employment outcomes and the nature and scope of vocational rehabilitation services to be included in the individualized plan for employment, a comprehensive assessment may be done by vocational rehabilitation. The purpose is to determine the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the eligible individual, including the need for supported employment. A comprehensive assessment includes, to the maximum extent possible and appropriate and in accordance with confidentiality requirements, the following:

- a. Information that is necessary to identify the rehabilitation needs of the individual and to develop the individualized plan for employment of the eligible individual;

- b. Existing information obtained for the purposes of determining the eligibility of the individual and assigning priority for an order of selection described in section 75-08-01-23;
- c. Any information as can be provided by the individual and, when appropriate, by the family of the individual;
- d. As necessary, an assessment of the personality, interests, interpersonal skills, intelligence, and related functional capacities, educational achievements, work experiences, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual, and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors, that affect the employment and rehabilitation needs of the individual; and
- e. As necessary, an appraisal of the individual's patterns of work behavior and services needed for the individual to acquire occupational skills, and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the utilization of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment.

History: Effective October 1, 1995; amended effective November 1, 2002.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-04

75-08-01-23. Order of selection.

1. ~~An Vocational rehabilitation must provide to an individual applying for services, including an individual receiving extended evaluation, must receive trial work experiences, all services necessary to determine eligibility for vocational rehabilitation services and an order of selection priority classification. These services Vocational rehabilitation must be provided provide these services~~ on a timely basis in accordance with federal law.
2. ~~Each individual must be informed~~ When vocational rehabilitation notifies an individual of eligibility, vocational rehabilitation must also notify the individual of the individual's priority category and the individual's right to appeal the assigned category when the individual is notified of eligibility. If the individual's priority category cannot be determined at the time of eligibility, a comprehensive needs assessment must be conducted. After the results of the comprehensive needs assessment, the individual must be notified of the priority category and the individual's right to appeal.

3. ~~If services vocational rehabilitation cannot be provided~~ provide services to all eligible individuals who apply due to a lack of resources, an order of selection procedure must be implemented.
 - a. An individual receiving services under an ~~individual written rehabilitation~~ individualized plan for employment must continue to receive all required services. An individual requiring or receiving postemployment services must be considered to be under an ~~individual written rehabilitation~~ individualized plan for employment. An individual described in paragraphs 1 through 3 of ~~subdivision b~~ must be assigned a priority in the order in which the paragraphs are listed.
 - b. ~~Any public safety officer injured in the line of duty shall be given first priority in all categories.~~
 - (1) Category 1: An individual determined to have a most severe significant disability.
 - (2) Category 2: An individual with severe significant disabilities.
 - (3) Category 3: ~~An individual~~ Other individuals with nonsevere disabilities.
 - b. An eligible individual who is not in a priority category that is being served will have access to services provided through information and referral.

History: Effective October 1, 1995; amended effective March 1, 1997; November 1, 2002.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-04

75-08-01-24. Individualized ~~written rehabilitation program plan~~ for employment. An individualized plan for employment is developed for all individuals who are determined eligible for vocational rehabilitation.

1. ~~The individual with a disability and, if appropriate, a parent, family member, guardian, advocate or authorized representative, and the counselor shall jointly develop, amend, agree on, and sign an individualized written rehabilitation program.~~ Prior to developing the individualized plan for employment, vocational rehabilitation must give the individual a written copy of the options for developing the plan.
2. The individualized plan for employment may be developed by the individual alone or by the individual with assistance from vocational rehabilitation or other parties.

3. The individualized plan must be agreed to and signed by the individual or the individual's legal representative and approved and signed by a qualified rehabilitation professional employed by vocational rehabilitation.
4. The individualized plan for eligible students transitioning from secondary education must be developed and approved by the time the student leaves the school system.
5. ~~An individual designing the individualized written rehabilitation program shall plan the program around~~ The individualized plan for employment is designed to assist the individual's achievement of the vocational goal, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities, interests, and informed choice of the individual. The record of service must support the selection of the vocational goal.
- ~~3.~~ 6. Counselors shall provide a copy of the individualized written rehabilitation program plan for employment, and any amendments, to the individual.
- ~~4.~~ 7. With the exception of diagnostic and evaluation assessment services, the department may provide vocational rehabilitation may provide goods and services only in accord with the individualized written rehabilitation program plan for employment.
- ~~5.~~ 8. The individualized written rehabilitation program plan for employment is not a legal contract.
- ~~6.~~ 9. The Vocational rehabilitation must review the individualized written rehabilitation program must be reviewed plan for employment at least annually in the same manner as it was originally developed and described in subsection 4 3.
- ~~7.~~ 10. The Vocational rehabilitation must include in the individualized written rehabilitation program must include plan for employment:
 - a. A vocational goal specific employment outcome in an integrated setting, which must be consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities, interests, and informed choice of the individual; and
 - b. A statement of goals and intermediate rehabilitation objectives that are:
 - (1) Based on the assessment determining eligibility and vocational rehabilitation needs, including the assessment of career interests; and

- (2) ~~Inclusive of placement in integrated settings, to the maximum extent appropriate;~~
- e. b. The specific services to be provided and the projected dates for initiation and anticipated duration of each service, including:
- (1) If appropriate, a statement of the specific rehabilitation assistive technology services;
 - (2) If appropriate, a statement of the specific on-the-job and related personal assistance services, and, the individual's appropriate and desired training in managing, supervising, and directing personal assistance services;
 - (3) An assessment of the need for postemployment services and, if appropriate, extended services;
 - (4) ~~Objective criteria, an evaluation procedure, and schedule to determine if the individualized written rehabilitation program objectives are being achieved;~~
 - (5) The terms and conditions under which goods and services are to be provided in the most integrated settings;
- (6) (5) The terms and conditions for the provision of services, including the individual's:
- (a) Responsibilities and vocational rehabilitation's responsibilities;
 - (b) Participation in the cost of services; and
 - (c) Access to comparable services and benefits under any other program;
- (7) ~~The individual's statement in the individual's own words describing how the individual was informed about and involved in choosing, among alternative goals, objectives, services, entities providing services, and methods used to provide the services;~~
- (8) (6) An assurance that the individual with disabilities was informed of:
- (a) ~~The individual's rights, means of expression, and remedies for any dissatisfaction~~ The availability of services through the client assistance program;

- (b) ~~The opportunity for a review of the rehabilitation determination, as set forth in section 75-08-01-14 and chapter 75-01-03~~ The individual's rights, means of expression, and remedies for any dissatisfaction, including the individual's right to request mediation; and
 - (c) ~~The availability of the resources available through the client assistance program and that the individual with disabilities was given a detailed explanation of the resources available; The opportunity for an administrative review of the rehabilitation determination, as set forth in section 75-08-01-14 and chapter 75-01-03;~~
- (9) (7) Information identifying services and benefits from other programs to enhance the capacity of the individual to achieve ~~the individualized written rehabilitation program's objectives~~ individual's vocational goal;
 - (10) ~~An amendment specifying the basis for termination of vocational rehabilitation services, if termination is due to ineligibility;~~
 - (11) ~~When appropriate, the basis on which the individual has been determined rehabilitated;~~
 - (12) (8) A reassessment of the need for postemployment services, or extended services prior to the point of successful closure; and
 - (13) (9) If appropriate, any plans for the provision of postemployment services and the basis on which the plans are developed.

8: 11. For an individual with a most severe significant disability for whom ~~a vocational objective of supported employment is~~ services are appropriate, in addition to the requirements in subsection 7 10, the following must be addressed:

- a. A description of time-limited services that vocational rehabilitation provides, not to exceed eighteen months in duration, unless the individualized ~~written rehabilitation program~~ plan for employment documents a longer period to achieve job stabilization; and
- b. A description of the extended services necessary and identification of the state, federal, or private programs, which may include natural supports, that provide the extended support, or, to the extent that is not possible at the time the individualized ~~written rehabilitation program~~ plan for employment is written, a statement describing

the basis for concluding that there is a reasonable expectation that those sources will become available.

History: Effective October 1, 1995; amended effective November 1, 2002.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02

75-08-01-25. Comparable services and benefits.

- ~~1. In all cases, the department shall encourage an individual with disabilities and the individual's family to financially contribute as much as possible to the cost of vocational rehabilitation goods and services provided as part of an individualized written rehabilitation program. When available, comparable services and benefits must be used, and the department must apply a financial needs test to specified vocational rehabilitation services. The individual's refusal to provide financial information will constitute the individual's not meeting the financial need criteria. In that event, the individual may be unable to access the services based on financial need.~~
 - ~~a. If an individual is single, under the age of eighteen years, and unemancipated, the individual's income, and the income of the individual's parents, must be considered.~~
 - ~~b. If an individual is single, under the age of eighteen years, and living with a guardian, the counselor shall determine financial need based on the individual's income.~~
 - ~~c. If the individual is single, eighteen years of age or over, but is living with a parent, the counselor shall determine financial need based on the individual's income only.~~
 - ~~d. If the individual is married, regardless of age, the counselor shall determine financial need based on the income of the individual and the individual's spouse.~~
1. Before providing any vocational rehabilitation service, except those listed in subsection 5, to an eligible individual or to members of the individual's family, vocational rehabilitation must determine whether comparable services and benefits exist under any other program and whether the services and benefits are available to the individual.
2. If comparable services and benefits do exist and are available to the individual at the time needed to achieve the provisions of the individualized plan for employment, they must be used to meet, in whole or in part, the cost of vocational rehabilitation services.
3. If comparable services and benefits do exist but are not available to the individual at the time they are needed, vocational rehabilitation shall

provide the services until comparable services and benefits become available.

2: 4. The use of comparable services and benefits does not apply if such a determination would interrupt or delay:

a. ~~If the determination of the availability would delay the provision of vocational rehabilitation services to an individual with disabilities who is at extreme medical risk; or~~ The progress of an individual toward achieving the employment outcome identified in the individualized plan for employment;

b. ~~If the individual would lose an An immediate job placement due to a delay in the provision of comparable services and benefits; or~~

c. The provision of vocational rehabilitation services to an individual with disabilities who is at extreme medical risk.

3: 5. The following categories of service do not require that comparable services and benefits be used:

a. ~~Evaluation of vocational rehabilitation potential, unless provided under an individualized written rehabilitation program for extended evaluation~~ Assessment for determining eligibility and rehabilitation needs;

b. ~~Counseling; and guidance, referral, and placement including information and support services to assist in exercising informed choice;~~

c. ~~Vocational and other training services not provided in a postsecondary institution~~ Information and referral;

d. Job-related services, including job search, job placement, job retention services, followup, and follow-along services;

e. ~~Rehabilitation technology services, excluding assistive technology devices, including telecommunications, sensory, and other rehabilitative technological aids and devices; and~~

e: f. Postemployment services that would be included under subdivisions a through ~~d~~ e.

History: Effective October 1, 1995; amended effective November 1, 2002.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02

~~75-08-01-26. Participation by an individual with disabilities in the cost of vocational rehabilitation services~~ Determination of financial need. A financial needs test must be applied as a consideration for the following vocational rehabilitation services:

- ~~1. Physical and mental restoration;~~
 - ~~2. Maintenance, unless required for diagnostic purposes;~~
 - ~~3. Transportation, unless required for diagnostic purposes;~~
 - ~~4. Occupational licenses;~~
 - ~~5. Tools, equipment, and initial stock, including livestock, supplies, and necessary shelters;~~
 - ~~6. Services to family members of an individual with disabilities, which are necessary to the adjustment of rehabilitation of the individual with disabilities;~~
 - ~~7. Telecommunications, sensory, and other technological aids and devices for purposes other than evaluation;~~
 - ~~8. Postemployment services necessary to assist individuals in maintaining suitable employment, excluding services normally provided without regard to financial needs;~~
 - ~~9. Home modifications, including adaptive devices and minor structural changes necessary for the individual to function independently in order to achieve a vocational goal;~~
 - ~~10. Other goods and services for which the individual may reasonably expect to receive benefits in terms of the individual's employability;~~
 - ~~11. Reader services and notetaker services;~~
 - ~~12. Personal assistance services; and~~
 - ~~13. Higher education as described in subsection 5 of section 75-08-01-28.~~
1. In all cases, vocational rehabilitation shall encourage an individual with disabilities and the individual's family to financially contribute as much as possible to the cost of vocational rehabilitation goods and services provided as part of an individualized plan for employment. When available, comparable services and benefits must be used, as described in section 75-08-01-25, and vocational rehabilitation must apply a financial needs test to specified vocational rehabilitation services. The individual's refusal to provide financial information will constitute the individual's not meeting the financial need criteria. In

that event, the individual may be unable to access the services based on financial need.

- a. If an individual is single, under the age of eighteen years, and unemancipated, the individual's income, and the income of the individual's parents, must be considered.
 - b. If an individual is single, under the age of eighteen years, and living with a guardian, vocational rehabilitation shall determine financial need based on the individual's income.
 - c. If an individual is single, eighteen years of age or over, but is living with a parent, vocational rehabilitation shall determine financial need based on the individual's income only.
 - d. If an individual is married, regardless of age, vocational rehabilitation shall determine financial need based on the income of the individual and the individual's spouse.
2. The fee scale established and administered by vocational rehabilitation must be used to determine client liability. Copies of the fee schedule, which may be updated from time to time, are available from vocational rehabilitation upon request. When determining client liability, vocational rehabilitation must take into consideration disability-related expenses incurred by or for the individual.
 3. Vocational rehabilitation must reevaluate financial need annually or whenever financial or other circumstances regarding the individual significantly change, whichever occurs first. Significant change includes marriage or divorce, other changes in dependent status, radical change in income, or to the individualized plan for employment.
 4. Regional vocational rehabilitation administrators may adjust or waive client financial participation. Documentation must be maintained indicating the conditions under which a waiver or adjustment is made and a copy placed in the client's file.
 5. Vocational rehabilitation may not apply a financial needs test, or require the financial participation of any individual who receives social security disability insurance benefits or supplemental security income benefits as determined under title II or title XVI of the Social Security Act [42 U.S.C. 301, et seq.].
 6. If the individual or the individual's representative disagrees with the outcome of the determination of financial need, the individual has the

right to have the determination reviewed in accordance with chapter 75-03-01.

History: Effective October 1, 1995; amended effective November 1, 2002.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02

75-08-01-27. Determination of financial need Services exempt from participation by an individual in the cost of vocational rehabilitation services.
Vocational rehabilitation shall provide the following services without regard to the financial resources available to the individual:

- ~~4. The fee scale established and administered by vocational rehabilitation, as provided for in federal law, must determine client liability. Copies of the fee schedule, which may be updated from time to time, are available from the department upon request.~~
- ~~2. The department must reevaluate financial need annually or whenever financial or other circumstances regarding the individual significantly change, whichever occurs first. Significant change includings marriage or divorce, other changes in dependent status, radical change in income or to the individualized written rehabilitation program.~~
- ~~3. If the individual or the individual's representative disagrees with the outcome of the determination of financial need, the individual has the right to have the determination reviewed in accordance with chapter 75-01-03.~~
1. Information and referral:
2. Assessments to determine eligibility and priority for services except for nonassessment services provided during trial work experiences;
3. Assessments to determine vocational rehabilitation needs;
4. Counseling and guidance;
5. Interpreter services;
6. Vocational training, except at institutions of higher education. For example, on-the-job training, personal adjustment training, and supported employment training;
7. Orientation and mobility services;
8. Reader and notetaker services;
9. Placement services;

10. Assistive technology services, excluding assistive technology devices; and
11. Personal assistance services.

History: Effective October 1, 1995; amended effective November 1, 2002.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02

~~75-08-01-28. Vocational rehabilitation services necessary to enable the individual to achieve an employment outcome~~ Services subject to participation by an individual in the cost of vocational rehabilitation services. Consistent with the individualized written rehabilitation program, vocational rehabilitation may provide, as appropriate to the vocational rehabilitation needs of each eligible individual, any goods or services necessary to enable the individual to achieve an employment outcome. Services include: Vocational rehabilitation shall apply a financial needs test as a consideration for eligibility for the following vocational rehabilitation services:

1. ~~An assessment for determining eligibility and vocational rehabilitation needs;~~
2. ~~Counseling, guidance, and work-related placement services for an individual with disabilities, including job search assistance, placement assistance, job retention services, personal assistance services, and followup;~~
3. ~~Physical and mental restoration services necessary to correct or modify the physical or mental condition of an individual who is stable or slowly progressive. In the purchase of medical goods or services, vocational rehabilitation shall comply with the prevailing medical assistance fee schedule, except for certain diagnostic services that medicaid excludes;~~
4. ~~Home modifications that may include those adaptive devices and minor structural changes necessary for the individual with disabilities to function independently in order to achieve a vocational goal. Funds for home modifications may not be applied to the purchase or construction of a new residence;~~
5. ~~Vocational and other training services, including:~~
 - a. ~~Personal and vocational adjustment training;~~
 - b. ~~Services to the individual's family that are necessary to the personal and vocational adjustment or rehabilitation of the individual;~~
 - c. ~~Postsecondary training, with the following limitations:~~

- ~~(1) Vocational rehabilitation may not provide postsecondary training unless maximum efforts have been made to secure grant assistance in whole, or in part, from other sources. An individual must accept all offered grant assistance. Vocational rehabilitation's participation shall not be calculated until after the institution's financial aid office needs analysis has been received;~~
 - ~~(2) When appropriate, vocational rehabilitation shall request an individual with disabilities to participate in the cost of attendance through the use of college work study and student loans;~~
 - ~~(3) Vocational rehabilitation funding for tuition, room and board, books, supplies, transportation, and incidentals for full-time students may not exceed the financial aid office determined unmet need or the state-supported college and university rate for tuition, room and board, whichever is less;~~
 - ~~(4) If, because of the individual's vocational impediment or vocational goal, the only available postsecondary training is at an out-of-state institution, vocational rehabilitation may waive the expenditure limit defined in paragraph 3 of subdivision e of subsection 5;~~
 - ~~(5) Funding for part-time students is limited to the state-supported college and university rate per credit hour or the financial aid office determined unmet need, whichever is less. For an individual not taking sufficient credit hours to apply for financial aid, the limit is the state university rate per credit hour; and~~
 - ~~(6) An individual shall maintain a grade point average that meets the school's requirement for graduation and shall otherwise demonstrate progress toward meeting the goal of the individualized written rehabilitation program. If the individual is placed on academic probation, continued funding is dependent on the approval of the regional vocational rehabilitation administrator;~~
- ~~d. Graduate study only when the individual can demonstrate that a suitable vocational goal is otherwise unachievable;~~
- ~~e. Expenditure policies in paragraphs 1 through 6 of subdivision e do not apply to vocational technical training programs not participating in a federal financial aid program. If comparable training is available through a program that participates in a federal financial aid program, vocational rehabilitation shall fund only~~

~~the costs equal to the costs for attendance in the program that participates in federal financial aid programs; and~~

- ~~f. On-the-job training, with the following limitations:
 - ~~(1) Conditions of training, certification, and wage payment applicable with state and federal wage and hour laws; and~~
 - ~~(2) A written agreement among the individual, counselor, and employer, which states the hourly wage, responsibility for workers' compensation coverage, and any other conditions of employment.~~~~

- ~~6. Except in institutions of higher education, where comparable benefits, including services for students with disabilities must be used, vocational rehabilitation may provide:
 - ~~a. Interpreter services and note-taking services for an individual who is deaf, including tactile interpreting for an individual who is deaf-blind;~~
 - ~~b. Reader services, rehabilitation teaching services, note-taking services, and orientation and mobility services for an individual who is blind; and~~
 - ~~c. Telecommunications, sensory, and other technological aids and devices.~~~~

- ~~7. Recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement, and other appropriate public service employment;~~

- ~~8. Occupational licenses, tools, equipment, initial stocks and supplies necessary in order to enter an occupation, except that vocational rehabilitation shall not purchase land or buildings for an individual with disabilities;~~

- ~~9. Time-limited, ongoing support services for an individual with a vocational objective of supported employment, including:
 - ~~a. Diagnostic services necessary to determine the individual's rehabilitation needs for supported employment that are supplemental to the assessment for eligibility used to determine vocational rehabilitation eligibility, and are provided only after vocational rehabilitation eligibility has been determined. The purpose of supplemental evaluations is to help develop, finalize, or reassess a supported employment plan of services;~~
 - ~~b. Job development and placement services; and~~~~

- ~~c. Other time-limited services necessary to support the individual in employment. The maximum time period for time-limited services is eighteen months, unless the individualized written rehabilitation program indicates that more than eighteen months of services are necessary in order for the individual to achieve job stability prior to transition to extended services. Time-limited services include:
 - ~~(1) Intensive on-the-job skills training and other training and support services necessary to achieve and maintain job stability;~~
 - ~~(2) Followup services with employers, supported employees, parents and guardians, and others for the purpose of supporting and stabilizing the job placement;~~
 - ~~(3) Discrete postemployment services, following transition to extended services, which are not available from the extended service provider and which are needed to maintain job placement; and~~
 - ~~(4) Other needed services listed in subsections 1 through 14.~~~~
- ~~10. Postemployment services for an individual with disabilities who was determined rehabilitated, if the services are necessary to assist the individual to maintain, regain, or advance in suitable employment. The services must relate to the original vocational impediments and the availability of the individual's record of service. An individual requiring multiple services over an extended period of time and a comprehensive or complex rehabilitation plan is not eligible for postemployment services, but may be encouraged to reapply. Postemployment services may:~~
- ~~a. Include counseling and guidance services to assist an individual to advance in employment; and~~
 - ~~b. Require an amendment to the individualized written rehabilitation program.~~
- ~~11. Assistive technology services to meet the needs and address the barriers confronted by an individual with disabilities in the areas of education, rehabilitation, employment, and transportation. Vocational rehabilitation shall provide assistive technology services at any time in the rehabilitation process, including the assessment for determining eligibility and vocational rehabilitation needs, extended evaluation, services provided under an individualized written rehabilitation plan, annual reviews of ineligibility decisions, annual reviews of extended employment in rehabilitation facilities, and postemployment services;~~

- ~~12. Transition services that promote or facilitate the accomplishment of long-term rehabilitation goals and objectives;~~
- ~~13. Other supportive services, including:~~
- ~~a. Maintenance for additional costs incurred while participating in rehabilitation;~~
 - ~~b. Transportation, including travel and related expenses in connection with transporting an individual and an individual's attendants for the purpose of supporting and deriving the full benefit of other vocational rehabilitation services, with the following restrictions:
 - ~~(1) Reimbursement is at the state rate level;~~
 - ~~(2) Transportation may include relocation, moving expenses, and vehicle modifications only when the individual is otherwise precluded from achieving a vocational objective;~~
 - ~~(3) Reimbursement must be provided at the prevailing rate for the service;~~
 - ~~(4) Vocational rehabilitation will not contribute to the purchase of a vehicle; and~~~~
 - ~~c. On-the-job or other related personal assistance services provided while an individual with disabilities is receiving vocational rehabilitation services:~~
- ~~14. Other vocational rehabilitation goods and services that an individual with disabilities is reasonably expected to benefit from in terms of employability:~~
- ~~1. Physical and mental restoration;~~
 - ~~2. Maintenance, unless required for assessment purposes;~~
 - ~~3. Transportation, unless required for assessment purposes;~~
 - ~~4. Assistive technology aids and devices;~~
 - ~~5. Occupational licenses;~~
 - ~~6. Tools, equipment, and initial stock, including livestock, supplies, and necessary shelters;~~
 - ~~7. Services to members of an individual's family, which are necessary for the rehabilitation of the individual with a disability;~~

8. Telecommunications, sensory, and other technological aids and devices for purposes other than evaluation;
9. Postemployment services necessary to assist individuals in maintaining suitable employment, excluding services normally provided without regard to financial needs;
10. Home modifications, including adaptive devices and minor structural changes necessary for the individual to function independently in order to achieve a vocational goal;
11. Other goods and services for which the individual may reasonably expect to receive benefits in terms of the individual's employability; and
12. Higher education as described in section 75-08-01-30.

History: Effective October 1, 1995; amended effective November 1, 2002.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02, 50-06.1-06

75-08-01-29. Closure Vocational rehabilitation services necessary to enable the individual to achieve an employment outcome. ~~The counselor shall close an individual's record of service at any time in the vocational rehabilitation process when it is determined that the individual is no longer eligible, is unavailable for diagnostic or planned services, chooses not to participate, or is rehabilitated. Consistent with the individualized plan for employment, vocational rehabilitation may provide, as appropriate to the vocational rehabilitation needs of each eligible individual, goods or services necessary to enable the individual to achieve an employment outcome. Services include:~~

1. ~~Closure due to ineligibility:~~
 - a. ~~Vocational rehabilitation shall close the individual's case if the individual has no disability, no substantial impediment to employment, or does not require services to achieve an employment outcome. Closure for ineligibility under these circumstances requires:~~
 - (1) ~~The opportunity for the individual or the individual's representative to participate in the closure decision;~~
 - (2) ~~Written notification of the closure decision;~~
 - (3) ~~Written notification of appeal rights, including the name and address of the appeals supervisor with whom an appeal may be filed, and written notification of the availability of the client assistance program;~~

- ~~(4) An individualized written rehabilitation program amendment, if appropriate;~~
 - ~~(5) Certification of ineligibility in the record of service that documents the reasons for closure, dated and signed by the counselor; and~~
 - ~~(6) Referral to other agencies and community rehabilitation programs, as appropriate.~~
- b. ~~Vocational rehabilitation shall close the individual's case, if there is clear and convincing evidence, after an extended evaluation or after a period of service provision under an individualized written rehabilitation program that the individual with disabilities is incapable of benefiting from vocational rehabilitation services in terms of achieving an employment outcome. Closure for ineligibility under these circumstances requires:~~
- ~~(1) The opportunity for the individual or the individual's representative to participate in the closure decision;~~
 - ~~(2) Written notification of the closure decision;~~
 - ~~(3) Written notification of appeal rights, including the name and address of the appeals supervisor with whom an appeal may be filed, and written notification of the availability of the client assistance program;~~
 - ~~(4) An individualized written rehabilitation program amendment, if appropriate;~~
 - ~~(5) Review of the ineligibility determination within twelve months. A review is not required in situations where the individual refuses it, the individual is no longer present in the state, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive;~~
 - ~~(6) Certification of ineligibility in the record of service that documents the reasons for closure, dated and signed by the counselor; and~~
 - ~~(7) Referral to other agencies and community rehabilitation programs, as appropriate.~~
2. ~~Closure for reasons other than ineligibility. The counselor shall close a case when an individual is unavailable during an extended period of time for an assessment to determine eligibility and vocational rehabilitation needs or when an individual is unavailable to participate in planned vocational rehabilitation services. The counselor shall have~~

~~made repeated efforts to contact the individual and to encourage the individual's participation. Closure under these circumstances requires:~~

- ~~a. Documentation of the rationale for closure in the record of service;~~
- ~~b. Written notification of the closure decision;~~
- ~~c. Written notification of appeal rights, including the name and address of the appeals supervisor with whom an appeal may be filed, and written notification of the availability of the client assistance program; and~~
- ~~d. An individualized written rehabilitation program amendment, if appropriate.~~

~~3. Closure of an individual determined to be rehabilitated:~~

- ~~a. An individual is determined to be rehabilitated if the individual has maintained suitable employment for at least sixty calendar days. The individual's record of service must contain documentation that vocational rehabilitation has:~~

- ~~(1) Determined that the individual is eligible;~~
- ~~(2) Provided an assessment for eligibility and determination of vocational rehabilitation needs;~~
- ~~(3) Provided counseling and guidance;~~
- ~~(4) Provided appropriate and substantial vocational rehabilitation services in accord with the individualized written rehabilitation program;~~
- ~~(5) Determined that the individual has maintained suitable employment for at least sixty calendar days;~~
- ~~(6) Provided an opportunity for individual involvement in the closure decision;~~
- ~~(7) Reassessed the need for and informed the individual of the purpose and availability of postemployment services, when necessary; and~~
- ~~(8) Provided written notification of the closure.~~

- ~~b. An individual in supported employment is determined rehabilitated when:~~

- (1) ~~The individual has substantially met the goals and objectives of the individual's individualized written rehabilitation program;~~
 - (2) ~~Extended services immediately available to preclude any interruption in the provision of the ongoing support needed to maintain employment; and~~
 - (3) ~~The individual has maintained employment for at least sixty days after the transition to extended services.~~
- e. ~~For an individual's case to be closed while working in a temporary transitional employment placement, the extended support services must include continuous job placements until job permanency is achieved.~~
4. ~~For an individual's case to be closed in extended employment in rehabilitation facilities, vocational rehabilitation shall conduct an annual review and reevaluation of the status of each individual with disabilities placed in an extended employment setting in a community rehabilitation program, including a workshop or other employment to determine the interest, priorities, and needs of an individual, for employment or training for competitive employment in an integrated setting in the labor market.~~
1. An assessment for determining eligibility and vocational rehabilitation needs;
 2. Counseling, guidance, and work-related placement services for an individual with disabilities, including job search assistance, placement assistance, job retention services, personal assistance services, and followup;
 3. Physical and mental restoration services necessary to correct or modify the physical or mental condition of an individual who is stable or slowly progressive. In the purchase of medical goods or services, vocational rehabilitation shall comply with the prevailing medical assistance fee schedule, except for certain diagnostic services that medicaid excludes;
 4. Home modifications that may include those adaptive devices and minor structural changes necessary for the individual with disabilities to function independently in order to achieve a vocational goal. Funds for home modifications may not be applied to the purchase or construction of a new residence;
 5. Vocational and other training services, including:
 - a. Personal and vocational adjustment training;

- b. Correspondence courses; and
 - c. Services to the individual's family that are necessary to the personal and vocational adjustment or rehabilitation of the individual;
- 6. Except in institutions of higher education, where comparable benefits, including services for students with disabilities must be used, vocational rehabilitation may provide:
 - a. Interpreter services and note-taking services for an individual who is deaf, including tactile interpreting for an individual who is deaf and blind;
 - b. Reader services, rehabilitation teaching services, note-taking services, and orientation and mobility services; and
 - c. Telecommunications, sensory, and other technological aids and devices;
- 7. Recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement, and other appropriate public service employment;
- 8. Occupational licenses, tools, equipment, initial stocks, and supplies necessary in order to enter an occupation, except that vocational rehabilitation shall not purchase land or buildings for an individual with disabilities;
- 9. Time-limited, ongoing support services for an individual receiving supported employment services, including:
 - a. Diagnostic services necessary to determine the individual's rehabilitation needs for supported employment that are supplemental to the assessment for eligibility used to determine vocational rehabilitation eligibility, and are provided only after vocational rehabilitation eligibility has been determined. The purpose of supplemental evaluations is to help develop, finalize, or reassess a supported employment plan of services;
 - b. Job development and placement services; and
 - c. Other time-limited services necessary to support the individual in employment. The maximum time period for time-limited services is eighteen months, unless the individualized plan for employment indicates that more than eighteen months of services are necessary in order for the individual to achieve job stability

prior to transition to extended services. Time-limited services include:

- (1) Intensive on-the-job skills training and other training and support services necessary to achieve and maintain job stability;
- (2) Followup services with employers, supported employees, parents and guardians, and others for the purpose of supporting and stabilizing the job placement;
- (3) Discrete postemployment services, following transition to extended services, which are not available from the extended service provider and which are needed to maintain job placement; and
- (4) Other needed services listed in this subsection;

10. Postemployment services for an individual with disabilities who was determined rehabilitated, if the services are necessary to assist the individual to maintain, regain, or advance in suitable employment. The services must relate to the original vocational impediments and the availability of the individual's record of service. An individual requiring multiple services over an extended period of time and a comprehensive or complex rehabilitation plan is not eligible for postemployment services, but may be encouraged to reapply. Postemployment services may:

- a. Include counseling and guidance services to assist an individual to advance in employment; and
- b. Require an amendment to the individualized plan for employment;

11. Assistive technology services to meet the needs and address the barriers confronted by an individual with disabilities in the areas of education, rehabilitation, employment, and transportation. Vocational rehabilitation shall provide assistive technology services at any time in the rehabilitation process, including the assessment for determining eligibility and vocational rehabilitation needs, trial work experiences, services provided under an individualized plan for employment, annual reviews of ineligibility decisions, annual reviews of extended employment in rehabilitation facilities, and postemployment services;

12. Transition services that promote or facilitate the accomplishment of long-term rehabilitation goals and objectives;

13. Other supportive services, including:

- a. Maintenance for additional costs incurred while participating in rehabilitation;
- b. Transportation, including travel and related expenses in connection with transporting an individual and an individual's attendants for the purpose of supporting and deriving the full benefit of other vocational rehabilitation services, with the following restrictions:
 - (1) Reimbursement cannot exceed the state rate level;
 - (2) Transportation may include relocation, moving expenses, and vehicle modifications only when the individual is otherwise precluded from achieving a vocational goal;
 - (3) Reimbursement must be provided at the prevailing rate for the service; and
 - (4) Vocational rehabilitation shall not contribute to the purchase of a vehicle; and
- c. On-the-job or other related personal assistance services provided while an individual with disabilities is receiving vocational rehabilitation services; and

- 14. Other vocational rehabilitation goods and services that an individual with disabilities is reasonably expected to benefit from in terms of an employment outcome.

History: Effective October 1, 1995; amended effective November 1, 2002.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02, 50-06.1-06

75-08-01-30. Postsecondary training. If an individual receives postsecondary training, the following conditions apply:

- 1. Vocational rehabilitation may not provide postsecondary training unless maximum efforts have been made to secure grant assistance in whole, or in part, from other sources;
- 2. Vocational rehabilitation's participation shall not be calculated until the institution's financial aid office needs analysis has been received. The financial needs analysis award letter must identify all available aid;
- 3. An individual must accept all offered grant assistance;
- 4. Vocational rehabilitation may request an individual to participate in the cost of attendance through the use of college work study and student loans;

5. Vocational rehabilitation may not participate in payment for postsecondary training if the individual is in default status, or is ineligible for financial aid due to a drug conviction or drug convictions as determined by free application for federal student aid (FAFSA) regulations;
6. Comparable benefits must be used for the following services:
 - a. Interpreter services and note-taking services for an individual who is deaf, including tactile interpreting for an individual who is deaf and blind;
 - b. Reader services, rehabilitation teaching services, note-taking services, and orientation and mobility services; and
 - c. Telecommunications, sensory, and other technological aids and devices;
7. If the individual attends an in-state public institution, vocational rehabilitation funding for tuition, room and board, books, supplies, transportation, and incidentals for a full-time student will be based on the following:
 - a. The estimated financial need as stated on the award letter from the financial aid office;
 - b. The unmet need as calculated by vocational rehabilitation;
 - c. The results of the budget assessment conducted by vocational rehabilitation; and
 - d. Total aid from all sources may not exceed the school's budget as determined by the financial aid office;
8. If the individual chooses to attend a private in-state or an out-of-state institution when the coursework is available in state, vocational rehabilitation will not fund more than it would at an in-state public institution;
9. If, because of the individual's vocational impediment or vocational goal, the only available postsecondary training is at an in-state private or out-of-state institution, vocational rehabilitation may waive the expenditure limit defined in subsection 7;
10. Funding for tuition and books for a part-time student may not exceed the financial aid office estimated financial need. For an individual not taking sufficient credit hours to apply for financial aid, the limit is the North Dakota university system rate per credit hour;

11. An individual shall maintain a grade point average that meets the school's requirement for graduation and shall otherwise demonstrate progress toward meeting the goal of the individualized plan for employment. If the individual is placed on academic probation, continued funding is dependent on the approval of the regional vocational rehabilitation administrator;
12. Participation in the cost of graduate study is determined on a case-by-case basis if a suitable vocational goal is otherwise unachievable; and
13. Expenditure policies in subsections 1 through 9 do not apply to vocational technical training programs not participating in a federal financial aid program. If comparable training is available through a program that does participate in a federal financial aid program, vocational rehabilitation costs shall not exceed the costs for attendance in that program.

History: Effective November 1, 2002.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02, 50-06.1-06

75-08-01-31. On-the-job training. When vocational rehabilitation provides on-the-job training, there must be a written agreement among the individual, counselor, and employer. The agreement must state the areas of training, the hourly wage which must comply with state and federal wage and hour laws, responsibility for workers' compensation coverage, expected results of the training, and any other conditions of employment.

History: Effective November 1, 2002.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02, 50-06.1-06

75-08-01-32. Closure due to ineligibility.

1. Vocational rehabilitation shall close the individual's case as ineligible if the individual has no disability, no substantial impediment to employment, or does not require services to achieve an employment outcome. Closure for ineligibility under these circumstances requires:
 - a. The opportunity for the individual or the individual's representative to participate in the closure decision;
 - b. Written notification of the closure decision and reasons for the decision;
 - c. Written notification of mediation, appeal rights, and due process procedures, including the name and address of the appeals supervisor with whom an appeal may be filed, and written

notification of the availability of and how to contact the client assistance program;

- d. An individualized plan for employment amendment if appropriate;
- e. Documentation of ineligibility in the record of service that identifies the reasons for closure, dated and signed by a qualified rehabilitation professional employed by vocational rehabilitation; and
- f. Referral to other agencies and community rehabilitation programs as appropriate.

2. Vocational rehabilitation shall close the individual's case, if there is clear and convincing evidence, after trial work experiences or after a period of service provision under an individualized plan of employment that the individual with disabilities is incapable of benefiting from vocational rehabilitation services in terms of achieving an employment outcome. Vocational rehabilitation shall provide the following when it closes a case due to ineligibility under these circumstances:

- a. The opportunity for the individual or the individual's representative to participate in the closure decision;
- b. Written notification of the closure decision and reasons for the decision;
- c. Written notification of mediation, and appeal rights, including the address of the appeals supervisor with whom an appeal may be filed, and written notification of the availability of, and how to contact, the client assistance program;
- d. An individualized plan for employment amendment if appropriate;
- e. Review of the ineligibility determination within twelve months. A review is not required in situations in which the individual refuses it, the individual is no longer present in the state, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal;
- f. Documentation of ineligibility in the record of service that identifies the reasons for closure, dated and signed by a qualified rehabilitation professional employed by vocational rehabilitation; and

- g. Referral to other agencies and community rehabilitation programs as appropriate.

History: Effective November 1, 2002.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02, 50-06.1-06

75-08-01-33. Closure for reasons other than ineligibility. Vocational rehabilitation shall close a case when an individual is unavailable during an extended period of time for an assessment to determine eligibility and vocational rehabilitation needs or when an individual is unavailable to participate in planned vocational rehabilitation services. Vocational rehabilitation shall make good-faith efforts to contact the individual and to encourage the individual's participation. Closure under these circumstances requires:

1. Documentation of the rationale for closure in the record of service;
2. Written notification of the closure decision;
3. Written notification of mediation, appeal rights, and due process procedures, including the name and address of the appeals supervisor with whom an appeal may be filed, and written notification of the availability of and how to contact the client assistance program; and
4. An individualized plan for employment amendment if appropriate.

History: Effective November 1, 2002.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02, 50-06.1-06

75-08-01-34. Closure for an individual determined to be rehabilitated.

1. An individual is determined to be rehabilitated if the individual has maintained suitable employment for at least ninety calendar days. The individual's record of service must contain documentation that vocational rehabilitation has:
 - a. Determined that the individual is eligible;
 - b. Provided an assessment for eligibility and determination of vocational rehabilitation needs;
 - c. Provided counseling and guidance;
 - d. Provided appropriate and substantial vocational rehabilitation services in accordance with the individualized plan for employment;
 - e. Determined that the individual has maintained suitable employment for at least ninety calendar days and that the individual and

counselor view the employment and the individual's performance in that employment as satisfactory;

- f. Determined that the employment is in an integrated setting;
 - g. Provided an opportunity for the individual's involvement in the closure decision;
 - h. Reassessed the need for and informed the individual of the purpose and availability of postemployment services, when necessary; and
 - i. Provided written notification of mediation, appeal rights, and due process procedures, including the name and address of the appeals supervisor with whom an appeal may be filed, and written notification of the availability of and how to contact the client assistance program.
2. An individual in supported employment is determined rehabilitated when:
- a. The individual has substantially met the goals and objectives of the individual's individualized plan for employment;
 - b. Extended services are immediately available to preclude any interruption in the provision of the ongoing support needed to maintain employment;
 - c. The individual is stabilized for a minimum of sixty days, as determined by vocational rehabilitation, before transition to extended services;
 - d. The individual has maintained employment for at least sixty days after the transition to extended services; and
 - e. The employment is in an integrated setting.
3. If the individual is earning less than minimum wage and in accordance with the Fair Labor Standards Act, the individual will receive an annual review for two years after the individual's case is closed and thereafter if requested by the individual.
4. For an individual's case to be closed while working in a temporary transitional employment placement, the extended support services must include continuous job placements until job permanency is achieved.

History: Effective November 1, 2002.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02, 50-06.1-06

75-08-01-35. Closure for an individual in extended employment.

1. An individual whose case is closed in extended employment shall receive an annual review for two years after the case is closed and thereafter if requested by the individual. The review shall reevaluate the status of the individual to determine the interests, priorities, and needs of the individual, for employment or training for competitive employment in an integrated setting in the labor market.
2. Upon closure of the case of an individual in extended employment, the individual will receive written notification of mediation, appeal rights, and due process procedures, including the name and address of the appeals supervisor with whom an appeal may be filed, and written notification of the availability of and how to contact the client assistance program.
3. An individual whose case is closed in extended employment is not considered to be successfully rehabilitated.

History: Effective November 1, 2002.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02, 50-06.1-06

TITLE 107

**CROP PROTECTION PRODUCT HARMONIZATION AND REGISTRATION
BOARD**

AUGUST 2002

ARTICLE 107-01

GENERAL ADMINISTRATION

Chapter
107-01-01 Organization of the Crop Protection Product Harmonization and Registration Board

CHAPTER 107-01-01
ORGANIZATION OF THE CROP PROTECTION PRODUCT HARMONIZATION AND REGISTRATION BOARD

Section
107-01-01-01 Organization and Functions of the Board

107-01-01-01. Organization and functions of the board.

1. **History.** The legislative assembly established the crop protection product harmonization and registration board under section 3 of chapter 75 and section 3 of chapter 9 of the 2001 Session Laws. The board was preceded by a legislative council committee, known as the crop harmonization committee, created under section 11 of chapter 31 of the 1999 Session Laws. The law creating the crop harmonization committee was repealed by section 4 of chapter 75 of the 2001 Session Laws.

2. **Purpose.** The purpose of the board is to:
 - a. Administer a grant program through the minor use pesticide fund for conducting or commissioning studies, investigations, and evaluations regarding the registration and use of pesticides for minor crops, minor uses, and other uses as determined by the board;

- b. Administer a grant program through which agriculture commodity groups may apply for funds to be used by those groups to address issues related to the registration of crop protection products;
 - c. Identify and prioritize crop protection product labeling needs;
 - d. Explore the extent of authority given to this state under the federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136a];
 - e. Identify the data necessary to enable registration of a use to occur in a timely manner;
 - f. Determine what research, if any, is necessary to fulfill data requirements for activities listed in North Dakota Century Code section 4-35-30;
 - g. Request the agriculture commissioner to pursue specific research funding options from public and private sources;
 - h. Request the North Dakota state university agricultural experiment station to pursue specific research to coordinate registration efforts; and
 - i. Pursue any opportunities to make crop protection product options available to agricultural producers in this state through any means the board determines advisable.
3. **Board membership.** The board consists of ten members as designated in North Dakota Century Code section 4-35-30.
4. **Inquiries.** General inquiries or grant applications regarding the board may be addressed to:

Crop Protection Product Harmonization and Registration Board
Office of the Lieutenant Governor
North Dakota State Capitol
600 East Boulevard Avenue, Department 101
Bismarck, ND 58505-0001
Telephone (701)328-2200
Facsimile (701)328-2205

History: Effective August 1, 2002.
General Authority: NDCC 4-35-30
Law Implemented: NDCC 4-35-30

ARTICLE 107-02

PESTICIDE HARMONIZATION AND REGISTRATION PROGRAMS

Chapter

| | |
|------------------|---|
| <u>107-02-01</u> | <u>Recovery of Funds</u> |
| <u>107-02-02</u> | <u>Minor Use Pesticide Fund Grant Program</u> |
| <u>107-02-03</u> | <u>Pesticide Harmonization Grant Program</u> |

CHAPTER 107-02-01
RECOVERY OF FUNDS

Section

| | |
|---------------------|---|
| <u>107-02-01-01</u> | <u>Recovery of Grant Funds Relating to Pesticide Registration</u> |
| <u>107-02-01-02</u> | <u>Acceptance of Donations to the Board</u> |

107-02-01-01. Recovery of grant funds relating to pesticide registration. North Dakota Century Code section 4-35-06.2 authorizes the board to accept funds received from expenses paid relating to the registration of pesticides. In attempting to recover funds, when possible, the board may receive royalties, license fees, or other intellectual property rights on the sale or lease of any product, process, or service developed in whole or in part with a minor use pesticide fund grant. Such agreement will be negotiated at the time of the grant award and will be structured so that the board may recover at least a portion of its investment of public funds. Repaid grant funds must be deposited in the minor use pesticide fund to pay expenses relating to the registration of pesticides or for the specific purpose negotiated between the board and grantee. If a grantee agrees to repay funds on the condition that such repayments shall be allocated toward a specific purpose, such specific purpose must be within the statutory authority of the board.

History: Effective August 1, 2002.

General Authority: NDCC 4-35-06.2

Law Implemented: NDCC 4-35-06.2

107-02-01-02. Acceptance of donations to the board. North Dakota Century Code section 4-35-06.2 authorizes the board to accept donations offered to or for the benefit of the board. If a person donates funds on the condition that such donations shall be allocated toward a specific purpose, such specific purpose must be within the statutory authority of the board. The board encourages agricultural organizations to assist in providing funding, in-kind services, or materials for laboratory studies and investigations concerning the registration of pesticides for minor crops, minor uses, or other uses that would benefit the organizations. The board may request that a company, whose product is registered

with the assistance of these funds, make a donation to the minor use pesticide fund.

History: Effective August 1, 2002.

General Authority: NDCC 4-35-06.2

Law Implemented: NDCC 4-35-06.2

CHAPTER 107-02-02
MINOR USE PESTICIDE FUND GRANT PROGRAM

| | |
|---------------------|--|
| <u>Section</u> | |
| <u>107-02-02-01</u> | <u>Definitions</u> |
| <u>107-02-02-02</u> | <u>Purpose</u> |
| <u>107-02-02-03</u> | <u>Procedure for Minor Use Pesticide Fund Grant Requests</u> |
| <u>107-02-02-04</u> | <u>Evaluation and Selection Criteria</u> |
| <u>107-02-02-05</u> | <u>Supplemental Program Information</u> |

107-02-02-01. Definitions. As used in this chapter:

1. "Agricultural commodity" means any distinctive type of agricultural, horticultural, vegetable, or animal product, including products qualifying as organic food products, bees, and honey.
2. "Board" means the crop protection product harmonization and registration board.
3. "FFDCA" means the federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 301 et seq.].
4. "FIFRA" means the federal Insecticide, Fungicide, and Rodenticide Act, as amended [7 U.S.C. 136 et seq.].
5. "IR-4 program" means interregional research project number four established by the United States secretary of agriculture under the Competitive, Special, and Facilities Research Grant Act [Pub. L. 89-106, § 2, August 4, 1965; 79 Stat. 431; 7 U.S.C. 450i(e)]. The purpose of the IR-4 program is to carry out the collection of residue and efficacy data in support of minor use pesticide registration or reregistration and to determine tolerances for minor use chemical residues in or on agricultural commodities.
6. "Laboratory" means the IR-4 program satellite laboratory established at North Dakota state university, or other IR-4 program satellite laboratories approved by the board.
7. "Minor crop" means an agricultural crop considered to be minor in the national context of registering pesticides.
8. "Minor use" means a pesticide use considered to be minor in the national context of registering pesticides, including a use for a special local need.
9. "Minor use pesticide fund" means the special fund in the state treasury created under North Dakota Century Code section 4-35-06.3.

10. "Other uses" means registration, reregistration, or modification of a pesticide registration for minor crops, minor uses, major crops, and major uses. "Other uses" includes research and other factfinding efforts relative to pesticide registration and use, but not nonresearch efforts such as persuading state or federal public officials to change current laws, rules, or regulations related to pesticide registration and use.
11. "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
12. "Registration" means the authorized use of a pesticide approved by the North Dakota department of agriculture.

History: Effective August 1, 2002.

General Authority: NDCC 4-35-30

Law Implemented: NDCC 4-35-06.3

107-02-02-02. Purpose. A minor use pesticide fund grant may be used for conducting or commissioning evaluations, studies, or investigations approved by the board to obtain or maintain a pesticide registration for a minor crop, minor use, or other use in North Dakota. These evaluations, studies, activities, or investigations may be conducted by North Dakota state university or may be secured by the board from other qualified laboratories, researchers, or contractors by written contract.

History: Effective August 1, 2002.

General Authority: NDCC 4-35-30

Law Implemented: NDCC 4-35-06.3

107-02-02-03. Procedure for minor use pesticide fund grant requests. Applicants may obtain a minor use pesticide fund application form by contacting the board at the address listed in subsection 4 of section 107-01-01-01. Applicants must deliver or mail two copies of the application and any attachments to the board at the address listed in subsection 4 of section 107-01-01-01. Applicants are required to include the following in their proposals:

1. Application coversheet, including names and addresses of the applicant organization, principal contact, project title, specific funding request, and total project budget.
2. Executive summary, limited to two pages, summarizing the essential elements of the proposal and funding request.
3. Project narrative, including when applicable:
 - a. A description of the intended research results;

- b. A description of the research methodology to be employed, including objectives, tasks, research site, and a detailed schedule of planned activities and a timeframe for completion.
 - c. A summary of prior research done by the applicant or others and the development of new uses to date;
 - d. An explanation of the estimated project benefit to one or more North Dakota agricultural sectors, such as increased markets, new uses, or expansion of existing uses;
 - e. A list of project cosponsors, including the name of the organization, address, telephone, key contact, and nature and extent of participation;
 - f. A list of principal investigators and other members of the research team, including their respective expertise and responsibilities under the project. Resumes of all principal investigators, limited to two pages, must be attached;
 - g. A review of existing research directly related to the funding request;
 - h. The current economic impact of the pest problem on the agricultural commodity;
 - i. The affected acres in North Dakota;
 - j. The effect of the pest problem on the environment, nontarget species, and human health;
 - k. A description of why current control measures are not effective; and
 - l. Any additional information, which the applicant deems relevant.
4. The pesticide registrant's written confirmation supporting the additional minor crop, minor use, or other use to the pesticide registrant's label, including any restrictions or guidelines the pesticide registrant intends to impose. The applicant should also include a contact name, address, and telephone number for the pesticide registrant.
5. For any pesticide residue study, the applicant must receive verification from the United States environmental protection agency that a tolerance can be established for the new use of that pesticide.
6. Project budget. Attach a detailed project budget, including the following categories:
- a. Salaries, wages, and fringe benefits.

- b. Equipment.
 - c. Materials and supplies.
 - d. Travel.
 - e. Publication costs.
 - f. Computer costs.
 - g. All other direct and indirect costs.
7. List and describe funding sources, including a breakdown of estimated expenditures by each funding source:
- a. Minor use pesticide fund.
 - b. Private funds.
 - c. Federal funds.
 - d. Other matching funds, identified by individual source.
8. Attach letters of commitment for matching funds to be provided contingent upon approval of this grant. Promotional materials or materials not directly related to the proposals are discouraged.

History: Effective August 1, 2002.

General Authority: NDCC 4-35-30

Law Implemented: NDCC 4-35-06.3

107-02-02-04. Evaluation and selection criteria. Proposals will be evaluated upon a basis of one hundred possible points, according to the following criteria:

- 1. **Relevance to areas of emphasis.** Preference will be given to those proposals that rank high in importance to the state agricultural economy, to human health, and to the environment. Up to thirty points may be awarded on this criterion.
- 2. **Overall merit and quality of proposal.** The board will review each proposal for technical and commercial merit and the relative competence and technical qualifications of project principals. Up to twenty-five points may be awarded on this criterion.
- 3. **Feasibility of completing project objectives within stated timeframes.** Preference will be given to proposals demonstrating a high probability of securing a pesticide registration, amended

registration, reregistration, or exemption. Up to fifteen points may be awarded on this criterion.

4. **Appropriateness of requested budget.** Priority will be given to those proposals that have a well-documented budget that is adequate and appropriate for the research. Up to fifteen points may be awarded on this criterion.
5. **Matching funds.** Priority will be given to those proposals that demonstrate a shared commitment for funding from other private or public sources or from the applicant. Matching funds may be in the form of cash or in-kind services, or both. Disbursement of funds will be contingent upon evidence that matching funds have been allocated to the proposal. Up to fifteen points may be awarded on this criterion.

History: Effective August 1, 2002.

General Authority: NDCC 4-35-30

Law Implemented: NDCC 4-35-06.3

107-02-02-05. Supplemental program information.

1. **Funding level.** Proposals are not limited to a specific dollar amount but the board's legislative appropriations are finite. The board reserves the right to increase or decrease the award based on its findings and on its level of available funds.
2. **Funding period.** Proposals may be submitted at any time. Reviews and grant awards will be made on a quarterly basis. proposals requiring up to two years of funding may be submitted, but the second year of funding is contingent upon availability of board funds and the applicant's satisfactory progress toward meeting project objectives.
3. **Funding limitations.** Applicants may not use minor use pesticide fund grants to pay for indirect costs, overhead costs, or equipment. If an equipment purchase is a necessary component of a project, other funds must be used to purchase the equipment.
4. **Eligibility of applicants.** An individual, company, or organization may request a minor use pesticide fund grant on behalf of a particular user community. Requests will not be accepted from pesticide manufacturers, dealers, or distributors. Qualified universities, the United States department of agriculture, or private researchers or laboratories may carry out funded projects.
5. **Good laboratory practice standards.** Any funded project involving pesticide residue data generation must allow acceptable scientific practices in accordance with 40 CFR, part 160, regarding good laboratory practice standards. Such funded projects include research towards:

- a. An application for registration, amended registration, or reregistration of a pesticide product under FIFRA sections 3, 4, or 24(c) [7 U.S.C. 136a, 136a-1, or 136v].
- b. An application for an experimental use permit under FIFRA section 5 [7 U.S.C. 136c].
- c. An application for an exemption under FIFRA section 18 [7 U.S.C. 136p].
- d. A petition or other request for establishment or modification of a tolerance, for an exemption for the need for a tolerance, or for other clearance under FFDCa section 408.
- e. A petition or other request for establishment or modification of a food additive regulation or other clearance by the United States environmental protection agency under FFDCa section 409.
- f. A submission of data in response to a notice issued by the United States environmental protection agency under FIFRA section 3(c)(2)(B).
- g. Any other application, petition, or submission sent to the United States environmental protection agency intended to persuade it to grant, modify, or leave unmodified a registration or other approval required as a condition of sale or distribution of a pesticide.

6. Research protocols. [Reserved]

History: Effective August 1, 2002.

General Authority: NDCC 4-35-30

Law Implemented: NDCC 4-35-06.3; 40 CFR, part 160

CHAPTER 107-02-03
PESTICIDE HARMONIZATION GRANT PROGRAM

Section

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107-02-03-01. Definitions. As used in this chapter:

1. "Agriculture commodity group" means an organization whose members are primarily farmers or ranchers; which represents the interests of those persons producing a specific agricultural, horticultural, vegetable, or animal product; and which develops and implements policies and programs on a state and national level to help protect and advance its members' interest.
2. Board" means the crop protection product harmonization and registration board.

History: Effective August 1, 2002.

General Authority: NDCC 4-35-30

Law Implemented: NDCC 4-35-30

107-02-03-02. Purpose. The board administers a grant program through which an agriculture commodity group may apply for funds to be used by the group to address issues related to the registration of crop protection products. Special emphasis will be given to applications that seek funds to address harmonization of pesticide labeling and availability of Canadian pesticides that are identical or substantially similar to more expensive United States-registered pesticides.

History: Effective August 1, 2002.

General Authority: NDCC 4-35-30

Law Implemented: NDCC 4-35-30

107-02-03-03. Procedure for pesticide harmonization grant request. To be eligible to receive a grant, an agriculture commodity group must submit a written application to the board at the address listed in subsection 4 of section 107-01-01-01. Each application must contain:

1. A request for a specific funding amount;
2. A specific explanation of the exact purposes for which the grant will be used;
3. A detailed timetable for the use of the grant funds; and

4. Any additional information the board determines appropriate for potential grant recipients.

History: Effective August 1, 2002.

General Authority: NDCC 4-35-30

Law Implemented: NDCC 4-35-30

107-02-03-04. Conditions imposed on grant recipients. [Reserved]

TITLE 108
DEPARTMENT OF COMMERCE

SEPTEMBER 2002

ARTICLE 108-01

DEPARTMENT OF COMMERCE

Chapter
108-01-01 North Dakota State Building Code

CHAPTER 108-01-01
NORTH DAKOTA STATE BUILDING CODE

| | |
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108-01-01-01. History. In 1979, the legislative assembly created the state building code. This code is codified in North Dakota Century Code chapter 54-21.3. At that time, the legislative assembly designated the 1976 uniform building code published by the international conference of building officials as the state building code. In 1983, the code was updated to the 1982 edition of the uniform building code, and expanded to include the recognition of the manufactured homes construction and safety standards under 24 CFR 3280 pursuant to the Manufactured Housing Construction and Safety Standards Act [42 U.S.C. 5401 et seq.] as the standard for the construction of manufactured

housing. In addition, the responsibility for the state building code was transferred to the office of intergovernmental assistance.

In 1985, the legislative assembly added the 1982 uniform mechanical code published by the international conference of building officials. The state building code was updated in 1987 to the 1985 edition of the uniform building code and uniform mechanical code. In 1989, the legislative assembly added a state amendment to section 504(f) of the uniform mechanical code pertaining to liquefied petroleum gas appliances.

In 1991, the legislative assembly updated the state building code to the 1991 uniform building code and 1991 uniform mechanical code and amended North Dakota Century Code chapter 54-21.3 to permit cities, townships, and counties to amend the code to conform to local needs. Then in 1993, the legislative assembly provided for the office of management and budget to adopt rules to implement and periodically update the code as well as to adopt rules to amend the code; designated effective August 1, 1994, the state building code as the code to be adopted by jurisdictions electing to adopt and enforce a building code; and added the Americans with Disabilities Act accessibility guidelines as the state's accessibility standards.

The 2001 legislative assembly changed the contents of the state building code to the international building code, international residential code, international mechanical code, and international fuel gas code published by the international code council. In addition, the legislative assembly created a state building advisory code committee to help develop the administrative rules and to solicit input on and develop recommendations for amending the state building code. The law also permits the five nongovernmental entities on the advisory committee to vote along with eligible jurisdictions on the recommendations made by the advisory committee.

The first rules developed to update, amend, and implement the state building code became effective in December 1994, as article 4-08, chapter 4-08-01. Those rules were developed by the office of intergovernmental assistance under the authority granted to the office of management and budget. In 1999, the office of intergovernmental assistance became the division of community services.

As a result of legislation in 2001, the division of community services was transferred from the office of management and budget to the department of commerce. This change meant the development of new rules for the state building code under the authority given to the department of commerce, and the deletion of the rules for the state building code that became effective in December 1994, article 4-08, chapter 4-08-01.

History: Effective September 1, 2002.

General Authority: NDCC 54-21.3-03(1)

Law Implemented: NDCC 18-12-06, 54-21.3-01, 54-21.3-02, 54-21.3-03, 54-21.3-04, 54-21.3-05

108-01-01-02. Definitions.

1. "DCS" means the division of community services.
2. "IBC" means the international building code.
3. "ICC" means the international code council.
4. "IFGC" means the international fuel gas code.
5. "IMC" means the international mechanical code.
6. "IRC" means the international residential code.
7. "Qualified appointed representative" means a code-knowledgeable individual designated by an eligible jurisdiction or organization to vote on the proposed published versions of the IBC, IRC, IMC, and IFGC and recommendations on proposed amendments from the building code advisory committee.

History: Effective September 1, 2002.

General Authority: NDCC 54-21.3-03(1)

Law Implemented: NDCC 18-12-06, 54-21.3-01, 54-21.3-02, 54-21.3-03, 54-21.3-04, 54-21.3-05

108-01-01-03. Intent. It is the intent of this chapter to prescribe the rules for implementing, updating, and amending the nationally recognized standards for construction, alteration, movement, demolition, repair, and use of buildings in the state of North Dakota.

History: Effective September 1, 2002.

General Authority: NDCC 54-21.3-03(1)

Law Implemented: NDCC 18-12-06, 54-21.3-01, 54-21.3-02, 54-21.3-03, 54-21.3-04, 54-21.3-05

108-01-01-04. Scope.

1. This chapter supplements all laws defined within the North Dakota Century Code relating to construction, alterations, improvements, and siting of buildings, unless specifically exempted.
2. This chapter applies to all cities, townships, and counties that elect to adopt and enforce building codes within their jurisdictional boundaries.
3. This chapter applies to all state and local government buildings.

4. This chapter applies to all public and private schools.

History: Effective September 1, 2002.

General Authority: NDCC 54-21.3-03(1)

Law Implemented: NDCC 18-12-06, 54-21.3-01, 54-21.3-02, 54-21.3-03, 54-21.3-04, 54-21.3-05

108-01-01-05. Implementation. The DCS is responsible for developing and implementing the administrative rules for implementing, updating, and amending the state building code. Cities, townships, and counties that elect to enforce a building code are responsible for adopting and enforcing the state building code, but may amend the code to conform to local needs. State agencies are responsible for assuring that plans and specifications for alterations and new construction of their buildings comply with the state building code, and that all work is inspected for compliance with the state building code. Schools located in jurisdictions that have not elected to adopt and enforce the state building code are responsible for assuring that plans and specifications for alterations and new construction comply with the state building code. Local governments that have not elected to adopt and enforce the state building code are responsible for assuring that plans and specifications for alterations and new construction of their buildings comply with the state building code.

History: Effective September 1, 2002.

General Authority: NDCC 54-21.3-03(1)

Law Implemented: NDCC 18-12-06, 54-21.3-03(1)(3), 54-21.3-05

108-01-01-06. Effective date of adoption of the state building code. Effective August 1, 1994, any city, township, or county that has previously elected to adopt and enforce a building code, or any jurisdiction that elects to adopt and enforce a building code, must adopt and enforce the state building code. A city, township, or county may, however, amend the state building code to conform to local needs.

History: Effective September 1, 2002.

General Authority: NDCC 54-21.3-03(1)

Law Implemented: NDCC 18-12-06, 54-21.3-01, 54-21.3-02, 54-21.3-03, 54-21.3-04, 54-21.3-05

108-01-01-07. Inquiries. Inquiries regarding the state building code may be addressed to:

ADA/Building Code Manager
Division of Community Services

History: Effective September 1, 2002.

General Authority: NDCC 54-21.3-03(1)

Law Implemented: NDCC 54-21.3-03(1)

108-01-01-08. Building code advisory committee. The building code advisory committee, by law, consists of nine representatives from the following agencies and organizations:

1. Two members from the North Dakota building officials association. One member must be from a jurisdiction of less than ten thousand people. The size of a county will be determined by the population of nonincorporated areas, and jurisdictions that have relinquished their authority to administer and enforce the codes to the county;
2. One member from the North Dakota chapter of the American institute of architects;
3. One member from the North Dakota society of professional engineers.
4. One member from the North Dakota association of builders;
5. One member from the North Dakota association of mechanical contractors;
6. One fire marshal nominated by the North Dakota state fire marshal;
7. One member nominated from the North Dakota electrical board; and
8. One member from the associated general contractors.

The building code advisory committee may meet and vote on recommendations with less than nine members. In the event of a tie vote on a proposed code change, the code change will be presented to the voting jurisdictions as a tie vote.

History: Effective September 1, 2002.

General Authority: NDCC 54-21.3-03(1)

Law Implemented: NDCC 18-12-06, 54-21.3-01, 54-21.3-02, 54-21.3-03, 54-21.3-04, 54-21.3-05

108-01-01-09. Updating and amending the state building code. The legislative assembly has mandated that the state building code consist of the IBC, IRC, IMC, and IFGC. These are nationally recognized codes published by the ICC and updated nationally every three years, with annual supplements published consisting of approved code changes. The first published version of these codes that will be adopted is the 2000 publication.

Each year, the DCS will meet with the building code advisory committee to either consider amendments to the newly published updated versions of the codes, or to consider amending the state building code with the nationally published interim supplements. To accomplish this, the following procedures will be used:

1. Review of the newly published updates. When the codes are updated nationally every three years, the DCS will schedule a meeting

with the building code advisory committee to establish a code updating and amendment cycle to begin no earlier than six months from the receipt of the newly published updates. Once the DCS publishes the updating and amendment cycle schedule, any interested party may submit proposals for amendments. The DCS will provide a form for submitting proposals.

All proposed amendments will first be reviewed by the building code advisory committee, and the committee, at that time, may develop amendments. Once all amendments have been reviewed, they will be sent to all voting jurisdictions identified by the DCS; to the organizations represented on the building code advisory committee; and to certain state agencies. They will be made available upon request to any other interested person or entity.

At least one public hearing will be scheduled for the building code advisory committee to receive public comments on the proposed amendments. After each proposed amendment is discussed, the committee will develop a recommendation to adopt the amendment, to adopt with modification, or to reject the amendment.

After the hearing, the DCS will publish and distribute to eligible voting organizations and jurisdictions the proposed amendments and the recommendations, including voting results of the committee on each proposed amendment.

2. Review of the annual published supplement. The DCS will meet with the building code advisory committee to discuss the approved changes published in the annual supplement. If the committee determines that these changes are not significant to warrant a code change cycle, no further consideration will be given. If, however, the committee determines that these changes should be considered, a code updating and amendment cycle will be established and the procedures identified in subsection 1 will be followed.

History: Effective September 1, 2002.

General Authority: NDCC 54-21.3-03(1)

Law Implemented: NDCC 54-21.3-03(1)

108-01-01-10. Voting. Voting on the recommendations for amendments to the codes will be limited to the following:

1. A qualified appointed representative from each city and county identified by the DCS as having adopted the state building code or, in the case of home rule cities, those that have adopted the same published codes used in the state building code. The DCS will be responsible for certifying up to one week prior to the voting meeting those jurisdictions that will be eligible to vote.

2. The qualified appointed representative of each of the following organizations on the building code advisory committee:

- a. North Dakota association of builders;
- b. North Dakota association of mechanical contractors;
- c. Associated general contractors;
- d. North Dakota chapter of the American institute of architects; and
- e. North Dakota society of professional engineers.

History: Effective September 1, 2002.

General Authority: NDCC 54-21.3-03(1)

Law Implemented: NDCC 54-21.3-03(1)

108-01-01-11. Voting procedures. Each jurisdiction and organization eligible and present to vote will be allowed one vote. In the event of a tie or when there is less than a two-thirds majority on a recommendation, cities and counties will receive votes as follows to determine the outcome:

| <u>Number of Residents</u> | | <u>Number of Votes</u> | |
|----------------------------|----------|------------------------|----------|
| <u>1</u> | <u>=</u> | <u>999</u> | <u>1</u> |
| <u>1,000</u> | <u>=</u> | <u>4,999</u> | <u>2</u> |
| <u>5,000</u> | <u>=</u> | <u>9,999</u> | <u>3</u> |
| <u>10,000</u> | <u>=</u> | <u>29,999</u> | <u>4</u> |
| <u>30,000</u> | <u>=</u> | <u>49,999</u> | <u>5</u> |
| <u>50,000</u> | <u>±</u> | | <u>6</u> |

The population for a county will be determined by subtracting the population of eligible cities. The most recent population figures published by the census bureau will be used.

As each recommendation for each proposed amendment is presented, time will be provided for anyone present to indicate support or opposition to each proposed amendment or to propose amending the recommendation. A proposed amendment to a recommendation must be approved by a two-thirds majority of the voting qualified appointed representatives to be considered.

After all proposed amendments have been acted on, a final vote will be taken for the purpose of recognizing the specific publication year of the IBC, IRC, IMC, and IFGC adopted and all of the amendments approved.

History: Effective September 1, 2002.
General Authority: NDCC 54-21.3-03(1)
Law Implemented: NDCC 54-21.3-03(2)

108-01-01-12. Publication of amendments. The DCS will publish, distribute, and make available a state building code book that identifies the published versions of the IBC, IRC, IMC, and IFGC and amendments adopted that are the current state building code.

History: Effective September 1, 2002.
General Authority: NDCC 54-21.3-03(1)
Law Implemented: NDCC 54-21.3-03(1)

108-01-01-13. Limitations. Subsection 2 of North Dakota Century Code section 54-21.3-03, pertaining to the construction of manufactured homes, may not be amended. These are federal minimum standards for construction that are the responsibility of the federal department of housing and urban development. Each manufactured home carries a label of inspection indicating compliance with the manufactured home construction and safety standards.

North Dakota Century Code section 54-21.3-04.1 may not be amended because the accessibility standards contained in the Americans with Disabilities Act of 1990 are federal law.

History: Effective September 1, 2002.
General Authority: NDCC 54-21.3-03(1)
Law Implemented: NDCC 54-21.3-03(2)

108-01-01-14. Appendix chapters. The appendix chapters of the IBC, IRC, IMC, and IFGC are not part of the state building code unless specifically adopted.

History: Effective September 1, 2002.
General Authority: NDCC 54-21.3-03(1)
Law Implemented: NDCC 54-21.3-03(1)