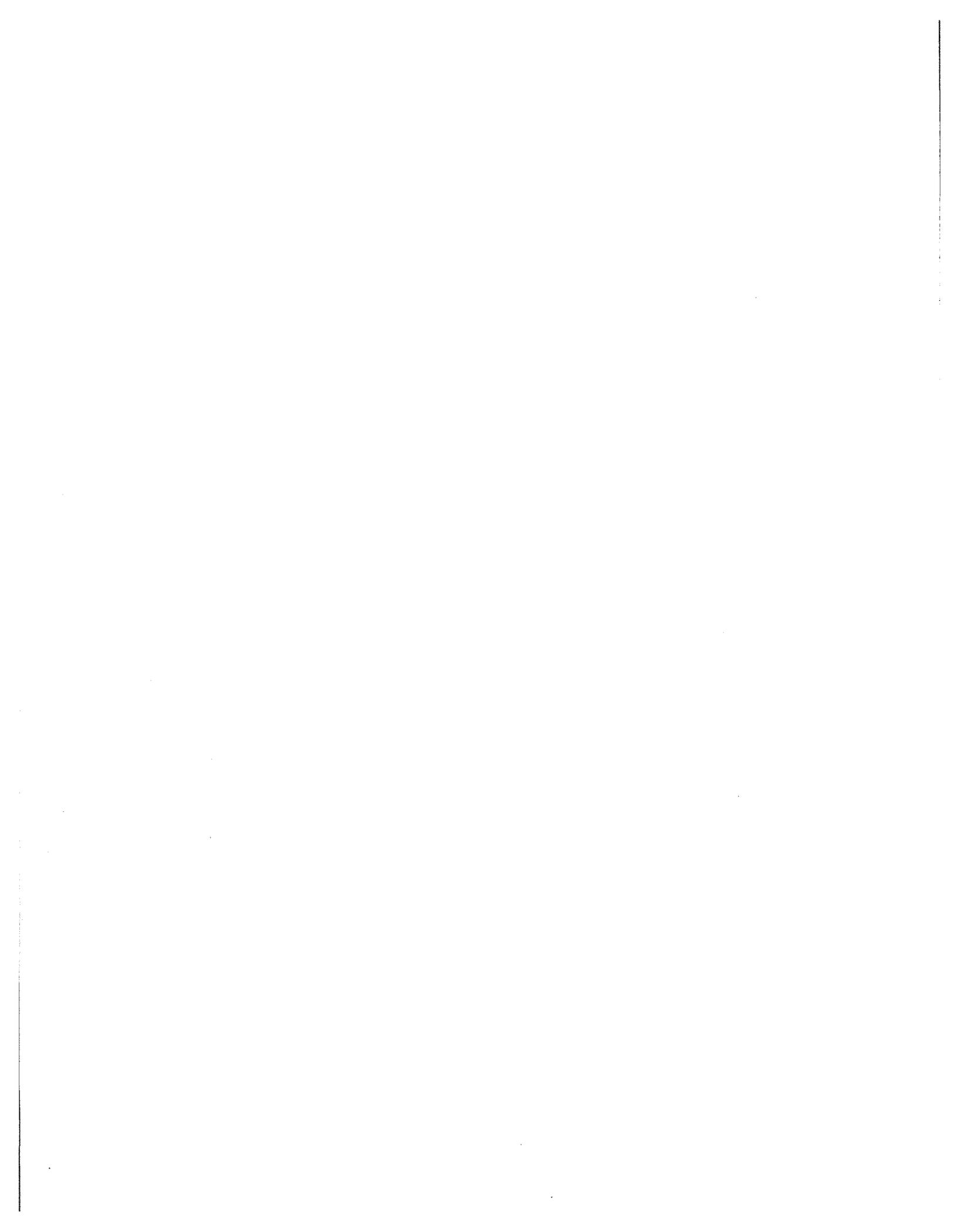


NORTH DAKOTA ADMINISTRATIVE CODE

Supplements 71 through 77

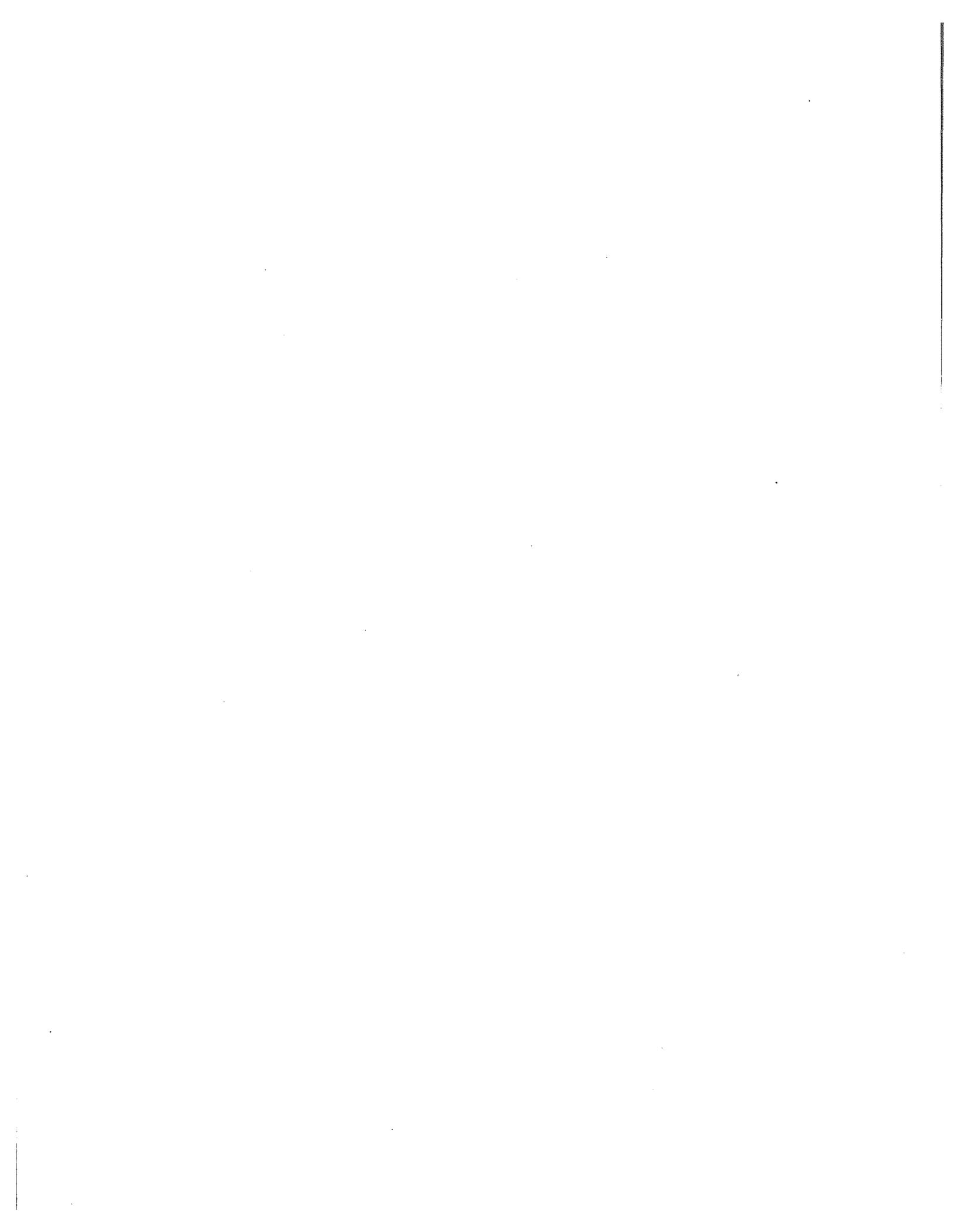
December 1984  
January 1985  
February 1985  
March 1985  
April 1985  
June 1985  
July 1985

Prepared by the Legislative Council staff  
for the  
Administrative Rules Committee

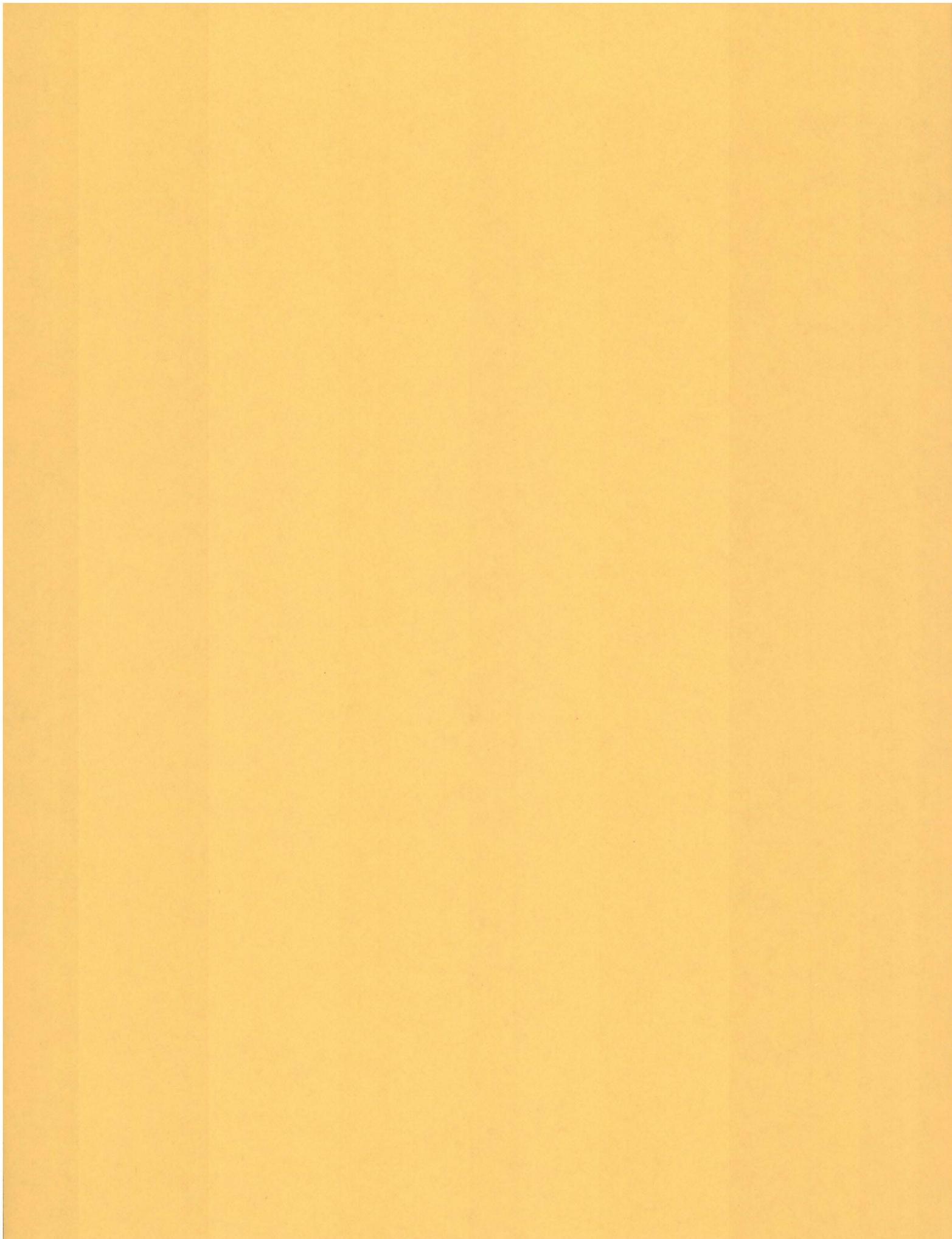


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**TITLE 3**  
**Accountancy, Board of Public**



JULY 1985

**3-02-01-01. Examinations - Location.** The board shall administer all examinations required for licensure in accounting in North Dakota. The written ~~examinations~~ examination administered to applicants for certification as certified public accountants shall be the uniform certified public accountant examination and an ethics examination prepared by the board and based upon the code of professional ethics promulgated by the board. All successful examination candidates will be required to complete a self-study ethics course based on the code of ethics promulgated by the board before they will be issued a certificate to qualify for licensure in accounting in North Dakota. The written ~~examinations~~ examination shall be given twice a year in Grand Forks, North Dakota, on dates specified by the institute.

**History:** Amended effective July 1, 1985.

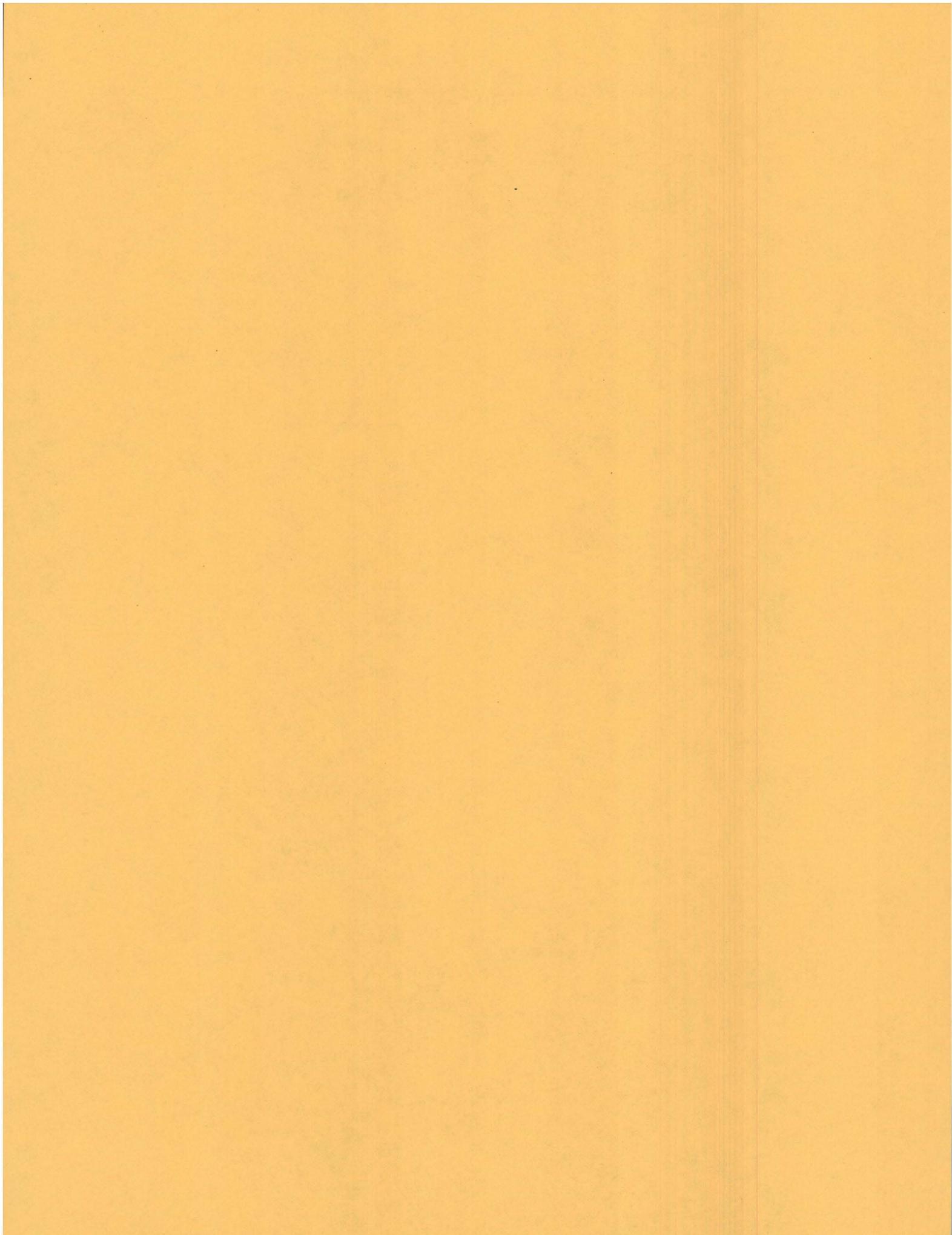
**General Authority:** NDCC 43-02.1-02(6)(d)

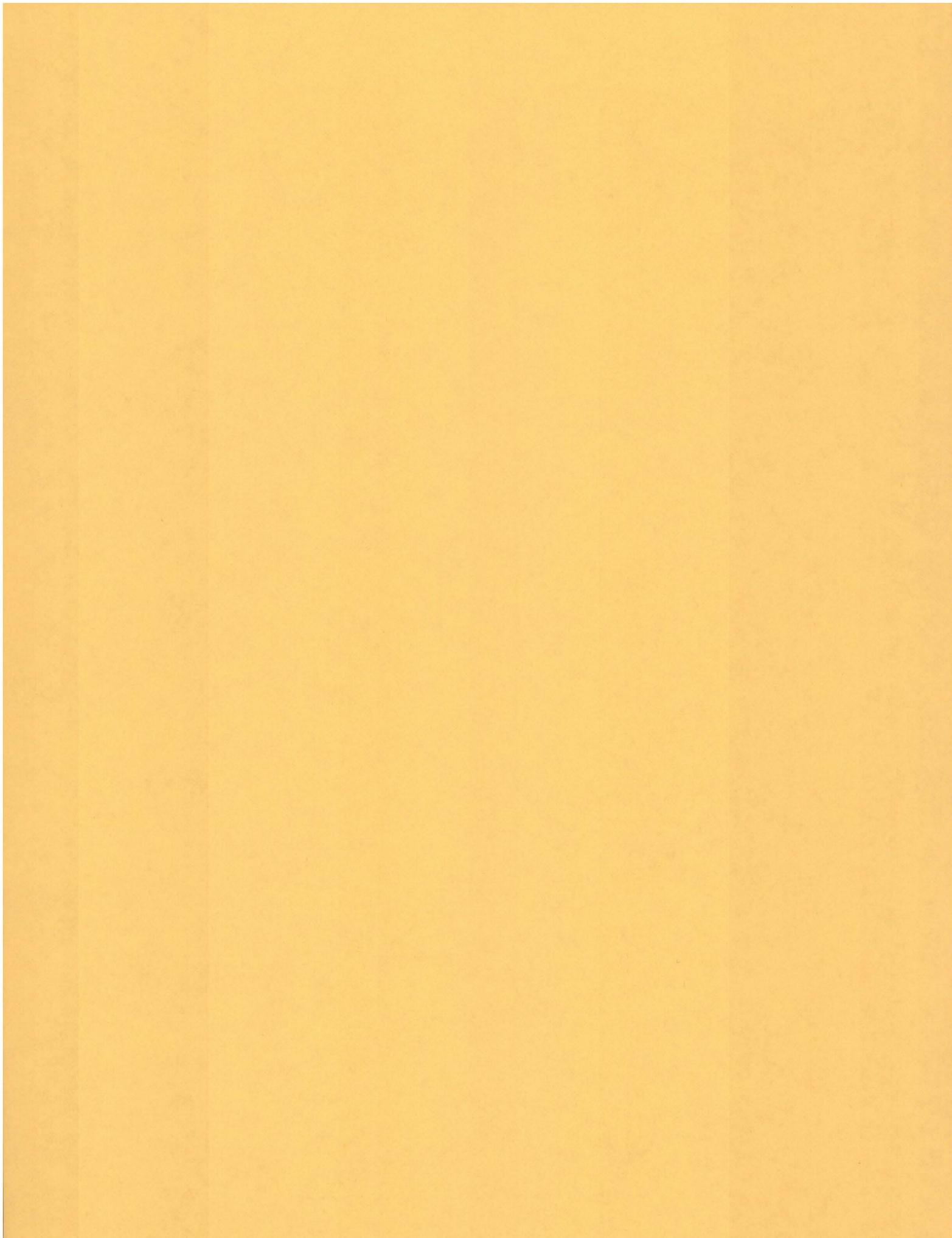
**Law Implemented:** NDCC 43-02.1-03(2)

**3-02-02-01. Examination fees.** The following examination fees have been established by the board for the certified public accountants ~~examinations~~ examination:

1. Not to exceed one hundred twelve dollars and fifty cents at the time an applicant files an application to take the examination.
2. ~~Fifty~~ Fifty-five dollars for each reexamination in accounting practice.
3. ~~Twenty-five~~ Twenty-seven dollars and fifty cents for each reexamination in the other subjects provided the applicant has already passed accounting practice or two other parts of the examination.

**History:** Amended effective July 1, 1981; July 1, 1985.  
**General Authority:** NDCC 43-02.1-02(6)(d)  
**Law Implemented:** NDCC 43-02.1-03(3)





**TITLE 7**  
**Agriculture, Commissioner of**



JUNE 1985

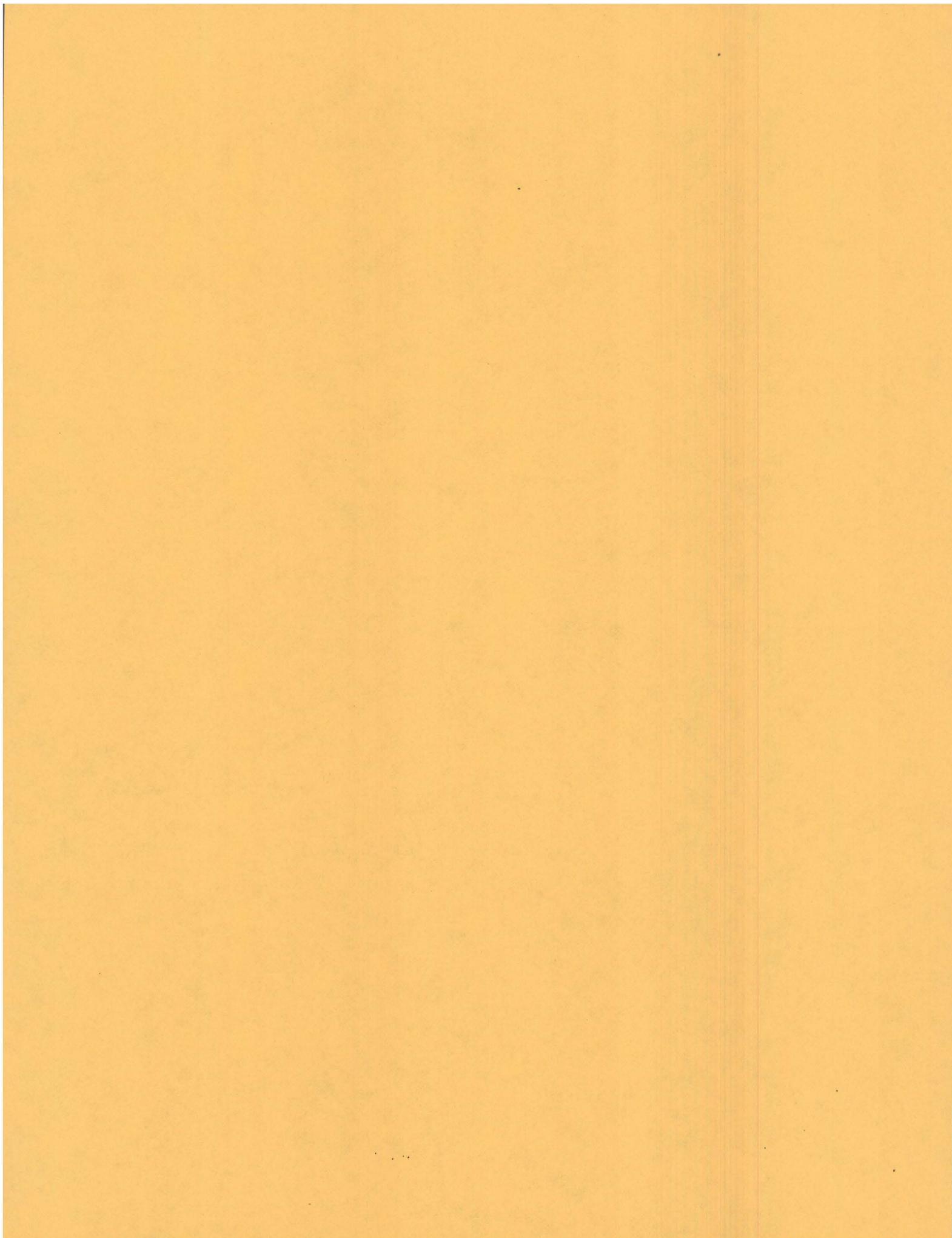
**7-06-01-02. Noxious weeds listed.** Weeds declared noxious shall be confined to weeds that are difficult to control, easily spread, and injurious to public health, crops, livestock, land, or other property. The following weeds have been declared noxious for the purpose of North Dakota Century Code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

1. Absinth wormwood (*artemisia absinthim*).
2. Canada thistle (*cirsium arvense*).
3. Field bindweed (*convolvulus arvensis*), also known as creeping jenny.
4. Hemp (*cannabis sativa*), also known as marijuana.
5. Hoary cress (*cardaria draba*), also known as perennial peppergrass or white top.
6. Leafy spurge (*euphorbia esula*).
7. Musk thistle (*carduus nutans*).
8. Perennial sowthistle (*sonchus arvensis*).
9. Russian knapweed (*centaurea repens*).
10. Spotted knapweed (*centaurea maculosa*lam).

~~This list is subject to review and change at the discretion of the commissioner.~~

History: Amended effective June 1, 1985.  
General Authority: NDCC 28-32-02, 63-01.1-03  
Law Implemented: NDCC 63-01.1-02







TITLE 10  
Attorney General



JULY 1985

STAFF COMMENT: Chapters 10-03-02, 10-03-03, and 10-03-04 contain all new material but are not underscored so as to improve readability.

ARTICLE 10-03

DETECTIVES

Chapter	
10-03-01	Detectives [Repealed]
10-03-02	Private Investigative Services
10-03-03	Private Security Services
10-03-04	General Rules

CHAPTER 10-03-01  
DETECTIVES

[Repealed effective July 1, 1985]

CHAPTER 10-03-02  
PRIVATE INVESTIGATIVE SERVICES

Section	
10-03-02-01	Qualifications for Private Investigator's License
10-03-02-02	Qualifications for Detective Agency License

10-03-02-03	Qualifications of Detective Agency Personnel
10-03-02-04	Application for Private Investigator License
10-03-02-05	Application Form for Detective Agency License
10-03-02-06	Criminal Records and Background Investigation Check
10-03-02-07	Prohibitions
10-03-02-08	Bonding
10-03-02-09	Contents of License - Posting
10-03-02-10	Issuance of Pocket Cards
10-03-02-11	Change of Ownership or Location
10-03-02-12	Out-of-state Private Investigators
10-03-02-13	Private Investigator Examination Restriction
10-03-02-14	Carrying of Firearms in the Course of Providing Private Investigative Service

**10-03-02-01. Qualifications for private investigator's license.** A person is qualified to receive a license as a private investigator:

1. Who can show by certified birth certificate or naturalization certificate proof of being at least eighteen years of age.
2. Who is a high school graduate or holder of the equivalent of a high school diploma, or who has at least three years training and experience in a public law enforcement agency or in providing private investigative services.
3. Who has not been convicted in any jurisdiction of a felony or a class A misdemeanor involving an act of violence or intimidation as defined in North Dakota Century Code chapters 12.1-16 through 12.1-25; prostitution as set forth in North Dakota Century Code chapter 12.1-29, and applicable federal and local laws; obscenity as set forth in North Dakota Century Code chapter 12.1-27.1, and applicable federal and local laws; controlled substances as set forth in North Dakota Century Code chapter 19-03.1, and applicable federal and local laws; or any other felony offense; unless the attorney general determines that the offense does not have a direct bearing upon the person's ability to serve the public as a private investigator and the person has been sufficiently rehabilitated pursuant to the provisions of North Dakota Century Code section 12.1-33-02.1, or a full pardon has been granted.
4. Who is not and never has been confined or committed as a mentally ill person, as defined by North Dakota Century Code chapter 25-03.1, to a hospital or other institution, unless the person is no longer suffering from disability as a mentally ill person.
5. Who has passed an examination conducted by or under the supervision of the attorney general, to determine competency to receive a license as a private investigator.

6. Who has filed with the attorney general a bond as required by section 10-03-02-08.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-04

**10-03-02-02. Qualifications for detective agency license.** Any person hiring another person to perform private investigative services must obtain a detective agency license. Any individual who applies for a detective agency license must be licensed as a private investigator in this state and have at least two consecutive years of experience as an investigator in any jurisdiction of the United States. A corporation, partnership, or association which applies for a detective agency license must have at least one member of the partnership or corporate officers of the corporation who is a licensed private investigator in this state with at least two consecutive years experience as an investigator in any jurisdiction of the United States.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-09

**10-03-02-03. Qualifications of detective agency personnel.**

1. For the purposes of this chapter, employee includes any person performing any private investigative services for a detective agency on a contractual basis.
2. A detective agency may only employ a person, who is licensed as a private investigator or registered as a provider of private investigative services, to assist in the work of the detective agency and the conduct of its business in any capacity of performing private investigative service work.
3. Any employee performing any private investigative service work for a detective agency in this state, except those specifically exempted by statute, must meet the qualifications specified to obtain a private investigator's license found in subsections 1, 2, 3, and 4 of section 10-03-02-01.
4. Any person employed by a detective agency to provide on a full-time, or substantially full-time, basis private investigative services for the detective agency must also be individually licensed as a private investigator. Any person employed by a detective agency to provide private investigative services on less than a substantially full-time basis, need only be registered as a provider of private investigative services as required in this section. Any person employed by a detective agency who does not provide any

private investigative services need not be registered or licensed.

5. Any unlicensed employee doing any private investigative service work for any detective agency, must be registered with the attorney general's office by the holder of the detective agency license as an employee providing private investigative services. Registration must be on the form as provided by the attorney general and must be filed within at least seven days after the start of the employee's employment at the detective agency. The registration form must include the employee's name, any alias, date and place of birth, current address and telephone number, history of formal education, all residences during the immediately preceding five years, all employment or occupations engaged in during the immediately preceding five years, history of prior private investigative experience, history of military service (including branch and dates of service, and type of discharge), a list of all arrests, convictions, and pending criminal actions in any jurisdiction, a color photograph acceptable to the attorney general taken within the immediately preceding six months, and general physical description (including height, weight, and color of eyes and hair). The registration form must also include a signed authorization by the employee for a criminal records and background investigation check (waiver clause), the name and license number of employing detective agency, the dates of employment with that agency and any other information as the attorney general may require.
6. The detective agency is responsible for any activities of its licensed or registered employees and may be subject to administrative action by the attorney general for the activities of its licensed or registered employees.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-04

**10-03-02-04. Application for private investigator license.** The information on the application form of any person applying for a license as a private investigator must be the same as the information contained on the registration form of registered employees of detective agencies. This form differs from the employee registration form only in that it will not require the name and license number of the detective agency or dates of employment with that agency.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-06

**10-03-02-05. Application form for detective agency license.** Any individual making application for or renewal of a detective agency license shall file with the office of the attorney general the individual's own private investigator's license number, the address of the detective agency, and the telephone number of the detective agency. Any corporation or partnership making application for or renewal of a detective agency license shall file with the attorney general's office the corporation or partnership's principal business address and telephone number, as well as the names, addresses, and telephone numbers of each principal officer, director, or partner, and the name, address, and telephone number of each person serving in any managerial capacity for the detective agency's operation in the state. Each corporation or partnership shall also provide the office of the attorney general with the appropriate articles of incorporation certificate number, or other appropriate reference number showing proper registration or certification by the secretary of state, if applicable, the name, address, and telephone number of an individual, licensed as a private

investigator, responsible for the actions of detective agency personnel, and any other information the attorney general may require.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-09

**10-03-02-06. Criminal records and background investigation check.** Before issuing a license to an applicant for a private investigator's license, or before approving the registration of employees of a detective agency, the attorney general may conduct or cause to be conducted a criminal records and background investigation check on the applicant.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-04

**10-03-02-07. Prohibitions.**

1. No private investigator or employee of a detective agency may wear, carry, use, display, or possess any identification, badge, uniform, patch, insignia, or make or utter any statement that could or might reasonably lead any person to believe or assume that the private investigator or employee of a detective agency has any police power or is a member of any governmental law enforcement agency or is in any way associated with any governmental law enforcement agency.
2. No private investigator or employee of a detective agency may use, control, possess, or own any motor vehicle of any kind which is marked or identified by any sign, insignia, decal, equipment, device, or contrivance, that could or might

reasonably lead the general public to believe or assume that the vehicle has some or any official designation or is a vehicle of or belonging to any governmental law enforcement agency.

3. No private investigator or employee of any detective agency may wear, carry, display, or possess, any type of uniform, badge, patch, or insignia which includes the word "police", the great seal of the state of North Dakota, or the seal of any political subdivision.
4. No private investigator or employee of any detective agency may wear, carry, use, display, or possess any identification, badge, uniform, patch, insignia, sign, decal, or other form of identification which indicates any type of common or customary military rank unless the identification of rank is used with and as an integral part of the uniform or identification as described in this section.
5. No private investigator or employee of a detective agency, including the holder of a detective agency license, may be employed full or part time in any capacity wherein such person has any police type powers or access to any official law enforcement records.
6. No private investigator or employee of any detective agency, may solicit or accept any commission or deputization that in any way involves the authority to use or employ, or the use or employment of, any police type powers, except that of a special deputy sheriff or special police officer, and then, only in the case of an emergency or disaster and only for the immediate time of the emergency or disaster.
7. As used in this section, positions with police type powers do not include official volunteer civil defense positions or membership in the national guard, reserve, or regular armed forces of the United States, but include positions or membership in the military police, security police, or similar police functions of the regular armed forces of the United States.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 12.1-13-04, 37-01-26

#### **10-03-02-08. Bonding.**

1. Before a private investigator's license can be issued to any applicant that applicant must file with the attorney general a bond executed by the applicant and by a surety company to be approved by the attorney general in the sum of five thousand dollars, in a form prescribed by the attorney general.

2. Before a detective agency license can be issued the applicant must file with the attorney general a bond executed by the applicant and a surety company to be approved by the attorney general in an amount determined by the number of persons employed or hired to do private investigative service work for the detective agency, in a form prescribed by the attorney general.

The amount of the detective agency bond is determined by the following schedule:

One to five employees ....seven thousand five hundred dollars.  
Six to ten employees.....ten thousand dollars.  
Eleven to twenty employees.....fifteen thousand dollars.  
Twenty-one or more employees.....twenty thousand dollars.

A new bond or appropriate bond rider must be executed and filed with the attorney general at any time the number of employees exceeds the maximum number in any given category as described above.

3. The bond executed pursuant to subsections 1 and 2 must be conditioned for the faithful and honest conduct of the business of the applicant and the applicant's agents and employees, and for the full protection of any person who deals with the applicant or the applicant's agents and employees. The bond must be taken in the name of the people of the state of North Dakota and must provide that any person injured by the breach of the conditions of the bond may bring an action on the bond in the name of the state of North Dakota for the use of the person so injured to recover legal damages suffered by reason of breach of the conditions; provided, however, that the aggregate liability of the surety for all damages may, in no event, exceed the sum of the bond. The surety on the bond may cancel the bond upon giving thirty days' notice in writing to the attorney general and thereafter is relieved of liability for any breach of condition occurring after the effective date of the cancellation.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04

**10-03-02-09. Contents of license - Posting.** To each qualified and approved applicant, the attorney general shall issue a license as a private investigator or detective agency. The license must show the name and business location of each licenseholder, the date on which it was issued, and the date of expiration, and must have imprinted thereon the seal of the attorney general and such other matter as shall be prescribed by the attorney general. Each licensee shall conspicuously display that license at all times in the licensee's place of business. If the licensee has more than one office as a place of business, the

licensee shall display a duplicate license at each office. A detective agency need not display the licenses of all the private investigators employed by the agency. If the attorney general revokes, suspends, or disapproves renewal of any private investigator or detective agency license, the attorney general may request the holder of the license to return the license to the attorney general within fourteen days of the request.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-05

**10-03-02-10. Issuance of pocket cards.**

1. To each individual licensed as a private investigator, the attorney general shall issue a laminated pocket card of a size, design, and content as may be determined by the attorney general. The pocket card must clearly state that the person is a licensed private investigator, the date of issuance of the person's license, and the date of expiration of the license. The card must also contain a photograph of the licensed private investigator, the private investigator's license number, and name and the seal of the attorney general.
2. To each employee performing private investigative services for a detective agency who has been registered and approved by the attorney general, the attorney general shall issue a laminated pocket card of a size, design, and content as may be determined by the attorney general. The pocket card must clearly state that the person is a registered investigator and the date of the attorney general's approval of the registrant. The pocket card must also include the registered investigator's photograph and name, the name of the detective agency for whom the investigator works, the license number of the detective agency, and the seal of the attorney general. The attorney general will not issue a pocket card for a registered employee to a person performing private investigative services for a detective agency on a contractual basis if that person is already licensed as a private investigator.
3. When a registered employee of a detective agency terminates employment or a contract with the detective agency, that employee shall return the pocket card to the detective agency immediately after termination. Within seven days after receiving the pocket card of the terminated employee, the detective agency shall mail or deliver the pocket card to the attorney general for cancellation, along with a letter from the holder of the detective agency license stating the date the registered employee was terminated and the date the agency received the terminated individual's card.

4. If the attorney general revokes, suspends, or disapproves the renewal of a license or registration of any person, the attorney general may request the person to return the person's pocket card. Within fourteen days of the request by the attorney general, the person upon whom the request has been made shall return the pocket card to the attorney general. If the attorney general revokes, suspends, or disapproves renewal of a license to any detective agency, the attorney general may request the holder of the detective agency license to return the pocket cards of all its registered employees. Within fourteen days of the request by the attorney general, the detective agency shall return the pocket cards of all its registered employees to the attorney general.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-05

**10-03-02-11. Change of ownership or location.** If a licensed detective agency is transferred to new ownership at any time, the detective agency shall notify the attorney general within fourteen days of the date of the transfer and a new license application form must be submitted by the new owner to the attorney general. Payment of license fees is nontransferable. Also, each licensed detective agency shall notify the attorney general about any changes in information provided in the application form, required by section 10-03-02-05, within fourteen days of the change.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-05

**10-03-02-12. Out-of-state private investigators.**

1. Any person who provides private investigative services within the boundaries of this state whose principal place of business is located outside this state must be licensed or registered or approved by the state or province of that person's principal place of business, or licensed or registered by the attorney general of this state.
2. Notwithstanding subsection 1, any person whose principal place of business is outside this state who provides more than thirty days of private investigative services within the boundaries of this state in a calendar year must hold a private investigator's license issued by the attorney general of this state.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-05

**10-03-02-13. Private investigator examination restriction.** Any applicant for a private investigator's license or employee of a detective agency who fails to pass the first examination required by the attorney general may apply for retesting no sooner than thirty days after notice of failure. Upon failure of second and subsequent examination, the applicant may apply for retesting again after a one-year waiting period.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04, 43-30-16

**10-03-02-14. Carrying of firearms in the course of providing private investigative service.** Carrying and the use of firearms by private investigators and registered employees of detective agencies must be in accordance with all existing state and federal laws, including certification and licensing when necessary. It is unlawful for any person while providing private investigative services to carry a firearm unless the individual carrying the firearm has completed the same requirements for firearms training as is required for North Dakota peace officers.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04

## CHAPTER 10-03-03 PRIVATE SECURITY SERVICES

Section	
10-03-03-01	Qualifications for Private Security Service Personnel
10-03-03-02	Qualifications as an Apprentice Security Officer
10-03-03-03	Qualifications for Security Officer
10-03-03-04	Qualifications for Commissioned Security Officer
10-03-03-05	Qualifications for Armed Security Personnel
10-03-03-06	Qualifications for Trainers
10-03-03-07	Equivalency
10-03-03-08	Licensing of Persons Providing Private Security
10-03-03-09	Qualifications and Licensing for Private Security Agency
10-03-03-10	Registration of Private Security Service Personnel
10-03-03-11	Application Form for Private Security Agency License
10-03-03-12	Application for Private Security License
10-03-03-13	Criminal Records and Background Investigation Check
10-03-03-14	Prohibitions

10-03-03-15	Bonding
10-03-03-16	Contents of License - Posting
10-03-03-17	Change of Ownership or Location
10-03-03-18	Out-of-state Private Security Services
10-03-03-19	Private Security Examination Restrictions
10-03-03-20	Carrying Firearms by Private Security Personnel

**10-03-03-01. Qualifications for private security service personnel.** A person is qualified to register as an apprentice private security officer, security officer, or commissioned security officer:

1. Who can show by certified birth certificate or naturalization certificate proof of being at least eighteen years of age.
2. Who is a high school graduate or holder of the equivalent of a high school diploma, or who has at least three years training and experience in a public law enforcement agency or in providing private security services.
3. Who has not been convicted in any jurisdiction of a felony or a class A misdemeanor involving an act of violence or intimidation as defined in North Dakota Century Code chapters 12.1-16 through 12.1-25; prostitution as set forth in North Dakota Century Code chapter 12.1-29, and applicable federal and local laws; obscenity as set forth in North Dakota Century Code chapter 12.1-27.1, and applicable federal and local laws; controlled substances as set forth in North Dakota Century Code chapter 19-03.1, and applicable federal and local laws; or any other felony offense; unless the attorney general determines that the offense does not have a direct bearing upon the person's ability to serve the public as a person providing private security service and the person has been sufficiently rehabilitated pursuant to North Dakota Century Code section 12.1-33-02.1, or a full pardon has been granted.
4. Who is not and never has been confined or committed as a mentally ill person, as defined by North Dakota Century Code chapter 25-03.1, to a hospital or other institution, unless the person is no longer suffering from disability as a mentally ill person.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-05

**10-03-03-02. Qualifications as an apprentice security officer.** To qualify for registration as an apprentice private security officer, a person:

1. Must complete a minimum of sixteen hours of classroom instruction, relating to the provision of private security

services before being uniformed and assigned to duty. This instruction must include the apprentice security officer training curricula (contained in appendix "A") plus first aid training as required by the private investigative security board, and other instruction as determined by the employer for the particular assignment intended.

2. Must receive a minimum of sixteen hours of field training, under the supervision of a security officer who has a minimum of two thousand hours of active service in that grade or equivalent combination of training and experience as defined in section 10-03-03-07, or under the supervision of a commissioned security officer, before being allowed to perform duties without direct supervision.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04

**10-03-03-03. Qualifications for security officer.** To qualify for registration as a security officer, an individual:

1. After one thousand hours, but before two thousand hours, as an active apprentice security officer, must make application with the attorney general for registration as a private security officer. The individual must then qualify to become a security officer in order to remain qualified to perform private security services in this state.
2. Must complete an additional thirty-two hours of classroom instruction as required by the private investigative security board. This instruction must include the security officer training curriculum (contained in appendix "B") required by the private investigative security board, and other instruction as determined by the employer for the particular assignment intended.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04

**10-03-03-04. Qualifications for commissioned security officer.** To qualify for registration as a commissioned security officer, an individual:

1. Must complete four thousand hours of active service as a security officer.
2. Must complete an additional eighty hours of classroom instruction as required by the private investigative security board. This instruction must be based upon the suggested

curricula items for commissioned security officer training (contained in appendix "C").

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-04

**10-03-03-05. Qualifications for armed security personnel.** It is unlawful for any person while providing private security services to carry a firearm, unless the individual carrying the firearm:

1. Has achieved at least the rank of security officer as defined in section 10-03-03-03;
2. Has completed the same requirements for firearms training as is required for North Dakota peace officers; and
3. Has been issued the armed private security certificate required by subsection 5 of North Dakota Century Code section 43-30-16.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-04

**10-03-03-06. Qualifications for trainers.** Classroom instruction required of apprentice security officers, security officers, or commissioned security officers must be conducted by trainers certified by the attorney general. Minimum requirements for certification as a trainer are:

1. Two thousand hours of active service as a security officer;
2. Equivalent combination of training and experience as defined in section 10-03-03-07;
3. One-year experience as an instructor in a relevant discipline at an education institution or educational agency; or
4. A degree from any educational institution in a nonrelevant discipline plus at least a minor in a relevant discipline.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-04

**10-03-03-07. Equivalency.** The attorney general may waive part of or all of any training or experience requirements for apprentice security officers, security officers, or commissioned security officers based upon any combination of the following; provided, that the

information necessary to make a determination regarding waiver of training or experience requirements is forwarded to the attorney general's office by the registrant or applicant:

1. Equivalent training or experience in private security in another state with equal or similar requirements.
2. Equivalent training or experience in law enforcement in any jurisdiction with equal or similar requirements.
3. Equivalent training or experience in military security.
4. Equivalent training or experience in proprietary security provided that equal or similar requirements for training as required by this chapter were met.
5. Equivalent training in any educational institution in relevant subject matters.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04

**10-03-03-08. Licensing of persons providing private security.**

Any person providing private security services must obtain a private security license from the attorney general unless the person is registered as an employee of a licensed private security agency. To be eligible for this license, the person must be registered as a commissioned security officer, and have passed an examination conducted by or under the supervision of the attorney general.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-05, 43-30-06

**10-03-03-09. Qualifications and licensing for private security agency.** Any person hiring another person to perform private security services must obtain a private security agency license. Any individual who applies for a private security agency license must themselves be licensed to perform private security services in this state and have at least two consecutive years of experience as a person providing private security services in any jurisdiction of the United States. A corporation or partnership which applies for a private security agency license must have at least one member of the partnership or corporate officers of the corporation who is registered in this state as a commissioned security officer and who has performed private security services for at least two consecutive years in any jurisdiction of the United States.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 43-30-04

Law Implemented: NDCC 43-30-04

**10-03-03-10. Registration of private security service personnel.**

1. Any person doing private security service work for any private security agency must register with the attorney general's office as an apprentice security officer, security officer, or commissioned security officer.
2. Registration must be filed with the attorney general at least seven days after the start of the employee's employment at the private security agency. The registration must include the employee's name, any alias, date and place of birth, current address and telephone number, a list of all arrests, convictions (felony and misdemeanor), and pending criminal actions in any jurisdiction, as well as appropriate information relating to the registrant's training classification and rank or grade. The registration shall also include a signed authorization by the employee for a criminal records and background investigation check (waiver clause), and any other information as the attorney general may require.
3. For purposes of this chapter "employee" includes any person performing any private security services for a private security agency on a contractual basis.
4. Each person initially registering with the attorney general as either an apprentice security officer, security officer, or commissioned security officer shall pay the one-time fee to be paid for the issuance of a private security training certificate as required by North Dakota Century Code section 43-30-16.
5. The private security agency is responsible for any activities of its licensed or registered employees and may be subject to administrative action by the attorney general for the activities of its licensed or registered employees.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-05, 43-30-16

**10-03-03-11. Application form for private security agency license.** Any individual making application for or renewal of a private security agency license shall file with the office of the attorney general the individual's own private security license number, the address of the agency, and the telephone number of the agency. Any corporation or partnership making application for or renewal of a private security agency license shall file with the attorney general's office the corporation or partnership's principal business address and telephone number, as well as the names, addresses, and telephone numbers

of each principal officer, director, or partner, and the name, address, and telephone number of each person serving in any managerial capacity for the agency's operation in this state. Each corporation or partnership shall also provide the office of the attorney general with the appropriate articles of incorporation certificate number, limited partnership file number, or other appropriate reference number showing proper registration or certification by the secretary of state, if applicable, the name, address, and telephone number of an individual, registered as a commissioned security officer, responsible for the actions of agency personnel, and any other information the attorney general may require.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-11, 43-30-16

**10-03-03-12. Application for private security license.** The information for the application form for any person applying for a private security license must include the applicant's name, any alias, date and place of birth, current address and telephone number, history of formal education, all residences during the immediately preceding five years, all employment or occupations engaged in during the immediately preceding five years, history of military service (including branch, dates of service, and type of discharge), a list of all arrests, convictions (felony and misdemeanor), and pending criminal actions in any jurisdiction, an acceptable color photograph taken within the immediately preceding six months, and general physical description (including height, weight, and color of eyes and hair). The registration form must also include a signed authorization by the applicant for a criminal records and background investigation check (waiver clause), and any other information as the attorney general may require.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-06

**10-03-03-13. Criminal records and background investigation check.** Before issuing a license to an applicant for a private security license or private security agency license, or before approving the registration of an employee as a provider of private security services, the attorney general may conduct or cause to be conducted a criminal records and background investigation check on the applicant or registrant.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04

**10-03-03-14. Prohibitions.**

1. No person providing private security services nor an employee of any private security agency may wear, carry, use, display, or possess any identification, badge, uniform, patch, insignia, or make or utter any statement that could or might reasonably lead any person to believe or assume that the person or employee, has any police power or is a member of any governmental law enforcement agency or is in any way associated with any governmental law enforcement agency.
2. No person providing private security services nor an employee of a private security agency may use, control, possess, or own any motor vehicle of any kind which is marked or identified by any sign, insignia, decal, equipment, device, or contrivance, that could or might reasonably lead the general public to believe or assume that the vehicle has some or any official designation or is a vehicle of or belonging to any governmental law enforcement agency.
3. No person providing security services nor an employee of any private security agency may wear, carry, display, or possess, any type of uniform, badge, patch, or insignia which includes the word "police", the great seal of the state of North Dakota, or the seal of any political subdivision.
4. No person providing private security services nor an employee of any private security agency may wear, carry, use, display, or possess any identification, badge, uniform, patch, insignia, sign, decal, or other form of identification which indicates any type of common or customary military rank unless the identification of rank is used with and as an integral part of the uniform or identification as described in this section.
5. No person providing private security services nor an employee of a private security agency, including the holder of a private security agency license, may be employed full or part time in any capacity wherein such person has any police type powers or access to any official law enforcement records.
6. No person providing private security services nor an employee of any private security agency may solicit or accept any commission or deputization that in any way involves the authority to use or employ, or the use or employment of, any police type powers, except that of a special deputy sheriff, or special police officer, and then, only in the case of an emergency or disaster and only for the immediate time of the emergency or disaster.
7. As used in this section, positions with police type powers do not include official volunteer civil defense positions or membership in the national guard, reserve, or regular armed forces of the United States, but include positions or membership in the military police, security police, or similar

police functions of the regular armed forces of the United States.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 12.1-13-04, 37-01-26

**10-03-03-15. Bonding.**

1. Before a private security license can be issued, the applicant shall file with the attorney general a bond executed by the applicant and a surety company to be approved by the attorney general in the sum of five thousand dollars in a form prescribed by the attorney general.
2. Before a private security agency license can be issued, the applicant shall file with the attorney general a bond executed by the applicant and a surety company to be approved by the attorney general in an amount determined by the number of persons employed or hired to do private security service work for the agency, in a form prescribed by the attorney general.

The amount of the private security agency bond must be determined by the following schedule:

One to five employees ....seven thousand five hundred dollars.  
Six to ten employees.....ten thousand dollars.  
Eleven to twenty employees.....fifteen thousand dollars.  
Twenty-one or more employees.....twenty thousand dollars.

A new bond or appropriate bond rider must be executed and filed with the attorney general at any time the number of employees exceeds the maximum number in any given category as described above.

3. The bond executed pursuant to subsections 1 and 2 must be conditioned for the faithful and honest conduct of the business of the applicant, and the applicant's agents and employees, and for the full protection of any person who deals with the applicant or the applicant's agents and employees. The bond must be taken in the name of the people of the state of North Dakota and must provide that any person injured by the breach of the conditions of the bond may bring an action on the bond in the name of the state of North Dakota for the use of the person so injured to recover legal damages suffered by reason of breach of the conditions; provided, however, that the aggregate liability of the surety for all damages, may, in no event, exceed the sum of the bond. The surety on the bond may cancel the bond upon giving thirty days' notice in writing to the attorney general and thereafter is relieved of liability for any breach of condition occurring after the effective date of the cancellation.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-04

**10-03-03-16. Contents of license - Posting.** To each qualified and approved applicant, the attorney general shall issue a private security license or a license as a private security agency. The license must show the name and business location of each licenseholder, the date on which it was issued, and the date of expiration, and must have imprinted thereon the seal of the attorney general and such other matter as is prescribed by the attorney general. Each licensee shall conspicuously display that license at all times in the licensee's place of business. If the licensee has more than one office as a place of business, the licensee shall display a duplicate license at each office. If the attorney general revokes, suspends, or disapproves renewal of any private security license or private security agency license, the attorney general may request the holder of the license to return the license to the attorney general within fourteen days of the request.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-05

**10-03-03-17. Change of ownership or location.** If a licensed private security agency is transferred to new ownership at any time, the agency shall notify the attorney general within fourteen days of the date of the transfer and a new license application form must be submitted by the new owner to the attorney general. Payment of license fees is nontransferrable. Also, each licensed private security agency shall notify the attorney general about any changes in information provided in the application form required by section 10-03-03-11, within fourteen days of the change.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-05

**10-03-03-18. Out-of-state private security services.**

1. Any person who provides private security services within the boundaries of this state whose principal place of business is located outside this state must be licensed or registered or approved by the state or province of that person's principal place of business, or licensed or registered by the attorney general of this state.
2. Notwithstanding subsection 1, any person whose principal place of business is outside this state who provides more than thirty days of private security services within the boundaries of this state in a calendar year must hold a private security

license or private security agency license issued by the attorney general of this state.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-05

**10-03-03-19. Private security examination restrictions.** An applicant for a license as a provider of private security services, who fails to pass the first examination required by the attorney general's office, may apply for retesting no sooner than thirty days after notice of failure. Upon failure of second and subsequent examination, the applicant may apply for retesting again after a one-year waiting period.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-16

**10-03-03-20. Carrying firearms by private security personnel.** Carrying and the use of firearms by anyone providing private security services, including private security agency personnel, must be in accordance with all existing state and federal laws, including certification and licensing when necessary.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-04

## APPENDIX A APPRENTICE SECURITY OFFICER TRAINING CURRICULUM OUTLINE (16 Hours)

### SECTION I. SECURITY ORIENTATION/OVERVIEW:

- A. Introduction and overview.
  - 1. To the course.
  - 2. To the employing organization.
- B. Role of private security.
  - 1. Brief history of private security.
  - 2. Overview of organization's security operations.

3. Role of security in crime prevention and assets.
  4. Protection.
  5. Components of private security services.
  6. Primary functions/activities of security personnel.
- C. Ethical standards for security personnel.
1. Code of ethics for private security personnel.
- D. Qualities essential to security personnel.
1. Attitude/public relations.
  2. Appearance.
  3. Personal hygiene.
  4. Physical fitness.
  5. Personal conduct/deportment.
  6. Discipline.
  7. Knowledge of responsibilities.

## **SECTION II. CRIMINAL JUSTICE AND SECURITY PERSONNEL:**

- A. The nature and extent of crime.
1. Overview.
    - a. The criminal law.
- B. The criminal justice system.
1. Overview.
    - a. The security person's relationship.
- C. Legal powers and limitations.
1. Rights of a property owner.
  2. Detention/arrest powers (citizen's or statutory).
  3. Search and seizure.
  4. Use of force.

### **SECTION III. GENERAL DUTIES:**

- A. Patrol techniques.
  - 1. Functions of patrol.
  - 2. Types of patrol.
  - 3. Preparing for patrol.
  - 4. Dealing with juveniles.
  - 5. Personal safety on the job.
  - 6. Traffic control.
- B. Access control.
  - 1. Why access control.
  - 2. Types of access control systems.
  - 3. Controlling an entrance or exit.
- C. Notetaking/report writing.
  - 1. Importance of notetaking/report preparation.
  - 2. Daily/shirt reports.
  - 3. Incident/special reports.

### **SECTION IV. EMERGENCIES:**

- A. Fire prevention and control.
  - 1. What is fire.
  - 2. Causes of fire.
  - 3. Classes of fire.
  - 4. Recognition and identification of fire hazards.
  - 5. Firefighting, control and detection equipment.
  - 6. Role in fire prevention.
  - 7. What to do in case of fire.
- B. Handling emergencies.

1. Bomb threats and explosions.
2. Natural disasters.
3. Mentally disturbed persons.
4. Medical emergencies.
5. First aid.

**APPENDIX B**  
**SECURITY OFFICER TRAINING CURRICULUM OUTLINE**  
**(32 Hours)**

**SECTION I. SECURITY SYSTEMS:**

- A. Physical security.
  1. Definition.
  2. Purpose.
  3. Locks and key control.
  4. Barriers.
  5. Access control systems.
  6. Alarm systems.
- B. Information security.
  1. Definition.
  2. Information classifications.
  3. Information and document control procedures.
- C. Personnel security.
  1. Threats to employees.
  2. Employee theft.

**SECTION II. EMERGENCY PROCEDURES:**

- A. Medical emergencies of other emergency procedures.

- B. Defensive tactics.
- C. Unusual occurrences.
  - 1. Strikes, demonstrations, etc.

**SECTION III. ROUTINE PROCEDURES:**

- A. Patrol.
  - 1. Prevention.
  - 2. Response to calls for service.
  - 3. Response to crime-in-progress.
  - 4. Crime scene protection.
- B. Reporting.
  - 1. Information collection.
  - 2. Report preparation.
- C. Dealing with problems unique to the individual's assignment.

**SECTION IV. LEGAL ASPECTS AND ENFORCEMENT OF RULES:**

- A. Legal authority.
  - 1. Authority of security personnel.
  - 2. Regulation of security personnel.
- B. Observing and reporting infractions of rules and regulations.
  - 1. Organizational rules and regulations.
  - 2. Security rules and regulations.

**APPENDIX C  
SUGGESTED COMMISSIONED SECURITY OFFICER CURRICULA ITEMS  
(80 Hours)**

Background investigation.

Civil court procedures.

Civil damage suits.  
Criminal court procedures.  
Collection and preservation of evidence.  
Crime prevention.  
Custody and control of property.  
Fingerprints.  
Follow-up investigations.  
Identification of persons.  
Industrial investigations.  
Insurance investigations.  
Interviews.  
Investigation and security as a professional vocation.  
Investigator's notebook.  
Mock crime scene.  
Modus operandi.  
Motion and still cameras.  
Obtaining information from witnesses.  
Plaintiff investigations.  
Preemployment investigations.  
Preliminary investigations.  
Preventive security.  
Principles of investigation.  
Purpose of private investigation.  
Report writing.  
Retail store investigation.  
Rules of evidence.  
Search and seizure.

Sources of information.

Surveillance and stakeout.

Taking statements.

## CHAPTER 10-03-04 GENERAL RULES

### Section

10-03-04-01	Powers of Private Investigative and Security Board
10-03-04-02	License Fees - Proration - Refunds
10-03-04-03	Renewal of Licenses
10-03-04-04	Grandfather Clause
10-03-04-05	Suspension, Revocation, or Refusal to Renew License

**10-03-04-01. Powers of private investigative and security board.**  
The private investigative and security board shall:

1. Conduct informal inquiries for the purpose of making recommendations to the attorney general concerning grievances, license revocations, license suspensions, and violations of state law relating to the providing of private investigative services and private security services in North Dakota. The chairman of the private investigative and security board, or a designee, shall preside over all inquiries. The board may call witnesses for the purpose of inquiry but shall have no powers of subpoena. The board shall make all findings resulting from such inquiries available to the attorney general and the governor. The board may recommend that the attorney general take appropriate administrative action as necessary.
2. Make recommendations to the attorney general with respect to the establishment of rules pursuant to North Dakota Century Code section 43-30-04.
3. Perform all other functions and duties as prescribed by the governor.

All meetings, for whatever purpose, conducted by the private investigative and security board must be at the call of the chairman of the private investigative and security board, or a designee, with approval by the governor.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-03

**10-03-04-02. License fees - Proration - Refunds.** License fees for providing private investigative services and private security services may be prorated on a quarterly basis for each period the license is in effect. However, no license renewals may be issued on a prorated basis, and no refunds may be made on license fees paid. Any agency providing both private investigative services and private security services shall meet all of the requirements for licensing as a private security agency and a detective agency, but may not be required to pay more than one agency license fee.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-11

**10-03-04-03. Renewal of licenses.** Every holder of a license as a private investigator, detective agency, provider of private security services, or private security agency whose license has expired may have the same restored immediately upon payment of all lapsed renewal fees; provided, however, that not more than one year has elapsed since the date of expiration, and provided that this section does not relieve any person from criminal prosecution for engaging in practice or providing services without a license as required by North Dakota Century Code chapter 43-30. Any person not paying the lapsed renewal fees within the time required by this section must be required to reapply for a new license and meet all the requirements for licensing.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-11

**10-03-04-04. Grandfather clause.** No person, private security agency, or detective agency previously licensed to provide private security services or private investigative services may be required to apply for a new license to provide those services, unless that person's or agency's license has been suspended, revoked, or allowed to lapse for a period of time more than one year. However, any such person, private security agency, or detective agency previously licensed shall meet all the other applicable requirements of chapters 10-03-03, 10-03-03, and 10-03-04.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-06

**10-03-04-05. Suspension, revocation, or refusal to renew license.** In addition to the causes for suspension, revocation, or refusal to renew a license listed in North Dakota Century Code section 43-30-23,

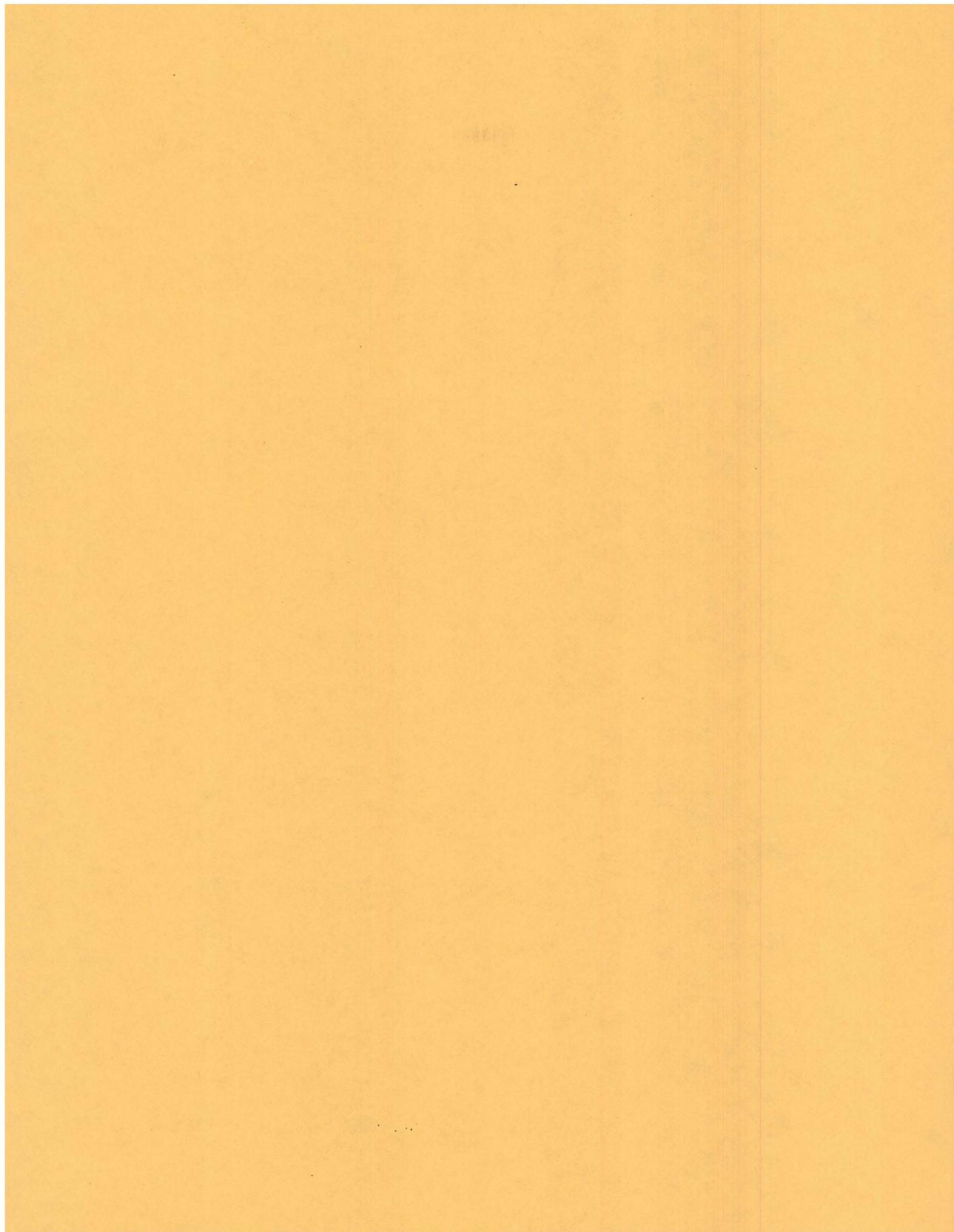
the attorney general may either refuse to renew, suspend, or revoke a license of any person or agency for any of the following causes:

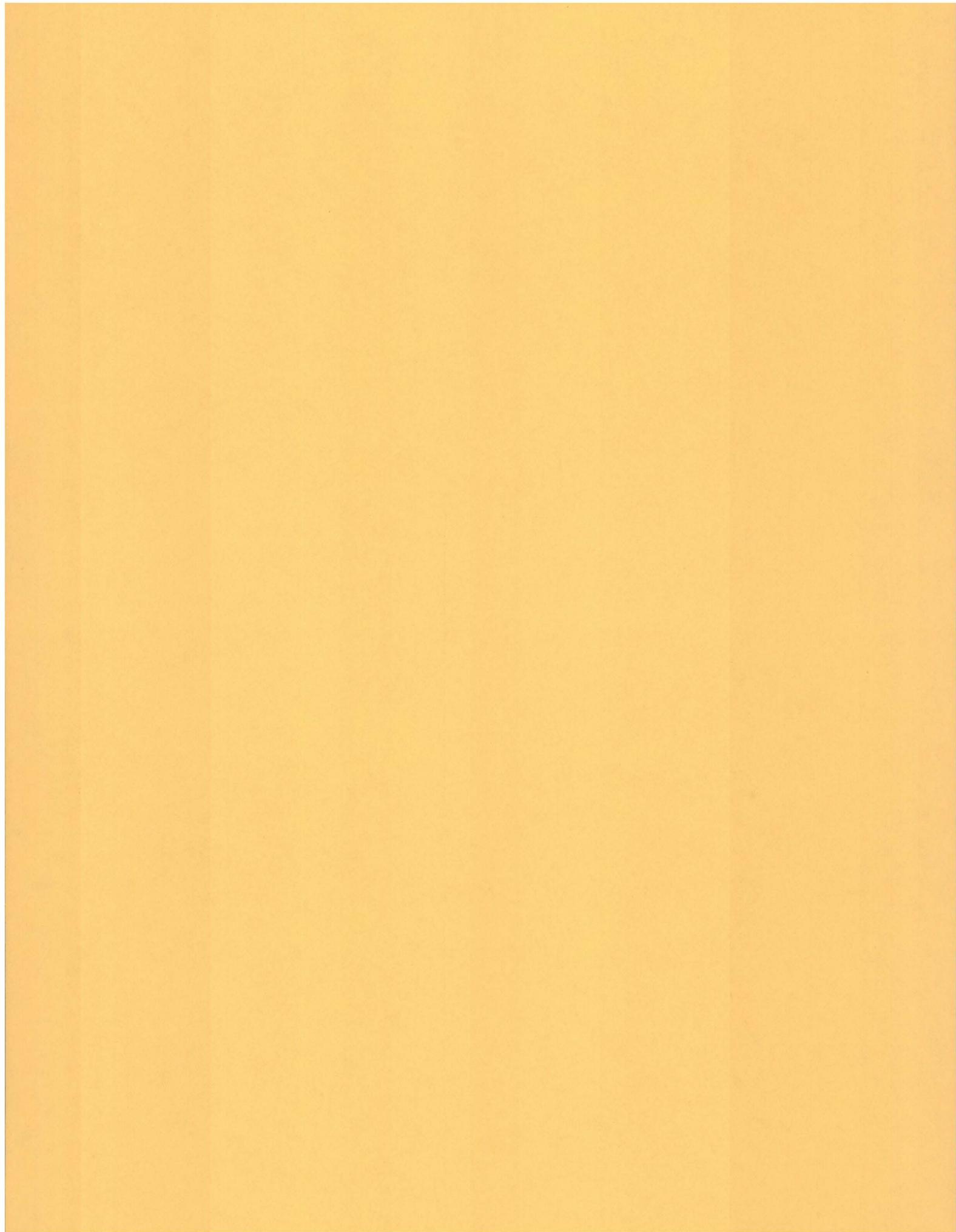
1. Failure or refusal to furnish information required by statute, rule, or request of the attorney general.
2. Making or causing to be made any false entry or written statement of fact in application for license, reports, or other written information to be filed with the attorney general.
3. Fraud in the taking of examination for licensing.
4. Carrying a weapon in violation of any statute or rule specifically regulating the carrying of weapons by private investigators or private security personnel, or in violation of any state and federal laws.
5. Violation of sections 10-03-02-07 and 10-03-03-14.
6. Violation of any of the rules regulating the provision of private investigative services or private security services (chapters 10-03-02, 10-03-03, and 10-03-04).

**History:** Effective July 1, 1985.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-12





**TITLE 25**  
**Embalmers, Board of**



MARCH 1985

**25-02-01-03. Preparation room equipment.** Every preparation room shall be equipped with a sanitary embalming table, and such table shall be provided with running water. Every plumbing fixture, receptacle, and water supply tank shall be provided with a proper air gap or other acceptable device to prevent backflow into the water supply. All plumbing shall comply with North Dakota state plumbing code North Dakota Administrative Code article 62-03, the State Plumbing Code. Every embalming room must be equipped with an exhaust fan.

**History:** Amended effective March 1, 1985.

**General Authority:** NDCC 43-10-05, 43-10-06

**Law Implemented:** NDCC 43-10-05, 43-10-06

**25-02-02-01. Application for license.** An application for an embalmer's license shall be written on a form provided by the state board of embalmers. The application shall contain the person's full name, age, place of residence, and any other provisions as may be from time to time required by the board. The application shall be accompanied by a fee of ~~fifteen~~ not to exceed twenty-five dollars which shall entitle the applicant to examination, and by affidavits of at least two reputable residents of the county in which the applicant resides or proposes to engage in the practice of embalming to the effect that the applicant is of good moral character and temperate habits.

**History:** Amended effective March 1, 1985.

**General Authority:** NDCC 43-10-05

**Law Implemented:** NDCC 43-10-11, 43-10-13

**25-02-02-02. Qualifications for licensure.** To qualify for a license as an embalmer, the applicant shall comply with all of the following requirements:

1. Be of good moral character and temperate habits.
2. Furnish evidence of successful completion of an accredited four-year high school course of study.
3. Furnish evidence of satisfactory completion of at least two years of accredited college or university course of study (one year means a minimum of thirty semester hours or a minimum of forty-five quarter hours). The following is the suggested course of study as adopted by the state board of embalmers:

Freshman Year

		Semester Hours	
Freshman English	English 101-102	3	3
General Biology	Biol. 163-164	4	4
Social Science (History, Government Economics)		3	3
Fundamentals of Speech	Sp. 101	3	
Elements of Accounting	Acct. 102		3
Military Science	M.S. 101-102	1	2
Physical Education	P.E. 101-102	1	1

Sophomore Year

General Chemistry	Chem. 105-106	4	4
Microbiology	Bact. 102	4	
Human Anatomy	Anat. 204		3
Pers. and Prev. Hygiene	Bact. 212		3
General Psychology	Psy. 101	3	
Introduction to Sociology	Soc. 201		3
Business Law	B.L. 315	3	
or			
Bus. Reports and Letter Writing	Man. 322		
Military Science	M.S. 201-202	1	2
Physical Education	P.E. 201-202	1	1

4. Have Has completed a course of instruction of not less than twelve months and graduated from a school of embalming as accredited by the American board of funeral service education or any successor recognized by the United States office of education for funeral service education.
5. Furnish a certified record containing a list of subjects completed with the individual grades or rating from the school described in subsection 4.
6. Have Has served at least twelve months internship after completion of educational requirements during which time the applicant has assisted in the preparation of not less than

twenty-five bodies as evidenced by reports on file with the executive secretary.

7. Demonstrate to a licensed embalmer proficiency in the art of embalming. Final embalming report to indicate by affidavit signed by a licensed North Dakota embalmer that the intern is proficient in embalming.

**History:** Amended effective April 1, 1979; July 1, 1983; March 1, 1985.

**General Authority:** NDCC 43-10-05

**Law Implemented:** NDCC 43-10-11

**25-02-02-04. License renewal, destruction, suspension, and reinstatement.**

1. Date of renewal. The license to practice embalming or preparing dead human bodies shall be issued for one year only but shall be renewed by the board upon payment to the treasurer of the annual renewal fee. The amount of the fee shall not exceed fifty dollars. The board may refuse to issue or renew the license for cause. The executive secretary of the board shall notify each holder of an embalmer's license thirty days prior to the renewal date. A retired embalmer who has been licensed by the board may be given a paid up honorary membership certificate as long as the embalmer is not engaged in active practice.
2. Loss or destruction of original license. In the event of the loss or destruction of the original license issued to any embalmer, the secretary of the state board of embalmers is authorized to issue a duplicate license upon verified proof of the loss or destruction of the original license.
3. Causes for which the board may refuse or suspend a license. The board may refuse to renew or suspend a license for any of the following:
  - a. Conviction of an offense where the board determines that the offense has a direct bearing upon a person's ability to serve the public as an embalmer or where the board determines pursuant to North Dakota Century Code section 12.1-33-02.1 that the person, following conviction of any offense, is not sufficiently rehabilitated.
  - b. Misrepresentation or fraud in the conduct of the business of the profession of an embalmer.
  - c. Solicitation after death or while death is impending for embalming business by the licensee, or by the agents, assistants or employees of the licensee. This subdivision does not prohibit general advertising.

- d. Gross immorality.
  - e. Aiding or abetting an unlicensed person to practice embalming.
  - f. Violation of any provision of North Dakota Century Code chapter 43-10.
  - g. Violation of any state law or municipal ordinance or regulation affecting the handling, custody, care, or transportation of dead human bodies.
  - h. Refusing to surrender promptly the custody of a dead human body upon the express order of a person lawfully entitled to its custody.
  - i. Gross negligence or gross incompetency in the practice of embalming.
  - j. Failure to pay the license fee prior to February first of ensuing year.
4. Reinstatement of revoked license. A licensee whose license has been revoked can be reinstated only by the unanimous consent of the board and upon passing such examination and investigation as the board may deem necessary and proper under all circumstances.

**History:** Amended effective July 1, 1983; March 1, 1985.

**General Authority:** NDCC 43-10-05

**Law Implemented:** NDCC 43-10-13, 43-10-15, 43-10-16, 43-10-17, 43-10-18, 43-10-19

**25-02-02-05. Licensure by reciprocity.**

- 1. **Education and experience requirements.** Applicants for license through reciprocity with other states must meet educational and experience requirements in conformity with the requirements of the North Dakota state board of embalmers.
- 2. **License through examination.** Consideration for reciprocity will be given only to embalmers who secured through examination the license on which they apply for reciprocal license, who were at the time of taking such examination and securing such license an actual and legal resident of the state that issued the license, and who have been actively engaged in the practice of their profession as a licensed embalmer for a period of not less than ~~two years~~ one year preceding the filing of an application for reciprocity.
- 3. **Fee.** The applicant must pay the fee of one hundred dollars.

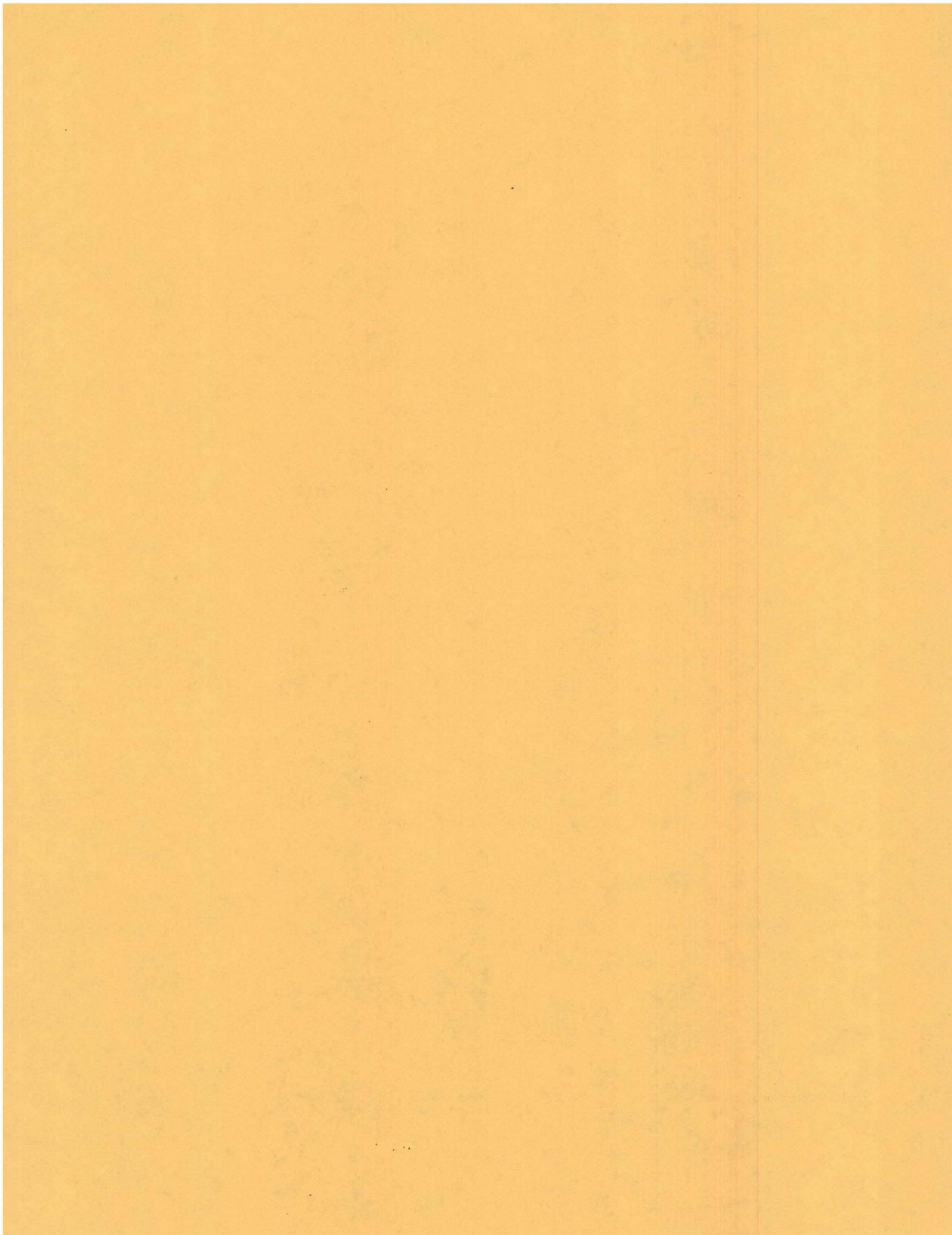
4. **Submit to examination.** A licensee through reciprocity shall submit to an examination at the time and place designated by the board for the purpose of taking a written examination on the laws, rules, and regulations of North Dakota regarding the practice of embalming.

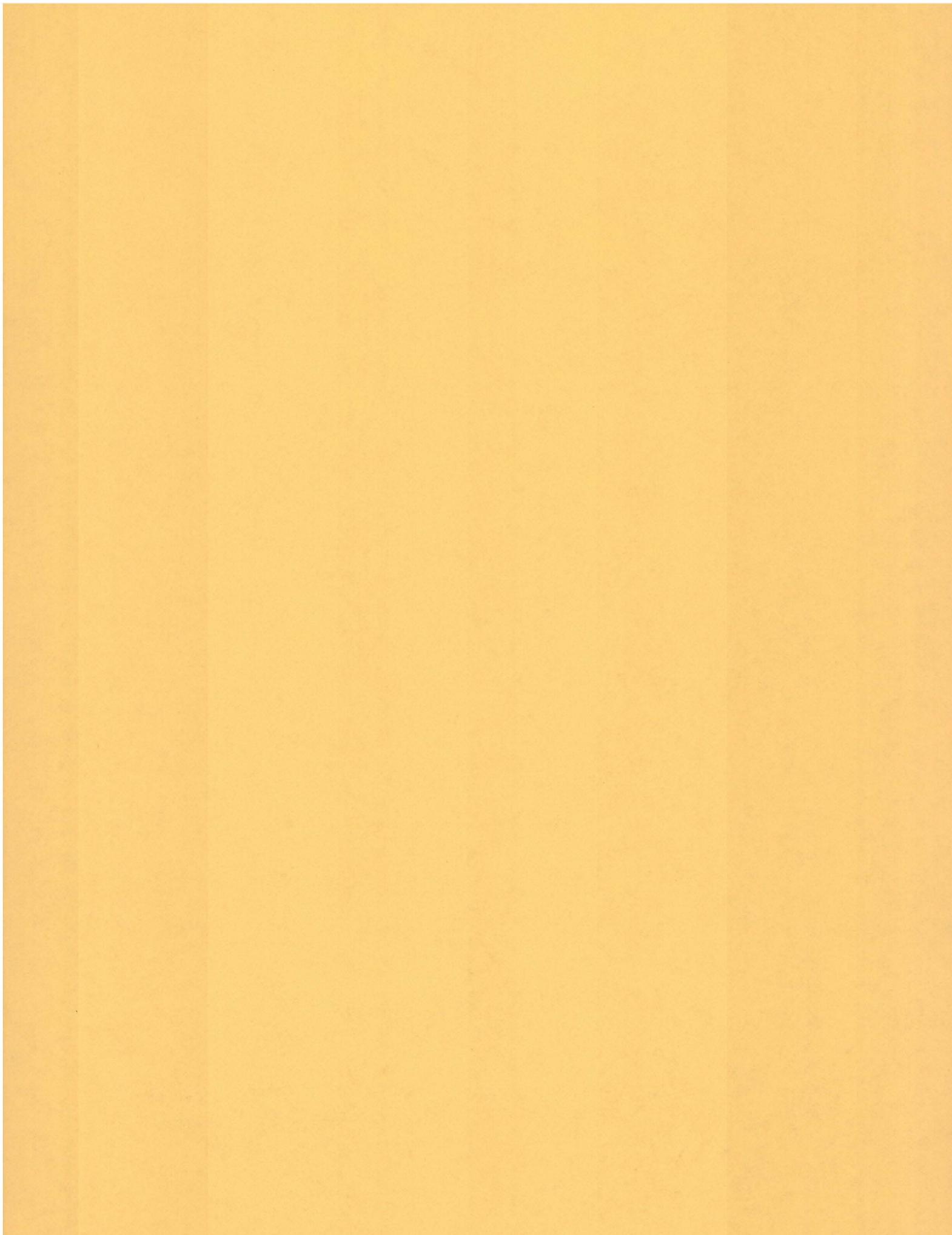
**History:** Amended effective July 1, 1983; March 1, 1985.

**General Authority:** NDCC 43-10-05

**Law Implemented:** NDCC 43-10-14







**TITLE 30**  
**Game and Fish Department**



DECEMBER 1984

30-05-01-06. Practice permits for regattas, races, marine parades, tournaments, or exhibitions. Organizations desiring to practice in preparation for regattas, races, marine parades, tournaments, or exhibitions, as prescribed in North Dakota Century Code section 20.1-13-11, may do so only with written authorization from the commissioner of the game and fish department or the commissioner's designated representatives. An organization representative must file a completed permit application on a form provided by the department. The commissioner or the commissioner's designated representative may issue the permit and designate the date, time, and location for the practice. The names of the individuals to practice must be listed on the permit.

History: Effective December 1, 1984.

General Authority: NDCC 20.1-13-12(3)

Law Implemented: NDCC 20.1-13-10(5), 20.1-13-11



JUNE 1985

**30-03-01-08. Interstate transport.** It shall be illegal to transport minnows or other live bait into or out of the state except with written permission of the game and fish commissioner and only with equipment approved by the commissioner. ~~Permits to transport live bait into or out of the state may be issued only to a wholesaler possessing disease-free certification on the live bait to be transported.~~

**History:** Amended effective June 1, 1985.

**General Authority:** NDCC 20.1-06-14

**Law Implemented:** NDCC 20.1-06-14

**30-05-03-03. Crown Butte.** Boats used powered by gas, gasohol, diesel, or other internal combustion motors are prohibited on the waters of Crown Butte Reservoir in Morton County may be propelled by paddles, oars, or sails only.

**History:** Amended effective June 1, 1985.

**General Authority:** NDCC 20.1-13-12

**Law Implemented:** NDCC 20.1-13-12

**30-05-03-08. Camels Hump Dam.** Boats and watercraft used powered by gas, gasohol, diesel, or other internal combustion motors are prohibited on the waters of Camels Hump Dam in Golden Valley County may be propelled by paddles, oars, or sails only.

**History:** Effective August 1, 1980; amended effective June 1, 1985.

**General Authority:** NDCC 20.1-13-12

**Law Implemented:** NDCC 20.1-13-12

30-05-03-10. Lein Dam. Boats and watercraft used powered by gas, gasohol, diesel, or other internal combustion motors are prohibited on the waters of the Lein Dam in Hettinger County may be propelled by paddles, oars, or sails only.

History: Effective August 1, 1980; amended effective June 1, 1985.

General Authority: NDCC 20.1-13-12

Law Implemented: NDCC 20.1-13-12

30-05-03-13. Hooker Lake. Boats and watercraft used powered by gas, gasohol, diesel, or other internal combustion motors are prohibited on the waters of Hooker Lake in Rolette County may be propelled by paddles, oars, or sails only.

History: Effective August 1, 1980; amended effective June 1, 1985.

General Authority: NDCC 20.1-13-12

Law Implemented: NDCC 20.1-13-12

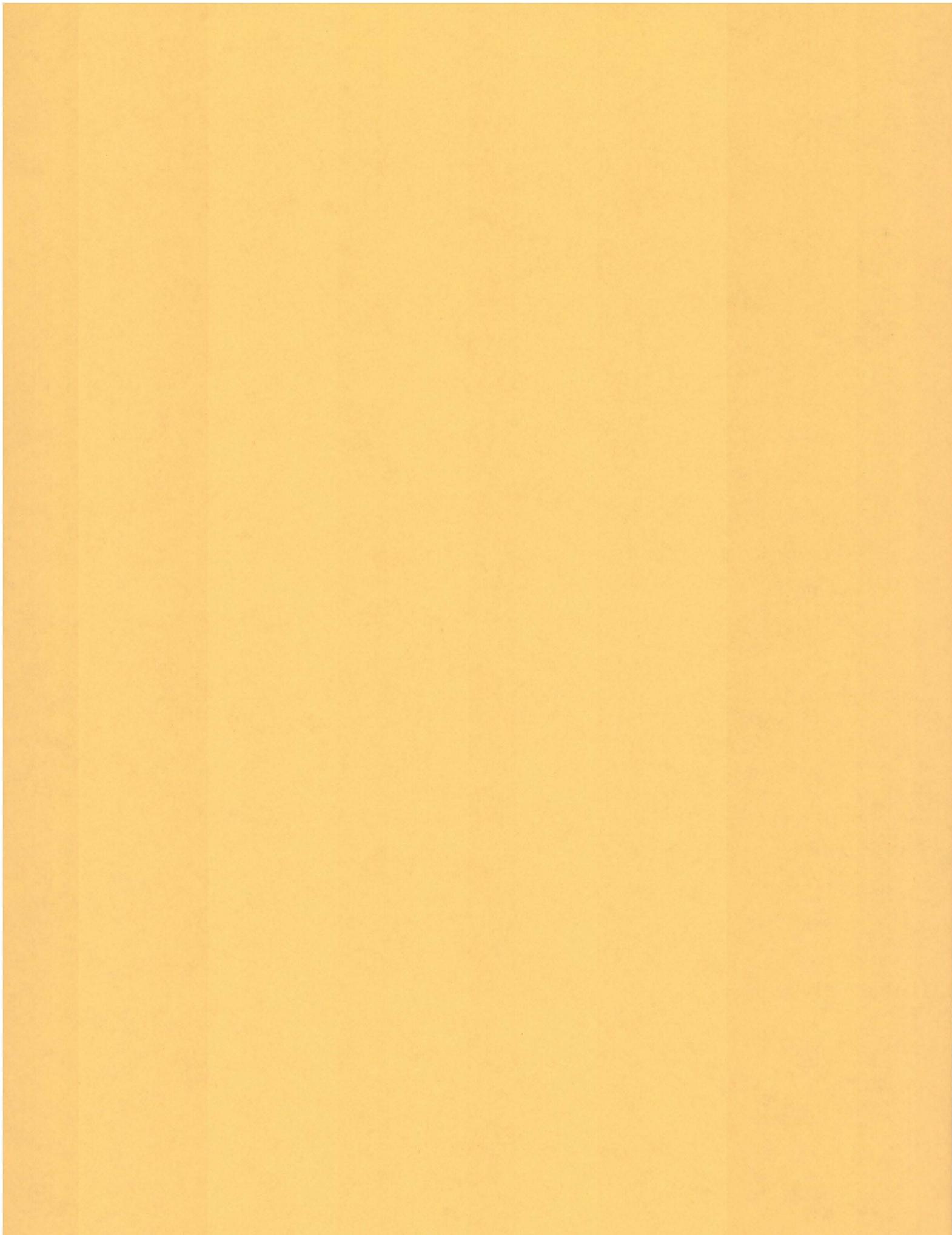
30-05-03-14. Arroda Lakes, East and West. Boats and watercraft used powered by gas, gasohol, diesel, or other internal combustion motors are prohibited on the waters of east and west Arroda Lakes in Oliver County may be propelled by paddles, oars, or sails only.

History: Effective August 1, 1980; amended effective June 1, 1985.

General Authority: NDCC 20.1-13-12

Law Implemented: NDCC 20.1-13-12





**TITLE 33**  
**Health, Department of**



JANUARY 1985

**33-03-13-05. Physical plant.** Buildings housing a residential facility for the physically disabled shall:

1. Comply with North Dakota Century Code section 48-02-19.
  2. Be constructed to accommodate no more than fifteen eligible residents.
  3. Be limited in size to three hundred fifty square feet [32.52 square meters] per resident, inclusive of space for two employees of the applicant. Facilities of more than eight resident beds shall be limited to one hundred seventy-five square feet [16.26 square meters] per additional resident bed.
  4. Be of modest design minimizing the length of hallways, the number of exterior corners, and complexity of construction.
  5. Include provisions for its conversion to an alternate use at a reasonable cost.
  6. Provide space for dining, kitchen, family living and recreation, utility, and bedrooms as an integral part of a single structure.
- ~~4-~~ 7. Provide these sleeping area standards:
- a. Require no more than two residents to share a bedroom other than on a temporary basis.
  - b. Provide no less than one hundred square feet [9.29 square meters] of floor area exclusive of bathroom and closet space for single occupancy bedrooms.

- c. Provide no less than eighty square feet [7.43 square meters] per bed of floor space exclusive of closet and bathroom space in double occupancy bedrooms.
  - d. Locate bedrooms on the outside wall and separate them from other rooms and spaces by walls extending from floor to ceiling.
  - e. Locate bedrooms at or above grade level.
- ~~5-~~ 8. Provide at least one full bathroom for every four residents.
- ~~6-~~ 9. Be designed to accommodate the resident's privacy with bedrooms and bathrooms arranged to provide separation of male and female residents.
- ~~7-~~ 10. Provide sufficient space in the kitchen to permit the participation of residents as well as staff in food preparation. Provide appropriate space and equipment, including a two-compartment sink, to adequately serve the food preparation and storage requirements of the facility.
11. Provide sufficient laundry space to include, in addition to a washer and a dryer, storage for laundry supplies, accommodation for ironing, and counterspace for folding clothing and linens.
- ~~8-~~ 12. Provide these staff accommodations:
- a. Space to accommodate employees, limited to a living room, efficiency kitchen, one full bathroom, and a double occupancy bedroom, when, as a condition of employment, they must live onsite-; or
  - b. A multipurpose space usable for sleeping for employees serving in shifts.
- ~~9-~~ 13. Provide sufficient storage, in addition to closet space, to accommodate the storage of out-of-season clothing, outdoor furniture, garden tools, lawnmower, and other equipment.
- ~~10-~~ 14. Provide a tempering valve, located to preclude resident access, to control the temperature of hot water supplied to lavatories and bathing facilities. The tempering valve shall permit control of temperature in the range of one hundred ten degrees Fahrenheit [47.22 degrees Celsius] to one hundred thirty-five to one hundred forty degrees Fahrenheit [57.22 to 60 degrees Celsius]. Hot water supplied to clotheswashers and dishwashers shall be one hundred thirty-five to one hundred forty degrees Fahrenheit [57.22 to 60 degrees Celsius].
15. Be equipped with emergency lighting capable of sustained battery operation, or onsite emergency electrical generation.

**History:** Effective September 1, 1983; amended effective January 1, 1985.

**General Authority:** NDCC 6-09.6-04

**Law Implemented:** NDCC 6-09.6-04

**33-03-14-03. Fire safety.**

1. Small intermediate care facilities for the developmentally disabled shall be located in areas served by a fire extinguishing organization approved by the state fire marshal.
2. Small intermediate care facilities for the ambulatory developmentally disabled shall comply with chapter 20 of the 1981 edition of the Life Safety Code. The use of chapter 20 rather than chapter 12 is permitted by 42 CFR 442.508 when a waiver is requested from and granted by the department. The department will grant a waiver provided a physician or psychologist, who meets the definition of a qualified mental retardation professional under paragraph 42 CFR 442.401, certifies that each resident served will:
  - a. Be ambulatory;
  - b. Receive active treatment; and
  - c. Be capable of following directions and taking appropriate action for self-preservation under emergency conditions.
3. A small intermediate care facility for the mobile nonambulatory, nonambulatory, and nonmobile shall comply with chapter 12 of the 1981 edition of the Life Safety Code. The fire safety evaluation system may be utilized in the design of the facility and in the evaluation of an existing building.

**History:** Effective September 1, 1983; amended effective January 1, 1985.

**General Authority:** NDCC 6-09.6-04

**Law Implemented:** NDCC 6-09.6-04

**33-03-14-06. Physical plant.** Buildings housing a small intermediate care facility for the developmentally disabled shall:

1. Provide a design making:
  - a. The small intermediate care facility for the ambulatory developmentally disabled accessible to nonambulatory visitors and employees, with at least one bathroom accessible to and usable by such visitors and employees. When the facility is accessible and the bathroom provided, the balance of the handicapped standards may be waived by

the department as provided for in 42 CFR 442.511. The waiver will be granted when only ambulatory developmentally disabled persons are served as listed under subsection 2 of section 33-03-14-03.

- b. The small intermediate care facility for the mobile nonambulatory, nonambulatory, and nonmobile developmentally disabled comply with North Dakota Century Code section 48-02-19.
2. Be constructed to accommodate no more than fifteen eligible residents.
3. Be limited in size to a maximum of three hundred fifty square feet [32.52 square meters] per resident, inclusive of space for two employees. Facilities of more than eight resident beds shall be limited to one hundred seventy-five square feet [16.26 square meters] per additional resident bed.
4. Be of modest design minimizing the length of hallways, the number of exterior corners, and complexity of construction.
5. Provisions for its conversion to an alternate use at a reasonable cost.
6. Provide space for dining, kitchen, family living and recreation, utility, and bedrooms as an integral part of a single structure.
- ~~4~~ 7. Provide these sleeping area standards:
  - a. Require no more than two residents to share a bedroom other than on a temporary basis.
  - b. Provide no less than one hundred square feet [9.29 square meters] of floor area exclusive of bathroom and closet space for single occupancy bedrooms.
  - c. Provide no less than eighty square feet [7.43 square meters] per bed of floor space exclusive of closet and bathroom space in double occupancy bedrooms.
  - d. Locate bedrooms on an outside wall and separate them from other rooms and spaces by walls extending from floor to ceiling.
  - e. Locate bedrooms at or above grade level.
- ~~5~~ 8. Provide at least one full bathroom for every four residents.
- ~~6~~ 9. Be designed to accommodate the resident's privacy, with bedrooms and bathrooms arranged to provide separation of male and female residents.

- 7- 10. Provide sufficient space in the kitchen to permit the participation of residents as well as staff in food preparation. Provide appropriate space and equipment, including a two-compartment sink, to adequately serve the food preparation and storage requirements of the facility.
11. Provide sufficient laundry space to include, in addition to a washer and dryer, storage for laundry supplies, accommodation for ironing, and counterspace for folding clothing and linens.
- 8- 12. Provide staff accommodations:
- a. Space to accommodate employees, limited to a living room, efficiency kitchen, one full bathroom, and a double occupancy bedroom, when, as a condition of employment, they must live onsite; or
  - b. A multipurpose space usable for sleeping for employees serving in shifts.
- 9- 13. Provide sufficient storage, in addition to closet space, to accommodate the storage of out-of-season clothing, outdoor furniture, garden tools, lawnmower, and other equipment.
- 10- 14. Provide a tempering valve, located to preclude resident access, to control the temperature of hot water supplied to lavatories and bathing facilities. The tempering valve shall permit control of temperature in the range of one hundred ten degrees Fahrenheit [47.22 degrees Celsius] to one hundred thirty-five to one hundred forty degrees Fahrenheit [57.22 to 60 degrees Celsius]. Hot water supplied to clotheswashers and dishwashers shall be one hundred thirty-five to one hundred forty degrees Fahrenheit [57.22 to 60 degrees Celsius].
15. Be equipped with emergency lighting capable of sustained battery operation.

**History:** Effective September 1, 1983; amended effective January 1, 1985.

**General Authority:** NDCC 6-09.6-04

**Law Implemented:** NDCC 6-09.6-04

**33-07-01-02. Governing body.**

1. The governing body shall be legally responsible for its institutions.
2. Bed capacity is established in sections 33-07-01-01, 33-07-02-08, 33-07-02-09, 33-07-02-10, and 33-07-02-11. The patient census of a hospital shall not exceed the licensed bed capacity during normal circumstances. However, the patient census in a hospital can exceed the licensed bed capacity for

a short period as a result of accidents, natural disasters, or other unusual circumstances not under the control of the hospital. The hospital governing body shall adopt policies governing utilization of hospital spaces after conferring with the medical staff. Hospitals exceeding their licensed bed capacity shall report the circumstances to the state department of health along with the steps that have been initiated to address the short-term emergency situation.

**History:** Amended effective January 1, 1985.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-02

STAFF COMMENT: Article 33-29 contains all new material but is not underscored so as to improve readability.

## ARTICLE 33-29

### POOL FACILITIES

Chapter  
33-29-01 Pool Facilities in North Dakota

#### CHAPTER 33-29-01 POOL FACILITIES IN NORTH DAKOTA

Section	
33-29-01-01	Definitions
33-29-01-02	Designated Responsible Individuals
33-29-01-03	Certified Laboratories and Analytical Procedures
33-29-01-04	Maximum Contaminant Level
33-29-01-05	Microbiological Contaminant Sampling Frequency and Analysis
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33-29-01-10	Right of Onsite Inspection
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33-29-01-12	Observance of State and Local Rules
33-29-01-13	Administrative Procedure and Judicial Review
33-29-01-14	Injunction Proceedings
33-29-01-15	Enforcement

**33-29-01-01. Definitions.** The following definitions apply as used in this chapter:

1. "Appurtenances" means all filtration systems, chlorination systems, pumps, valves, meters, bathhouses or other devices, walkways, or buildings utilized for the proper supervision, operation, and maintenance of a pool facility.
2. "Bather" means any person using the pool and adjoining deck areas for the purpose of water sports or related activities.
3. "Department" means the North Dakota state department of health.
4. "Maximum contaminant level" means the maximum permissible number of organisms as indicated on the standard plate count, membrane filter, or in the fermentation tube test.
5. "Pool facility" means a public, semipublic, special use pool, or spa.
6. "Premises" means the area enclosed by a barrier and any adjacent support facilities such as bathhouses, clubhouses, shower rooms, equipment rooms, etc., including the office of operational and maintenance personnel.
7. "Private" means a pool or spa which is located on private property under the control of the homeowner, the use of which is limited to swimming or bathing by members of the owner's family or their invited guests.
8. "Public" means a pool or spa intended to be used collectively by the general public for swimming or bathing, regardless of whether a fee is charged for such use.
9. "Semipublic" means a pool or spa on the premises of, or part of, a motel, mobile home park, apartment, condominium, subdivision, club, camp, institution, school, or similar establishments where the primary business of the establishment is not the operation of a pool or spa and where admission to the use of the pool or spa is included in the fee, or consideration paid or given for the primary use of the premises to such groups and their invited guests.
10. "Spa" means a pool used exclusively in conjunction with high velocity air or high velocity water recirculation systems utilizing hot, cold, or ambient temperature water including all appurtenances used in connection with the spa.
11. "Special use" means a pool or spa used exclusively for a particular purpose, including but not limited to treatment pools, therapeutic pools, and special pools for water therapy.

12. "Swimming pool" means any indoor or outdoor structure, basin, chamber, or tank containing an artificial body of water for swimming, diving, wading, or recreative bathing including all appurtenances used in connection with the swimming pool.

**History:** Effective January 1, 1985.

**General Authority:** NDCC 23-01-03

**Law Implemented:** NDCC 23-01-03

**33-29-01-02. Designated responsible individuals.** The owner or operator is responsible for communicating with the department in matters relating to pool facility construction or alteration, monitoring and sampling, maintenance, operation, recordkeeping, and reporting required by this chapter.

**History:** Effective January 1, 1985.

**General Authority:** NDCC 23-01-03

**Law Implemented:** NDCC 23-01-03

**33-29-01-03. Certified laboratories and analytical procedures.** All microbiological samples must be analyzed by a laboratory which has been certified by the department and which uses approved analytical procedures.

**History:** Effective January 1, 1985.

**General Authority:** NDCC 23-01-03

**Law Implemented:** NDCC 23-01-03

**33-29-01-04. Maximum contaminant level.** The maximum contaminant level for pool facility water may not exceed two hundred bacteria colonies per one milliliter of sample on a standard plate count or show the presence of organisms of the coliform group in a fermentation tube test or membrane filter test.

**History:** Effective January 1, 1985.

**General Authority:** NDCC 23-01-03

**Law Implemented:** NDCC 23-01-03

**33-29-01-05. Microbiological contaminant sampling frequency and analysis.**

1. a. Sampling frequency for public swimming pools or spas. The owner or operator of a public swimming pool or spa is required to submit for analysis, one swimming pool or spa water sample every week during the swimming pool's or spa's period of operation.
- b. In cases where public swimming pools or spas have a period of operation of a full twelve months per year, approved

disinfection residuals and pH test results may be substituted for fifty percent of the microbiological samples. A minimum of one swimming pool or spa sample must be submitted for microbiological analysis every other week.

2. Sampling frequency for semipublic and special use pools or spas. The owner or operator of a semipublic or special use pool or spa is required to submit for analysis, one swimming pool or spa water sample every month during the swimming pool's or spa's period of operation.
3. All microbiological analyses must be composed of a standard plate count or coliform test. The type or combination of the required testing must be determined by the department.
4. Microbiological contaminant sampling frequency requirements may be increased at the discretion of the department.
5. Microbiological testing requirements required by the department will be provided free of charge by the public health laboratory to all nonprofit organizations in the state.

**History:** Effective January 1, 1985.

**General Authority:** NDCC 23-01-03

**Law Implemented:** NDCC 23-01-03

**33-29-01-06. Turbidity/clarity requirements.** Swimming pool water must have sufficient clarity at all times such that the main drain or drains located at the deep end of the pool are clearly visible from the pool decking or a black and white disk, six inches [15.24 centimeters] in diameter, is clearly visible from the pool decking when placed at the deep end of the pool.

**History:** Effective January 1, 1985.

**General Authority:** NDCC 23-01-03

**Law Implemented:** NDCC 23-01-03

**33-29-01-07. Disinfectant residual.** All pool facilities shall disinfect the pool water by continuous chlorination or other means or methods of equal bactericidal efficiency. A minimum free chlorine residual of one milligram per liter (mg/l) or a department approved halogen, or compounds of them, imparting an equivalent disinfecting residual must be maintained in the pool facility water at all times. All disinfectants utilized in a pool facility may not be detrimental to the health or safety of the general public.

**History:** Effective January 1, 1985.

**General Authority:** NDCC 23-01-03

**Law Implemented:** NDCC 23-01-03

**33-29-01-08. Record maintenance.** The owner or operator of a pool facility shall retain on the premises or at a convenient location near the premises, the following records:

1. Microbiological analyses. Records of microbiological analyses must be kept for not less than three years. Actual laboratory reports may be kept, or may be transferred to tabular summaries, provided that the following information is included:
  - a. The date, place and time of sampling, and the name of the person who collected the sample.
  - b. The date of analysis.
  - c. The laboratory performing the test.
  - d. The analytical technique or method used.
  - e. The results of the analysis.
2. Monthly operation report. All pool facilities shall maintain records of operation to be kept for not less than three years. Records shall be kept of pH, disinfectant residual and temperature, together with other data as may be required on forms furnished by the department.
3. All pool facilities shall maintain copies of written reports, pool surveys, or other correspondence received from the department for a period of three years.

**History:** Effective January 1, 1985.

**General Authority:** NDCC 23-01-03

**Law Implemented:** NDCC 23-01-03

**33-29-01-09. Reporting requirements.**

1. Except where a shorter reporting period is specified, the owner or operator of a pool facility shall report to the department the results of any microbiological analysis within seven days of the date of when the owner or operator has received the analytical results.
2. The owner or operator shall notify the department within seventy-two hours of the failure to comply with this chapter.
3. The owner or operator is not required to report analytical results to the department in cases where a certified laboratory performed the analysis and reported the results to the department.

**History:** Effective January 1, 1985.

**General Authority:** NDCC 23-01-03  
**Law Implemented:** NDCC 23-01-03

**33-29-01-10. Right of onsite inspection.**

1. A duly authorized officer, employee or agent of the department may enter and inspect any property, premises, or place on or at which a pool facility is located or is being constructed.
2. The department may conduct tests and take samples of water or other materials which affect or may affect the general health or safety of bathers. The department has access to and may copy any records required under this chapter and may inspect any equipment located on the premises pertaining to the pool facility's operation and maintenance.

**History:** Effective January 1, 1985.  
**General Authority:** NDCC 23-01-03  
**Law Implemented:** NDCC 23-01-03

**33-29-01-11. Right of closure.** If a pool facility has been determined to be a health or safety hazard or in the event of a failure to comply with any of the requirements of this chapter, the department may abate or cause the suspension of the use of such a pool facility until such time as the pool facility is no longer deemed a health or safety hazard.

**History:** Effective January 1, 1985.  
**General Authority:** NDCC 23-01-03  
**Law Implemented:** NDCC 23-01-03

**33-29-01-12. Observance of state and local rules.** The construction, operation, and maintenance of pool facilities must be conducted in accordance with appropriate state building, plumbing, and electrical codes, and with all pertinent state and local health department rules. In the event of any conflict between the provisions of these rules and the provisions of any other ordinance, the provision imposing the higher standard or more stringent requirement is controlling.

**History:** Effective January 1, 1985.  
**General Authority:** NDCC 23-01-03  
**Law Implemented:** NDCC 23-01-03

**33-29-01-13. Administrative procedure and judicial review.** Any proceeding under this chapter for the issuance or modification of rules and enforcement procedures of the department shall be conducted in accordance with article 33-22 and North Dakota Century Code chapter 28-32. Where an emergency exists requiring immediate action to protect

the public health and safety, the department may, without notice or hearing, issue an order reciting the existence of such emergency and require such remedial actions as are necessary. The order is effective immediately, but on application to the department within ten days of the order, any person to whom the order is directed must be awarded a hearing. The hearing must be in accordance with article 33-22 and North Dakota Century Code chapter 28-32. On the basis of such hearing, the

emergency order must be continued, modified, or revoked, within thirty days after the hearing.

**History:** Effective January 1, 1985.

**General Authority:** NDCC 23-01-03

**Law Implemented:** NDCC 23-01-03

**33-29-01-14. Injunction proceedings.** Whenever, in the judgment of the department, any person has engaged in or is about to engage in any acts or practices which constitute a violation of this chapter, or any rule or order issued hereunder, the department may maintain an action in the name of the state enjoining such action or practices or for an order directing compliance and, upon a showing by the department that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

**History:** Effective January 1, 1985.

**General Authority:** NDCC 23-01-03

**Law Implemented:** NDCC 23-01-03

**33-29-01-15. Enforcement.** If, after the completion of the administrative hearing process, the department determines that a violation of this chapter, or any rule or order of the department issued under this chapter, has occurred, it shall make all of its evidence and findings available to the attorney general for use in any remedial action his office determines to be appropriate, including an action of injunctive relief.

**History:** Effective January 1, 1985.

**General Authority:** NDCC 23-01-03

**Law Implemented:** NDCC 23-01-03

MARCH 1985

**33-11-01-01. Definitions.** Words defined in North Dakota Century Code chapter 23-27 shall have the same meaning in this chapter.

1. "An ambulance driver" means an individual who operates a vehicle as defined in section 33-11-01-07.
2. "An ambulance run" means the response of an ambulance vehicle and personnel to an emergency or nonemergency for the purpose of rendering medical care or transportation or both to someone sick or incapacitated.
3. "An attendant" means a qualified individual responsible for the care of the patient while on an ambulance run pursuant to the requirements in section 33-11-01-09.
4. "Department" means the state department of health as defined in North Dakota Century Code chapter 23-01.
5. "Driver's license" means the license as required under North Dakota Century Code section 39-06-01.
6. "Emergency care technician" means a person who meets the requirements of the state emergency care technician program and is certified by the department.
7. "Emergency medical technician-ambulance" means a person who meets the requirements of the national emergency medical technician-ambulance program and is certified by the national registry of emergency medical technicians.
8. "Emergency medical technician-paramedic" means a person who meets the requirements of the national emergency medical technician-paramedic program and is certified by the national registry of emergency medical technicians.

- 6- 9. "Equivalent" means training of equal or greater value which accomplishes the same results.
- 7- 10. "Personnel" means qualified attendants, or drivers, or both, within an ambulance service.
- 8- 11. "Separate location" means separate town, city, or municipality.
- 9- 12. "State health council" means the council as defined in North Dakota Century Code title 23.

**History:** Effective September 25, 1979; amended effective March 1, 1985.

**General Authority:** NDCC 23-27-04

**Law Implemented:** NDCC 23-27-04

### 33-11-01-03. Application for license.

1. Application for the license shall be made in the manner prescribed by the department.
2. The application must be for either basic life support ambulance service as defined in chapter 33-11-02, or for advanced life support ambulance service as defined in chapter 33-11-03.
- 2- 3. Operators operating more than one ambulance service out of separate locations are required to apply for a license and pay an annual license fee for each location.

**History:** Effective September 25, 1979; amended effective March 1, 1985.

**General Authority:** NDCC 23-27-04

**Law Implemented:** NDCC 23-27-04

### 33-11-01-04. Issuance and renewal of licenses.

1. On receipt of an initial or renewal application, the department or its authorized agent may inspect the ambulance service. If minimum standards, described in this chapter, for either basic life support ambulance services or advanced life support ambulance services, are met, the department shall issue a license.
2. If minimum standards, for either basic life support ambulance services or advanced life support ambulance services, are not met, the department will allow the ambulance service thirty days to comply with the standards. The department will work with the ambulance service to obtain compliance.

**History:** Effective September 25, 1979; amended effective March 1, 1985.

**General Authority:** NDCC 23-27-04

Law Implemented: NDCC 23-27-04

**33-11-01-05. Special licenses and waivers.**

1. An operator of a surface ambulance service intended for industrial site use, such as the Coyote Project near Beulah and the Coal Creek Station near Fairbairn, or other special purpose such as sporting events, tourist gatherings, et cetera, may be issued a special license by the department.
2. Based on each individual case, the department may waive any provisions of this chapter.
3. The waiver provision shall only be used for a specific period in specific instances provided such a waiver does not adversely affect the health and safety of the person transported, and then only if a nonwaiver would result in unreasonable hardship upon the ambulance service.
4. A waiver consideration at special events will be pursued only after department consultation with the local ambulance service.

History: Effective September 25, 1979; amended effective March 1, 1985.  
General Authority: NDCC 23-27-01  
Law Implemented: NDCC 23-27-01

**33-11-01-08. Training standards for ambulance driver.**

1. The driver shall have a current American heart association basic rescuer (cardiopulmonary resuscitation) certification unless there are two attendants as defined in section 33-11-01-09 or one attendant plus one other person with a current American heart association basic rescuer certification attending the patient and shall meet the requirements as defined under subsection 1 of section 33-11-01-01.
2. The requirements of subsection 1 become effective July 1, 1980.
3. From September 25, 1979, through June 30, 1980, the driver shall have a current valid North Dakota driver's license pursuant to requirements under North Dakota Century Code chapter 39-06.

History: Effective September 25, 1979.  
General Authority: NDCC 23-27-04  
Law Implemented: NDCC 23-27-04

33-11-01-08. Number of personnel required. The minimum personnel required on each ambulance run shall be one driver and one attendant.

History: Effective September 25, 1979; amended effective March 1, 1985.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

~~33-11-01-09. Training standards for attendant.~~

- ~~1. The attendant shall have a current certification in the American national red cross advanced first aid and emergency care course or its equivalent as may be prescribed by the department and shall have a current American heart association basic rescuer (cardiopulmonary resuscitation) certification.~~
- ~~2. The requirements of subsection 1 become effective July 1, 1980.~~
- ~~3. From September 25, 1979, through June 30, 1980, the attendant shall have a current certificate indicating completion of the American national red cross standard first aid and personal safety course or by the mine safety and health administration, or the equivalent thereof.~~

History: ~~Effective September 25, 1979.~~

General Authority: ~~NDEC 23-27-04~~

Law Implemented: ~~NDEC 23-27-04~~

33-11-01-09. Other requirements.

1. Personnel must be able to identify and locate all equipment items required to be carried in an ambulance.
2. All licensed ambulance services shall keep the ambulance vehicle interior and exterior and other equipment clean and in proper working order.
3. All linens, airways, oxygen masks, nasal cannulas, and other equipment coming in direct contact with the patient, must be either a single-use disposable type, or cleaned, laundered, or disinfected after each use.
4. When a vehicle has been utilized to transport a patient known to have a communicable disease other than a common cold, the vehicle and all exposed equipment shall be disinfected before the transport of another patient.

History: Effective September 25, 1979; amended effective March 1, 1985.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

~~33-11-01-10. Number of personnel required. The minimum personnel required on each ambulance run shall be one driver and one attendant.~~

History: Effective September 25, 1979.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01-10. Out-of-state operators.

1. Operators from another state may pick up patients within this state for transportation to locations within this state under the following circumstances:
  - a. When there is a natural disaster, such as a tornado, earthquake, or other disaster which may require all available ambulances to transport the injured; or
  - b. When an out-of-state ambulance is traveling through the state for whatever purpose comes upon an accident where immediate emergency ambulance services are necessary.
2. Out-of-state ambulance services who expect to pick up patients from within this state and transport to locations within this state are expected to meet the North Dakota state standards and become licensed under North Dakota Century Code chapter 23-27 and this chapter.

History: Effective September 25, 1979; amended effective March 1, 1985.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

**33-11-01-11. Minimum equipment requirements.** Redesignated as section 33-11-02-03, effective March 1, 1985.

**33-11-01-12. Other requirements.** Repealed effective March 1, 1985.

**33-11-01-13. Out-of-state operators.** Repealed effective March 1, 1985.

STAFF COMMENT: Chapters 33-11-02 and 33-11-03 are not underscored as these are old sections redesignated and not substantially changed.

**CHAPTER 33-11-02  
BASIC LIFE SUPPORT AMBULANCE LICENSE**

Section	
33-11-02-01	Training Standards for Ambulance Driver
33-11-02-02	Training Standards for Attendant
33-11-02-03	Minimum Equipment Requirements

**33-11-02-01. Training standards for ambulance driver.** The driver shall have a current American heart association basic rescuer (cardiopulmonary resuscitation) certification, or equivalent as prescribed by the department, unless there are two attendants as defined in section 33-11-02-02 or one attendant plus one other person with a current American heart association basic rescuer certification, or equivalent, attending the patient.

**History:** Effective March 1, 1985.  
**General Authority:** NDCC 23-27-04  
**Law Implemented:** NDCC 23-27-04

**33-11-02-02. Training standards for attendant.** The attendant must have a current certification in the American national red cross advanced first aid course or its equivalent as may be prescribed by the department and must have a current American heart association basic rescuer (cardiopulmonary resuscitation) certification or its equivalent.

**History:** Effective March 1, 1985.  
**General Authority:** NDCC 23-27-04  
**Law Implemented:** NDCC 23-27-04

**33-11-02-03. Minimum equipment requirements.**

1. Ambulance cot with retaining straps.
2. Stretchers with retaining straps. Vehicle design dictates quantity.
3. Piped oxygen system - with appropriate regulator and flow meter, or two "E" size bottles for minimum oxygen supply with regulator and flow meter.
4. Portable oxygen unit with carrying case. To include one "D" size bottle with another "D" bottle in reserve.
5. Nasal cannulas and oxygen masks with tubing - transparent and assorted sizes.

6. Suction - portable.
7. Bag mask type resuscitation unit with child and adult size face masks.
8. Spine boards - one full-size and one half-size, with retaining straps.
9. Fracture splints - operator's option: inflatable, ladder, frac-kit, board, or cardboard.
10. Two or more padded boards one-half inch by three and one-half inches wide by four and one-half feet long [1.27 centimeters by 8.89 centimeters wide by 11.43 centimeters long], and two or more padded boards one-half inch by three and one-half inches wide by three feet long [1.27 centimeters by 8.89 centimeters wide by .91 meters long].
11. Cold paks - four minimum.
12. Fire extinguisher - dry chemical, mounted, five pound [2.27 kilogram] minimum.
13. Sandbags - two or more.
14. Obstetrical kit - disposable.
15. Poison kit or syrup of ipecac.
16. Two sterile burn sheets.
17. Triangular bandages.
18. Universal dressings - approximately ten inches [25.4 centimeters] by thirty-six inches [91.44 centimeters].
19. Sterile gauze pads - four inches [10.16 centimeters] by four inches [10.16 centimeters].
20. Soft roller self-adhering type bandages - six inches [15.24 centimeters] by five yards [4.57 meters]. Also two-inch [5.08-centimeters] roller bandage.
21. Bite sticks.
22. Oropharyngeal airways in adult, child, and infant sizes.
23. Mouth-to-mouth artificial ventilation airways for adults and children.
24. Roll of aluminum foil - eighteen inches [45.72 centimeters] by twenty-five feet [7.62 meters] - sterilized and wrapped.

25. Adhesive tape - assorted sizes.
26. Shears - blunt - two minimum.
27. Large size safety pins.
28. Bedpan, emesis basin, urinal.
29. Distilled water or saline solution.
30. Intravenous bottleholder - cot mounted or ceiling hooks.
31. Flashlights - two minimum.
32. Sanitary napkins.
33. Cotton tip applicators.
34. Cervical collar, headband, chin straps.
35. Adequate blankets, sheets, pillows, towels, et cetera.
36. Sterilization agent to clean equipment - local option.
37. Reflectorized flares for securing scene - set of three minimum.
38. One set socket wrenches, crowbar, heavy hammer, screwdriver, hacksaw, pliers, et cetera.
39. Blood pressure monometer, cuff, and stethoscope.
40. Lower extremity traction splint.
41. VHF radio with eight channel capability meeting state emergency medical services standards.

**History:** 33-11-01-11; redesignated effective March 1, 1985.

**General Authority:** NDCC 23-27-04

**Law Implemented:** NDCC 23-27-04

## CHAPTER 33-11-03 ADVANCED LIFE SUPPORT AMBULANCE LICENSE

Section	
33-11-03-01	Standards for Personnel
33-11-03-02	Minimum Equipment Standards
33-11-03-03	Minimum Medication Requirements

33-11-03-04            Medical Director  
33-11-03-05            Availability on First Call  
33-11-03-06            Advertising Restrictions

**33-11-03-01. Standards for personnel.**

1. One person must have, as a minimum, a current emergency medical technician-ambulance certification.
2. One person must have, as a minimum, a current emergency medical technician-paramedic certification, or be a registered nurse currently certified as an emergency medical technician-ambulance who has a current American heart association advanced cardiac life support certification.

**History:** Effective March 1, 1985.

**General Authority:** NDCC 23-27-04

**Law Implemented:** NDCC 23-27-04

**33-11-03-02. Minimum equipment standards.** The ambulance must contain all the equipment requirements as found in 33-11-02-03, plus the following:

1. Cardiac monitor. Defibrillator with pediatric capabilities; electrocardiogram voice recorder if automatic defibrillator is used.
2. Portable radio. Rechargeable battery operated capable of reaching law enforcement and hospitals.
3. Portable suction. Rechargeable battery operated with appropriate catheters.
4. Medical antishock trousers. Three air chambers, adult size.
5. Esophageal obturator airway.
6. Intravenous therapy equipment. Catheters, tubing solutions, as approved by medical director.
7. Blood tubes.
8. Syringes and needles.
9. Alcohol swabs. Betadine swabs.
10. Electrocardiogram supplies. Rolls of electrocardiogram paper, monitor electrodes and defibrillator pads.
11. Chemstix or dextrostix.

**History:** Effective March 1, 1985.

**General Authority:** NDCC 23-27-04  
**Law Implemented:** NDCC 23-27-04

**33-11-03-03. Minimum medication requirements.** The ambulance must contain the following medications:

1. Sodium bicarbonate.
2. Epinephrine.
3. Lidocaine.
4. Atropine.
5. Naloxone.
6. Nitroglycerin.
7. Diazepam.
8. Dextrose fifty percent.

**History:** Effective March 1, 1985.  
**General Authority:** NDCC 23-27-04  
**Law Implemented:** NDCC 23-27-04

**33-11-03-04. Medical director.** Each ambulance service shall have a North Dakota licensed physician who shall serve as official medical director and whose duties include, but are not limited to, establishing local medical protocols, recommending optional equipment for ambulance service; and maintaining current training requirements for personnel.

**History:** Effective March 1, 1985.  
**General Authority:** NDCC 23-27-04  
**Law Implemented:** NDCC 23-27-04

**33-11-03-05. Availability on first call.** The advanced life support ambulance must be available for the first call. A basic life support ambulance may be offered on prescheduled nonemergency calls.

**History:** Effective March 1, 1985.  
**General Authority:** NDCC 23-27-04  
**Law Implemented:** NDCC 23-27-04

**33-11-03-06. Advertising restrictions.** No ambulance service may advertise itself as an advanced life support ambulance service unless it is so licensed.

**History:** Effective March 1, 1985.

General Authority: NDCC 23-27-04  
Law Implemented: NDCC 23-27-04

33-16-02-01. Declaration of policy. The state of North Dakota declares that public policy shall be to maintain reasonable standards of quality and purity of the waters of the state, and to be essentially in compliance with section 101(a) of the 1972 Federal Water Pollution Control Act, as amended. This chapter is promulgated to be consistent with the public health and the public enjoyment of such waters, for the propagation and protection of fish and wildlife, and the economic, industrial, and social development of the state. The waters of the state shall include those waters within the state as defined in North Dakota Century Code section 61-01-01 and those rivers, streams, and lakes forming boundaries between North Dakota and other states or Canada. All known and reasonable methods to control and prevent pollution of the waters of North Dakota shall be required. The state of North Dakota, in accordance with the 1972 Federal Water Pollution Control Act, as amended, declares that state and public policy is to maintain or improve, or both, standards of quality and purity of the waters of this state. These standards are established for the protection of public health and enjoyment of these waters, to ensure the propagation and well-being of fish, wildlife, and all biota associated or dependent upon said waters, and to safeguard social, economical, and industrial development associated with this resource. The waters of the state include those waters within the state as defined in North Dakota Century Code section 61-01-01 and those rivers, streams, and lakes forming boundaries between this state and other states or Canada. All known and reasonable methods to control and prevent pollution of the waters of this state are required, including improvement in water quality, when feasible.

The portion of the statement of policy contained in North Dakota Century Code section 61-28-01 which reads as follows, ~~shall become~~ is a part of this chapter:

It is hereby declared to be the policy of the state of North Dakota to act in the public interest to protect, maintain and improve the quality of the waters in the state for continued use as public and private water supplies, propagation of wildlife, fish and aquatic life, and for domestic, agricultural, industrial, recreational and other legitimate beneficial uses, to require necessary and reasonable treatment of sewage, industrial, or other wastes.

It is the purpose of this chapter to maintain and improve the quality of waters in the state and to maintain and protect existing water uses. The "quality of the waters" shall be the quality of record existing at the time the first standards were established in 1967, or later records if these indicate an improved quality in certain waters. ~~However, there are parameters of quality included herein~~

which are more stringent than those in previous standards and new parameters of quality which have been added. It is intended that these parameters of quality will be attained by July 17, 1979. Waters whose existing quality is higher than the established standards will be maintained at the higher quality unless it can be affirmatively demonstrated that a change in quality is justifiable to provide necessary economic or social development and will not adversely affect the stated beneficial uses of the water. All exceptions must be supported by data. Exceptions will be granted only on a case-by-case basis for any specific water quality criteria or parameters and will be granted in accordance with the procedures outlined in the North Dakota continuing planning process.

Any industrial, public, or private project or development other than municipal which will ~~constitute~~ constitutes a new or increased source of pollution to high quality waters will be required to ~~shall~~ provide at least the best practicable degree of treatment available under present existing technology as designated in the North Dakota pollutant discharge elimination system. Municipal wastes ~~will~~ are required to meet the effluent requirements as noted in subsection 3 of section 33-16-02-04. The environmental protection agency will be kept advised and provided with the information needed to ~~discharge~~ perform its responsibilities under the Federal Water Pollution Control Act, as amended.

History: Amended effective March 1, 1985.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

### 33-16-02-02. ~~Definition~~ Definitions.

1. "Consecutive thirty-day average" is the average of samples taken during any consecutive thirty-day period, but not a requirement for thirty consecutive daily samples.
2. A standard defined as "dissolved" means the total quantity of a given material present in a filtered water sample, regardless of the form or nature of its occurrence.
- 1- 3. "Pollution" means such contamination; or other alteration of the physical, chemical, or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters; or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic ~~life~~ biota.

4. A standard defined as "total" means the total quantity of a given material present in an unfiltered water sample regardless of the form or nature of its occurrence. This includes both dissolved and suspended forms of a substance, including the total amount of the substance present as a constituent of the particulate material.

2- 5. "Water usage". The best usage for the waters shall be those uses determined to be the most consistent with present and potential uses in accordance with the economic and social development of the area. Present principal best uses are those defined in subdivisions a, b, c, and d, but are not to be construed to be the only possible usages permitted.

a. Agricultural uses. Water suitable for irrigation, stock watering, and other agricultural uses, but not suitable for use as a source of domestic supply for the farm unless satisfactory treatment is provided.

b. Industrial water. Waters that are suitable for industrial purposes, including food processing, after treatment. Treatment may include that necessary for prevention of boiler scale and corrosion.

c. Municipal and domestic water. Waters that are suitable for use as a source of water supply for drinking and culinary purposes after treatment to a level approved by the state department of health.

d. Recreation, fishing, and wildlife. Waters that are suitable for the propagation or support of fish and other aquatic ~~life~~ biota; that will not adversely affect wildlife in the area; and are suitable for boating and swimming. (Natural high turbidities in some waters and physical characteristics of banks and streambeds of many streams are factors that limit their value for bathing. Low flows or natural physical and chemical conditions in some waters may limit their value for fish propagation or aquatic ~~life~~ biota.)

History: Amended effective March 1, 1985.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

33-16-02-03. Variances. Where, upon written application by the responsible person or persons, the department finds that by reason of exceptional circumstances, the strict enforcement of any provision in this chapter, including water quality criteria, would cause undue hardship, adversely affect public health, safety, or welfare, or would be unreasonable, impractical, or not feasible under the circumstances, the department in its discretion may permit a

variance therefrom upon such conditions and within such time limitations as it may prescribe for prevention, control, or abatement of water pollution in harmony with the intent and general purposes of this chapter and applicable state and federal laws. The United States environmental protection agency will be advised of such variances and informed as to the need therefor. Where, upon written application by the responsible discharger, the department finds that by reason of substantial and widespread economic and social impacts the strict enforcement of state water quality criteria is not feasible, the department can permit a variance. The department can set conditions and time limitations with the intent that progress toward improvements in water quality will be made. The United States environmental protection agency will be advised of such variances and informed as to the need.

History: Amended effective March 1, 1985.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

**33-16-02-04. General requirements.** The following are general requirements for all waste discharges:

1. No untreated domestic sewage shall be discharged into the surface waters of North Dakota.
2. No untreated industrial wastes or other wastes which contain substances or organisms which may endanger public health or degrade the receiving water body's quality or water usage shall be discharged into the waters of North Dakota.
3. The degree of treatment for municipal wastes shall be that required by the department and shall be based on the following:
  - a. Municipal wastes are to receive a minimum of secondary treatment or equivalent which shall be equal to at least an eighty-five percent removal of five-day biochemical oxygen demand, or shall meet the effluent standards noted in subdivision c. The more restrictive requirements shall apply.
  - b. Wastes shall be effectively disinfected before discharge into state waters if such discharges cause violation of the fecal coliform criteria as set forth in these standards.
  - c. No municipal waste discharge shall be permitted unless the effluent meets the following criteria:
    - (1) Five-day biochemical oxygen demand: Twenty-five milligrams per liter consecutive thirty-day average.

- (2) Suspended solids: Thirty milligrams per liter consecutive thirty-day average.

In certain instances, external circumstances or specific uses of the receiving waters make either attainment or application of the suspended solids or fecal coliform limitations an ineffective means of controlling water quality. For this reason, the department reserves the right to evaluate the application of these limitations on a case-by-case basis. The suspended solids limitation will apply without exception to the discharges from all municipalities of over five thousand population.

- (3) Fecal coliform: Fecal coliform not to exceed two hundred per one hundred milliliters consecutive thirty-day geometric mean of four hundred per one hundred milliliters seven-day geometric mean average.

In certain instances, external circumstances or specific uses of the receiving waters make either attainment or application of the suspended solids or fecal coliform limitations an ineffective means of controlling water quality. For this reason, the department reserves the right to evaluate the application of these limitations on a case-by-case basis. The suspended solids limitation will apply without exception to the discharges from all municipalities of over five thousand population.

- (4) pH: Six through nine point zero.

It is recognized that natural ground waters in some parts of the state, presently used for water supplies without treatment are alkaline. Discharges from waste treatment facilities using these water supplies may exceed the upper pH limits. Approval to discharge may be granted providing the pH criteria for the receiving water is not violated. Natural ground water and surface waters in some parts of the state, presently used for water supplies with or without treatment, are basic and the stabilization process of wastewater treatment in lagoon systems can result in more alkaline (increased pH) water. Discharges from waste treatment facilities may exceed the upper pH limit due to these uncontrollable properties. Approval to discharge may be granted providing the pH of the receiving water is not violated.

- d. The department may require a higher degree of additional treatment than that listed in this section if

such waste discharges, made during low stream flows, cause violations of stream water quality standards, or have a detrimental effect on the beneficial uses of the receiving waters.

4. Industrial waste effluents shall meet all parameters of quality as set forth under the North Dakota pollutant discharge elimination system and shall not violate North Dakota water quality standards.

**History:** Amended effective March 1, 1985.

**General Authority:** NDCC 61-28-04

**Law Implemented:** NDCC 61-28-04

**33-16-02-05. General conditions.** The following minimum conditions are applicable to all water in North Dakota, at all places and at all times. These waters shall include both classified and unclassified waters. ~~Adoption of specific classifications for any waters not presently classified under this chapter will be done as soon as practical by the department after the completion of additional studies.~~

All waters of the state shall be:

1. Free from substances attributable to municipal, industrial, or other discharges or agricultural practices that will cause the formation of putrescent or otherwise objectionable sludge deposits.
2. Free from floating debris, oil, scum, and other floating materials attributable to municipal, industrial, or other discharges or agricultural practices in sufficient amount to be unsightly or deleterious.
3. Free from materials attributable to municipal, industrial, or other discharges or agricultural practices producing color, odor, or other conditions in such a degree as to create a nuisance or render any undesirable taste to fish flesh, or in any way, make ~~feed~~ fish inedible.
4. Free from substances attributable to municipal, industrial, or other discharges or agricultural practices in concentrations or combinations which are toxic or harmful to human, animal, plant, or resident aquatic ~~life~~ biota.
5. Free from oil or grease residue attributable to wastewater, which causes a visible film or sheen upon the waters or any discoloration of the surface of adjoining shoreline or causes a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines or prevents classified uses of such waters.

6. There shall be no materials such as garbage, rubbish, trash, cans, bottles, or any unwanted or discarded material disposed of into the waters of the state.

**History:** Amended effective March 1, 1985.

**General Authority:** NDCC 61-28-04

**Law Implemented:** NDCC 61-28-04

**33-16-02-06. Specific standards of quality for designated classes of waters of the state.** The following standards are prescribed as specific water quality for designated classes of waters to protect beneficial water uses as set forth in the following water use descriptions and classifications.

It is recognized that during certain periods of the year, some waters may contain certain natural chemical, physical, and biological characteristics or properties equaling or exceeding the limits set forth in these standards. The department may use the natural background level as the standard for any particular parameters and as a base for controlling the addition of wastes from controllable sources. ~~In the case of periods where~~ When the flow in the stream is less than the ten-year, seven-day low flow level, the department reserves the right to make a case-by-case evaluation of application of these standards. However, no substances shall be present in concentrations or combinations that materially interfere with, or that prove hazardous to, the intended water usage.

The magnitude of any specific parameter violation or the intrinsic nature and potential damage caused by any specific parameter violation will be considered by the department in evaluating whether a single parameter violation shall result in administrative action.

1. Class I streams. The quality of waters in this class shall be such as to permit the propagation or life, or both, of resident fish species and shall be suitable for boating, swimming, and other water recreation. The quality shall be such that after treatment consisting of coagulation, settling, filtration, and chlorination, or equivalent treatment processes, the treated water shall meet the bacteriological, physical, and chemical requirements of the state department of health for municipal use. The quality of water shall be such as to permit its use for irrigation, stock watering, and wildlife use without injurious effects.

The requirements of this class of water shall be as follows:

<u>Storet Code</u>	<u>Substance or Characteristic</u>	<u>Limitation</u>
00608	Ammonia (un-ionized) as (N) (Diss.)	-02 mg/l
	<u>No more than 5 days per 30-day</u>	

	<u>period after acclimation***</u>	.1 mg/l
	<u>No more than 20 days per 30-day period</u>	.05 mg/l
	<u>For any discharge continuing beyond 20 days</u>	.02 mg/l
01002	Arsenic (Total)	.05 mg/l
01005	Barium (Diss.)	1.0 mg/l
01020	Boron (Diss.)	<del>1.5 mg/l</del> <u>.75 mg/l</u>
01027	Cadmium (Total)	.01 mg/l
00940	Chlorides ( <del>Diss.</del> ) (Total)	100 mg/l
01034	Chromium (Total)	.05 mg/l
01042	Copper (Total) **	.05 mg/l
00720	Cyanides (Total)	.005mg/l
01049	Lead (Diss.) **	.05 mg/l
00618	Nitrates (N) (Diss.) *	1.0 mg/l
00666	Phosphates (P) (Diss.) *	0.1 mg/l
01092	Zinc (Total) **	1.0 mg/l
01147	Selenium (Total)	.01 mg/l
39516	Polychlorinated Biphenyls (Total)	<del>100 ug/l</del> <u>.15 ug/l</u>
00300	Dissolved oxygen	not less than 5.0 mg/l
00403	pH	7.0-8.5
00010	Temperature	Eighty-five degrees Fahrenheit [29.44 degrees Celsius] The maximum increase shall not be greater than five degrees Fahrenheit <del>{-15 degrees Celsius}</del> <u>[2.78 degrees Celsius]</u> above natural background conditions.

coliforms

31616 Fecal coliform Shall not exceed a geometric mean of 200 fecal coliforms per 100 ml based on a minimum of not less than five samples during separate 24-hour periods for any 30-day period, nor shall 10 percent of total samples exceed 400 fecal

per 100 ml. This standard shall apply only during the recreation season, May 1, to September 30.

00929	Sodium	50 percent of total cations as mEq/l.
32730	Phenols	.01 mg/l
00945	Sulfates (Diss.)	250 mg/l
50060	Total chlorine residual	<del>.01 mg/l</del> .2 mg/l
71900	Mercury (Total)	.002 mg/l
	<u>Combined radium 226 and radium 228</u>	5 pCi/L
	<u>Gross alpha particle activity, including radium 226, but excluding radon and uranium</u>	15 pCi/L

\* The standards for nitrates (N) and phosphates (P) are intended as interim guideline limits. Since each stream or lake has unique characteristics which determine the levels of these constituents that will cause excessive algae plant growth (eutrophication), the department reserves the right to review these standards after additional study and to set specific limitations on any waters of the state. ~~No standard will be modified without adequate regional public notification, hearing and opportunity for comment.~~ However, in no case shall the standard for nitrates (N) exceed ten milligrams per liter for any waters used as a municipal or domestic drinking water supply.

\*\* More restrictive criteria than specified may be necessary to protect fish and aquatic life biota. These criteria

will be developed according to the procedures in subdivision b of subsection 2 of section 33-16-02-07.

\*\*\* No concentrations greater than .02 mg/l will be permitted until the department has monitored chemical and physical parameters in the receiving water and its aquatic biota to ensure sensitive aquatic species are allowed to acclimate to increased un-ionized ammonia concentrations.

**Radiological criteria-**

- a- The average dissolved concentrations (including the naturally-occurring or "background" contribution) of iodine-131, radium-226, strontium-89, strontium-90, and tritium shall not exceed the following concentration limits:

Iodine	5 pCi/l
Radium-226	1 pCi/l
Strontium-89	100 pCi/l
Strontium-90	10 pCi/l
Tritium	3,000 pCi/l

For all other radionuclides, the average dissolved concentration limits shall be one one-hundred-fiftieths of the corresponding maximum permissible concentration in water for continuous occupational exposure as recommended by the national committee on radiation protection (National Bureau of Standards Handbook 69 or subsequent revisions)-

- b- For the case of a mixture of radionuclides, the following relationship shall be satisfied:

Where C denotes the average concentration of the respective radionuclides and L denotes its concentration limit (subdivision a)-

- c- In some cases where alpha emitters, strontium-90, radium-228, iodine-129, iodine-130, and lead-210, are known to be absent, routine analyses for dissolved gross beta radioactivity (excluding potassium-40 contribution) may be employed to monitor and show compliance with this criteria (except for tritium) so long as the gross concentration does not exceed 100 pCi/l. When these conditions are not met, routine quantitative analyses of individual radionuclides shall be performed to show compliance. Except in cases where tritium from

other than natural sources is known to be absent, routine tritium analyses shall be performed to show compliance. (Note: Absence is taken to mean a negligible small fraction of the specific concentration limit, where the limit for unidentified alpha emitters is taken as the limit for radium-226).

d. For the radionuclides associated with suspended material in transport, the average concentration limits shall be one one-hundred-fiftieths of the corresponding maximum permissible concentration in water (insoluble form) for continuous operational exposure as recommended by the National Committee on Radiation Protection. Moreover in-stream sedimentation of these materials shall not produce solids beds such that there is noncompliance with the provisions of subdivisions a and b (because of leaching) or excessive accumulation, or both, in native flora and fauna.

e. "Average" concentrations shall be computed from monitoring data acquired during the previous twelve months, however, maximum concentrations shall not exceed three times the average concentration limits specified herein.

f. Variances from concentration limits specified herein shall be permitted only if (1) the contributing source is a noncontrollable, natural source, (2) best available treatment is provided for manmade discharges, and (3) the exposure received by affected population groups is within established dose limits.

2. Class IA streams. The quality of this class of waters shall be such that its uses shall be the same as those identified for Class I, except that treatment for municipal use may also require softening to meet the chemical requirements of the state department of health. The physical and chemical criteria shall be those for Class I, with the following exceptions:

<u>Storet Code</u>	<u>Substance or Characteristic</u>	<u>Limitation</u>
00940	Chlorides (Diss.)	175 mg/l
00929	Sodium	60% of total cations as mEq/l.
00945	Sulfates (Diss.)	450 mg/l

3. Class II streams. The quality of this class of waters shall be such that its uses shall be the same as those identified for Class I, except that additional treatment may be required over that noted in Class IA to meet the drinking water requirements of the state department of health.

Streams in this classification may be intermittent in nature which would make some of these waters of questionable value for beneficial uses, such as irrigation, municipal water supplies, or fish life. The physical and chemical criteria shall be those for Class IA, with the following exceptions:

<u>Storet Code</u>	<u>Substance or Characteristic</u>	<u>Limitation</u>
00940	Chlorides (Diss.)	250 mg/l
01042	Copper (Total) ** *	0.1 mg/l
00618	Nitrates as (N) (Diss-) *	1-5 mg/l
00666	Phosphates as (P) (Diss-) *	0-2 mg/l
01092	Zinc (Total) **	2-0 mg/l
00403	pH	6.0 - 9.0

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\* The standards for nitrates and phosphates are intended as guideline limits. Since each stream or lake has unique characteristics which determine the levels of these constituents that will cause excessive algae growth (eutrophication) the department reserves the right to review these standards after additional study and to set specific limitations on any waters of the state. No standard will be modified without adequate regional public notification, hearing and opportunity for comment. However, in no case shall the standard for nitrates (N) exceed ten milligrams per liter for any waters used as a municipal or domestic drinking water supply.

\*\*\*More restrictive criteria than specified may be necessary to protect fish and aquatic life biota. These criteria will be developed according to the procedures in subdivision b of subsection 2 of section 33-16-02-07.

4. Class III streams. The quality of this class of waters shall be suitable for industrial and agricultural uses, i.e. cooling, washing, irrigation, and stock watering. These streams all have low average flows, and generally, prolonged periods of no flow. The physical and chemical criteria shall be those for Class II, with the following exceptions:

<u>Storet Code</u>	<u>Substance or Characteristic</u>	<u>Limitation</u>
00608	Ammonia (Un-ionized) as (N) *** <sub>-</sub>	.10 mg/l
01002	Arsenic (Total) *** <sub>-</sub>	0.1 mg/l
01020	Boron (Diss.)	0.75 mg/l
00720	Cyanides (Total) *** <sub>-</sub>	0.1 mg/l
01049	Lead (Diss.) **	0.1 mg/l
00945	Sulfate (Diss.)	750 mg/l

\* The standards for nitrates and phosphates are intended as guideline limits. Since each stream or lake has unique characteristics which determine the levels of these constituents that will cause excessive algae growth (eutrophication) the department reserves the right to review these standards after additional study and to set specific limitations on any waters of the state. No standard will be modified without adequate regional public notification, hearing and opportunity for comment. However, in no case shall the standard for nitrates (N) exceed ten milligrams per liter for any waters used as a municipal or domestic drinking water supply.

\*\*\* More restrictive criteria than specified may be necessary to protect fish and aquatic life biota. These criteria will be developed according to the procedures in subdivision b of subsection 2 of section 33-16-02-07.

History: Amended effective March 1, 1985.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

### 33-16-02-07. Miscellaneous provisions.

1. **Mixing zones.** The size and configurations of a mixing zone cannot be uniformly prescribed for all streams due to the particular characteristics of each stream. However, the following considerations are to be taken into account when mixing zones are determined:
  - a. The water quality standards must be met at every point outside of the mixing zone. The department may require a means of expediting mixing and dispersion of wastes, if found necessary.
  - b. The total mixing zone (or zones) at any cross-sectional area of the stream should not be larger than twenty-five percent of the cross-sectional area or volume of flow and shall not extend more than fifty percent of the width. Mixing zones shall provide an acceptable passageway for movement of fish and other aquatic organisms.
  - c. The ninety-six hour ~~FEM~~ LC 50 for indigenous or resident fish and fish food organisms shall not be exceeded at any point in the mixing zone.
  - d. Mixing zones shall be as small as possible and shall not intersect spawning or nursery areas, migratory routes, or municipal water intakes. Overlapping of mixing zones should be avoided or minimized to prevent adverse synergistic effects.
2. **Sampling and testing.**
  - a. All methods of sample collection, preservation, and analyses used in applying any of the provisions of this chapter shall be in accord with those prescribed in the latest edition of "Standard Methods for the Examination of Water and Wastewater", published by the American public health association, or in accordance with tests or analytical procedures that have been found to be equal or more applicable by the department or the environmental protection agency.
  - b. Bioassay tests shall be performed in accordance with procedures outlined in the latest edition of "Standard Methods for the Examination of Water and Wastewater" published by the American public health association, or in accordance with tests or analytical procedures that have been found to be equal or more applicable by the department or the environmental protection agency. Bioassay studies shall be made using a sensitive resident species.

- c. When specific application factors are not available, the application factor should be determined by using methods listed in the latest edition of "Quality Criteria for Water", published by the environmental protection agency or by using other methods accepted as equal or applicable by the environmental protection agency.
- d. "Consecutive thirty-day average" or "mean" shall be the average or mean of samples taken during any consecutive thirty-day period, but not a requirement for thirty consecutive daily samples.
- e. "Consecutive seven-day average" or "mean" shall be the average or mean of samples taken during any consecutive seven-day period, but not a requirement for seven consecutive daily samples.
- f. A standard defined as "total" means the total quantity of a given material present in an unfiltered water sample regardless of the form or nature of its occurrence. This includes both dissolved and suspended forms of a substance, including the total amount of the substance present as a constituent of the particulate material. In order to obtain a "total" water sample, special sediment sampling techniques must be employed.
- g. A standard defined as "dissolved" means the total quantity of a given material present in a filtered water sample, regardless of the form or nature of its occurrence. In order to obtain a "dissolved" water sample, a composite or grab sampling technique will be employed.

History: Amended effective March 1, 1985.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

33-16-02-09. Lake classification. The following lakes are classified according to the water characteristics which are to be maintained in the specified lakes. Generally, the beneficial water uses and parameter limitations designated for Class I streams shall apply to all classified lakes, except that for cold water fishery lakes (Class I) the total chlorine residual shall not exceed two thousandths milligram per liter. However, specific background studies and information may require that the department apply a standard for any specific parameter which may diverge from those listed under for Class I streams. Department justification will be supplied if standards other than those listed under Class I streams are applied to any of the classified lakes. All waters not

specifically listed shall be governed in accordance with section 33-16-02-05-

In addition, it is intended that these nutrient parameter guidelines be used as a goal in any lake improvement or maintenance program:

<u>Parameter</u>	<u>Limit</u>
NO <sub>3</sub> as N	.375 mg/l
PO <sub>4</sub> as P	.025 mg/l

1. **Numerical classification.** The numerical classification refers to the type of fishery a lake may be capable of supporting based on the lake's geophysical characteristics. However, the capability of the lake to support a fishery may be affected by seasonal variations or other natural occurrences which may alter the lake characteristics.

<u>CLASS</u>	<u>CHARACTERISTICS</u>
1	Cold water fishery. Waters capable of supporting growth of salmonid fishes and associated aquatic <del>life</del> <u>biota</u> .
2	Cool water fishery. Waters capable of supporting growth and propagation of nonsalmonid fishes and marginal growth of salmonid fishes and associated aquatic <del>life</del> <u>biota</u> .
3	Warm water fishery. Waters capable of supporting growth and propagation of nonsalmonid fishes and associated aquatic <del>life</del> <u>biota</u> .
4	Marginal fishery. Water capable of supporting a fishery on a seasonal basis.
5	Not capable of supporting a fishery.

2. **Alphabetical classification.** The alphabetical classification refers to the present value of the lake for fishery and recreation, coupled with the trophic state of the lake.

<u>CLASS</u>	<u>CHARACTERISTICS</u>
A	Lakes which are presently of satisfactory quality for fisheries and recreation.
B	Lakes which are presently somewhat degraded but have long-term potential for fisheries and recreation.
C	Lakes which are presently somewhat degraded and progressing toward further degradation.
D	Lakes which have a restricted capability to support a fishery due to major degradation or physical limitations, or both.
E	Saline lakes with recreational value but no fishery potential.

### 3. Individual classification.

<u>County</u>	<u>Lake</u>	<u>Classification</u>
Adams	Mirror	4D <u>3B</u>
Adams	N. Lemmon	1A <u>1B</u>
Barnes	Ashtabula	2E <u>3C</u>
Barnes	Heinze	2B <u>3C</u>
Barnes	Moon	2A
<b>Barnes</b>	<b>Stevens</b>	<b>2E</b>
Barnes	Clausen Spring	1A
<b>Barnes</b>	<b>Sweetwater</b>	<b>4E</b>
Benson	Wood Lake	2B
Benson	Graves	2B <u>3C</u>
Benson	Reeves	2B <u>3C</u>
Bottineau	Metigoshe	2C
Bottineau	Long Lake	2C

Bottineau	Pelican	3C	
Bottineau	Carbury	2B	
Bottineau	Cassidy	<del>2E</del> 3C	
Bottineau	Strawberry	2B	
Bowman	Bowman-Haley	<del>2B</del> 3C	
Bowman	Gascoyne	<del>2E</del> 3C	
Bowman	Kalina	<del>2A</del> 3C	
Bowman	Spring Lake	3C	
Burke	Powers Lake	<del>2E</del> 3C	
Burke	Short Creek	2B	
Burke	Smishek	2B	
Burke	Traux Mine	1A	
Burke	Northgate	<del>1E</del> 2C	
Burke	Bowbells Mine	1A	
<b>Burleigh</b>	<b>Sterling Reservoir</b>		<b>4B</b>
Burleigh	McDowell Dam	3C	
Burleigh	New John's Lake	2B	
Cass	Casselton Reservoir	3C	
Cass	Hunter Dam	3D	
Cass	Brewer Lake	2C	
Cavalier	Mt. Carmel	2C	
<b>Dickey</b>	<b>Brewer Lake</b>		<b>4B</b>
Dickey	Moores Lake	1A	
Dickey	Pheasant	3C	
Dickey	Wilson Dam	3C	
Divide	Skjeremo	2C	
Dunn	Lake Ilo	<del>2B</del> 3C	

Eddy	Warsing Dam	2C	
<del>Eddy</del>	<del>Battle Lake</del>		2D
Emmons	Braddock Dam	3B 3C	
Emmons	Nieuwsma Dam	2C	
Emmons	Rice Lake	4C	
Emmons	Welk Dam	3B 3C	
Foster	Juanita	3D	
Golden Valley	Camel Hump	1B	
Golden Valley	Odland Dam	3B 3C	
Golden Valley	Williams Creek	2E 4D	
<b>Grand Forks</b>	<b>Niagara Dam</b>		<b>4E</b>
<u>Grand Forks</u>	<u>Fordville</u>	2C	
<u>Grand Forks</u>	<u>Larimore</u>	2B	
<u>Grand Forks</u>	<u>Kolding</u>	2C	
Grant	Tschida	2A 2B	
<del>Grant</del>	<del>Cat Coulee</del>		4D
Grant	Raleigh Reservoir	4D	
Grant	Sheep Creek	1A 2B	
Griggs	Red Willow	2E 3C	
<u>Griggs</u>	<u>Carlson-Tande</u>	3C	
Hettinger	Larson Lake	2B 3C	
<u>Hettinger</u>	<u>Kilzer</u>	3C	
Hettinger	Castle Rock	1B 1C	
<u>Hettinger</u>	<u>Indian Creek</u>	3C	
Hettinger	Mott Dam	1E 2C	
<u>Hettinger</u>	<u>Blickensderfer</u>	2B	

Kidder	Cherry Lake	2D	
Kidder	Crystal Springs	3C	
Kidder	Frettum Lake	<del>1E</del> <u>2C</u>	
Kidder	Round Lake	2B	
Kidder	Lake Williams	2A	
Kidder	Lake Isabel	<del>2E</del> <u>3C</u>	
Kidder	George Lake	5E	
LaMoure	Schlect-Weix.	3C	
LaMoure	Hein.-Martin	<del>1B</del> <u>2B</u>	
LaMoure	Kulm-Edgeley	<del>1E</del> <u>2C</u>	
LaMoure	Cottonwood	4D	
<del>LaMoure</del>	<del>Lime-Seeffeldt</del>		<del>3E</del>
Lamoure	Kalmbach	4D	
LaMoure	Schlect-Thom	<del>1B</del> <u>2B</u>	
LaMoure	Lake LaMoure	<del>2A</del> <u>2B</u>	
Logan	Beaver Lake	<del>2E</del> <u>3C</u>	
Logan	Mundt Lake	2D	
Logan	Rudolph Lake	4D	
McHenry	Cottonwood	<del>2B</del> <u>3B</u>	
McHenry	George Lake	2D	
McHenry	Round Lake	<del>4E</del> <u>3C</u>	
McHenry	Buffalo Lodge	<del>2E</del> <u>3C</u>	
McIntosh	Blumhardt	1A	
McIntosh	Coldwater	2A	
McIntosh	Green Lake	2D	
McIntosh	Lake Hoskins	2D	
McIntosh	Clear Lake	2D	

McIntosh	Jund Dam		4D
McKenzie	Arnegard Dam	4D	
McKenzie	Sather Dam	1B 2B	
McLean	Brush Lake	2D 3C	
McLean	Geleharber P.		4E
McLean	W. Park Lake	2B	
McLean	E. Park Lake	2B	
McLean	Brekken	2B	
McLean	Holmes	2B	
McLean	Lightening	2B	
McLean	Crooked Lake	2C	
McLean	Custer Mine	1A	
McLean	Audubon	2A 2B	
McLean	Strawberry	3D	
McLean	Yanktona		4D
McLean	Long Lake	4D	
McLean	Riv. Spillway	1A	
Morton	Crown Butte	1E 3C	
Morton	Glen Ullin		4D
Morton	Fish Creek	1B	
Morton	Sweetbriar	2E 3C	
Morton	Dawson Pond		1D
Morton	Nygren	3B	
Morton	Danzig	3D	
Mountrail	Parshall Mine		4E
Mountrail	Clearwater	2E 3C	

Mountrail	White Earth	2B	
<del>Mountrail</del>	Arnstad Pond		1B
Mountrail	Stanley Reservoir (Central)	<del>2C</del> <u>3C</u>	
Nelson	McVilIe Dam	1B	
Nelson	Whitman Dam	1B	
Nelson	Tolna Dam	2C	
Oliver	Nelson Lake	3B	
Oliver	Van Ostling	3C	
Oliver	M. Mosbrucker	2C	
Oliver	A. Mosbrucker	1C	
Oliver	<u>E.</u> Arroda Lake	1C	
<u>Oliver</u>	<u>W.</u> Arroda Lake	<u>1C</u>	
Pembina	Renwick Dam	2C	
Pierce	Balta Dam	2C	
Pierce	Buffalo Lake	<del>2B</del> <u>2C</u>	
Ramsey	Devils Lake	<del>2B</del> <u>3C</u>	
Ramsey	Cavanaugh	<del>2C</del> <u>3C</u>	
Ransom	Ransom County Dam		3B
<u>Ransom</u>	<u>Dead Colt Creek</u>	<u>3B</u>	
Renville	Lake Darling	2C	
Richland	Lake Elsie	2B	
<u>Richland</u>	<u>Mooreton Pond</u>	<u>2B</u>	
Rolette	Carpenter	2C	
Rolette	Dion Lake	2B	
Rolette	Gravel Lake	1B	
<u>Rolette</u>	<u>Gordon</u>	<u>2B</u>	

Rolette	Hooker Lake	<del>1E</del> <u>1B</u>	
Rolette	Belcourt	2B	
Rolette	School Section	2B	
Rolette	Upsilon	<del>2B</del> <u>3C</u>	
Rolette	Shutte Lake	2C	
Sargent	Alkali Lake	<del>2E</del> <u>3C</u>	
Sargent	Silver Lake	2C	
Sargent	Frenier Dam		3B
Sargent	Tewaukon	<del>2E</del> <u>3C</u>	
Sargent	Buffalo Lake	4D	
Sargent	Mann Lake		4D
Sargent	Sprague Lake	<del>2B</del> <u>3D</u>	
Sargent	Krause Slough		2B
Sheridan	Hecker	2B	
Sheridan	S. McClusky	2B	
Sioux	Froelich	<del>1B</del> <u>2B</u>	
Slope	Cedar Lake	3D	
Slope	Davis Dam	<del>1A</del> <u>1B</u>	
Slope	Hamann Dam	1A	
Slope	Stewart Lake	3D	
Stark	Abbey Dam	<del>1B</del>	
Stark	Patterson	<del>2B</del> <u>3C</u>	
Stark	Dickinson Dike	<del>1E</del> <u>2C</u>	
Stark	Belfield Pond	3C	
Steele	N. Tobiason	3B	
Steele	<u>S.</u> Golden Lake	<del>2E</del> <u>3C</u>	
Steele	N. Golden <u>Lake</u>	<del>2E</del> <u>3C</u>	

Stutsman	Jamestown Reservoir	2B	
Stutsman	Clark Lake	3C	
Stutsman	Jim Lake	<del>2D</del> <u>3D</u>	
Stutsman	Spiritwood	<del>2E</del> <u>2B</u>	
Stutsman	Arrowwood	4D	
Stutsman	Krapp Dam	2C	
Stutsman	Barnes Lake	<del>2D</del> <u>3C</u>	
Stutsman	Pipestem Reservoir	<del>2B</del> <u>3C</u>	
Towner	Armourdale	<del>1E</del> <u>2C</u>	
Walsh	Matejcek	1A	
Walsh	Bylin Dam	2B	
Walsh	Homme Dam	2B	
Ward	North Carlson	2C	
Ward	Rice Lake	2C	
Ward	Des Laes Reservoir		4D
Ward	Velva Sptsm.	1B	
Wells	Harvey Dam	<del>2E</del> <u>3C</u>	
Wells	Lake Hiawatha	4D	
Williams	Blacktail	<del>2B</del> <u>3B</u>	
Williams	Epp.-Springbrook	2C	
Williams	Iverson	<del>1B</del> <u>2B</u>	
Williams	Kota-Ra	1A	
Williams	McCloud	<del>2E</del> <u>3C</u>	
Williams	McGregor	1B	
Williams	Tioga Reservoir	2B	
Williams	Williston Park	4D	

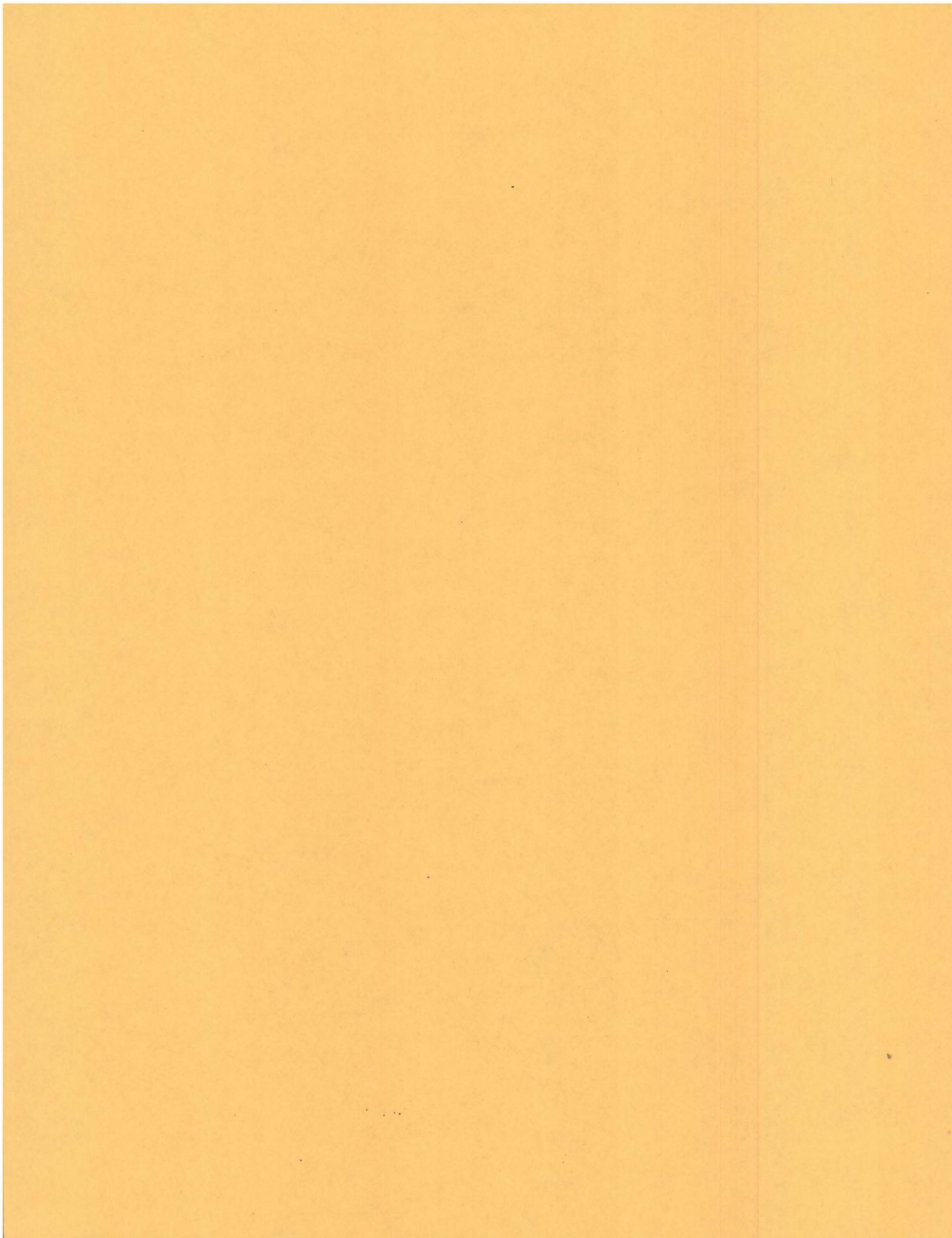
Williams	Cottonwood	4D 3D	
Williams	Twin Lakes		4D
	Oahe	1A	
	Sakakawea	1A	

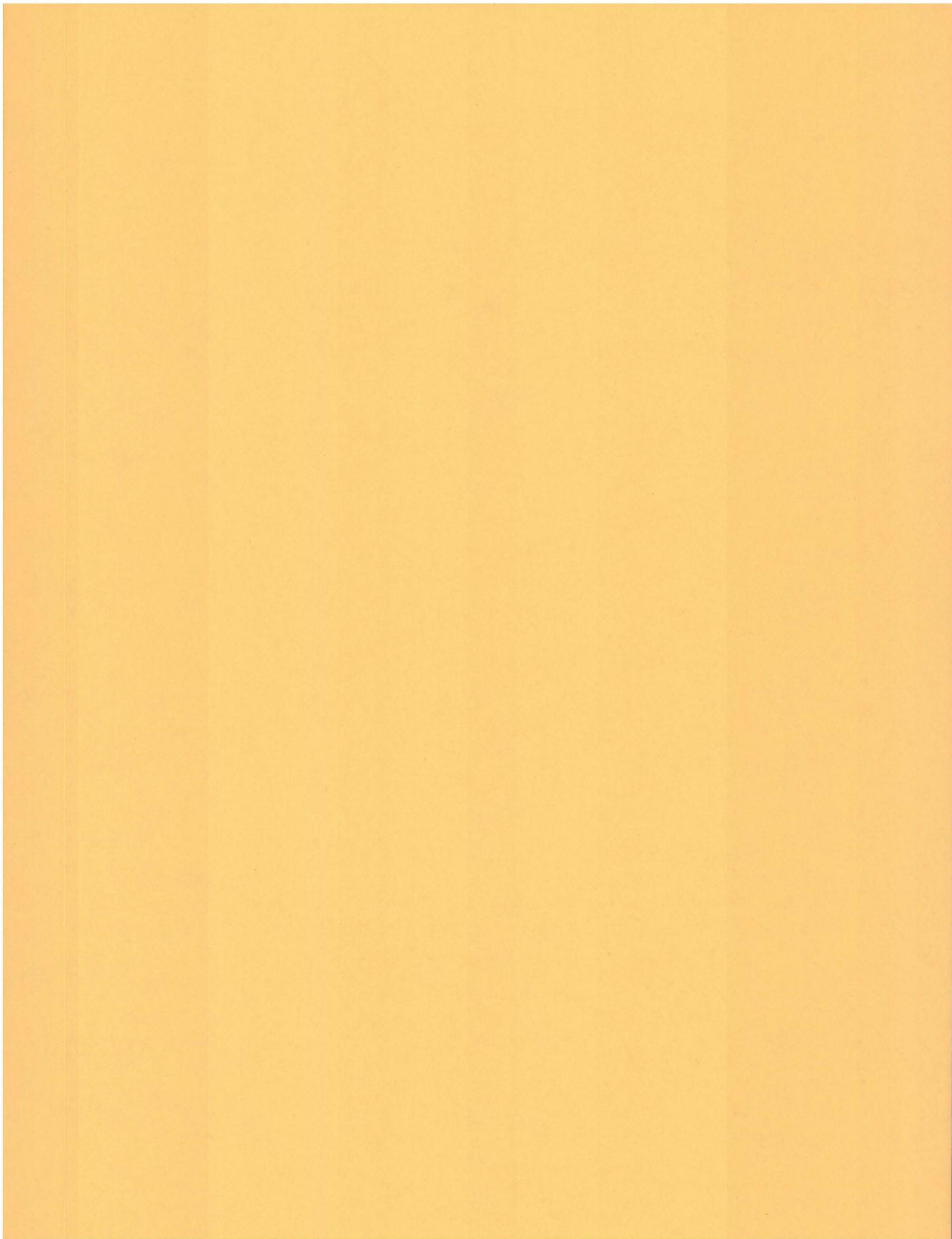
History: Amended effective March 1, 1985.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04







**TITLE 37**  
**Highway Department**



JULY 1985

**37-03-03-09. Hearings prior to suspension or revocation for alcohol offenses.** Hearings authorized under North Dakota Century Code section 39-20-05 shall be scheduled by the hearing officer assigned to the particular case, by sending notice to the licensee, or the licensee's counsel, if any. The date, time, and place of the hearing shall be established by the hearing officer as workload permits. The scheduled date, time, and place for hearing may be changed only with the permission of the hearing officer, bearing in mind the time constraints provided by North Dakota Century Code section 39-20-05 for holding the hearing. Rescheduling will be allowed only for the most compelling reasons and scheduling conflicts of the licensee or counsel will not be sufficient cause to reschedule a hearing at a time beyond that provided by law.

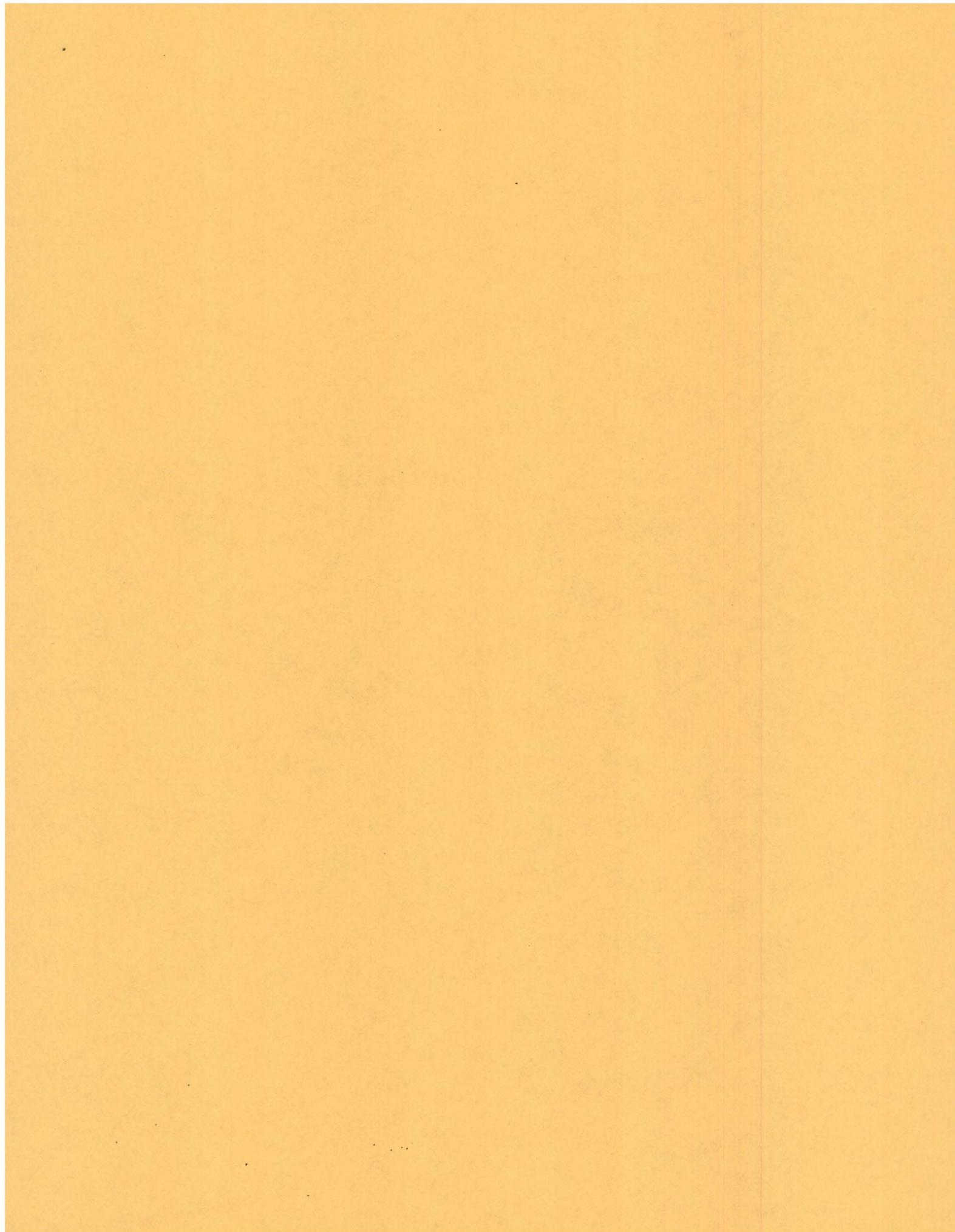
It is the responsibility of the licensee or law enforcement officer concerned with the hearing to obtain and present at the hearing all documents or exhibits that the licensee or officer believes necessary to prove the issues to be considered. However, the officer need not produce a duplicate copy of the sworn report submitted to the state highway commissioner with the operator's license following the arrest or stop involved.

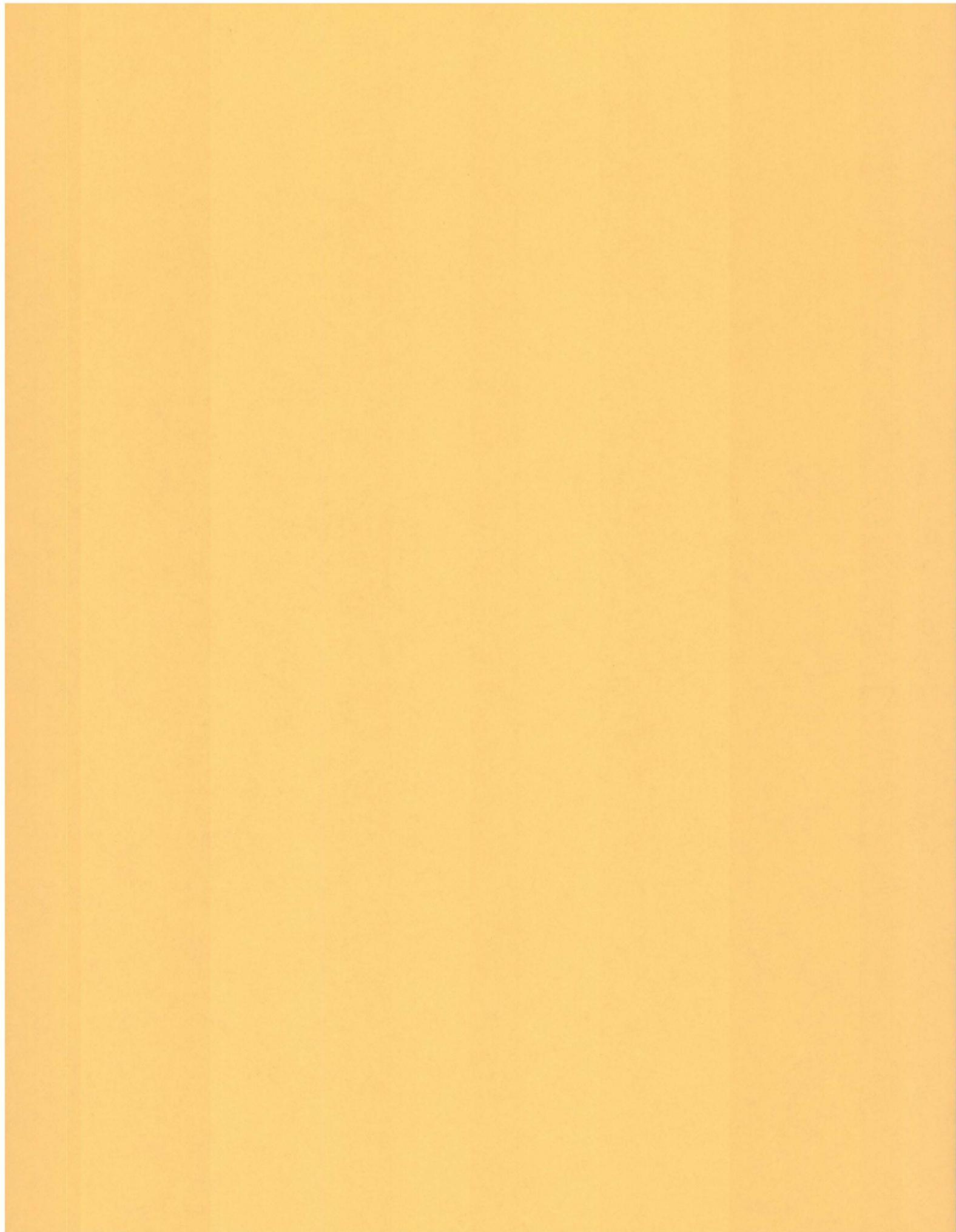
**History:** Effective July 1, 1983; amended effective July 1, 1985.

**General Authority:** NDCC 28-32-03

**Law Implemented:** NDCC 39-20-05







**TITLE 40**  
**Historical Board**



DECEMBER 1984

STAFF COMMENT: Chapter 40-02-03 contains all new material but is not underscored so as to improve readability.

CHAPTER 40-02-03  
CARE AND CUSTODY OF PREHISTORIC  
GRAVES AND REMAINS

Section	
40-02-03-01	Definitions
40-02-03-02	Inadvertent Disinterment - Protection of Site
40-02-03-03	Inadvertent Disinterment - Notification
40-02-03-04	Inadvertent Disinterment - Study
40-02-03-05	Inadvertent Disinterment - Reinterment
40-02-03-06	Planned Disinterment - Notification
40-02-03-07	Planned Disinterment - Study
40-02-03-08	Planned Disinterment - Reinterment

**40-02-03-01. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Burial mound" means a raised or mounded earthen structure which was placed over a prehistoric interment of human remains or which contains prehistoric human remains, or both.
2. "Grave goods" means all artifacts and any other items deliberately interred with human remains, including projectile points, knives, scrapers, articles of clothing, ornaments, or religious items.
3. "Prehistoric cemetery" means any area which contains burial mounds or prehistoric graves.

4. "Prehistoric grave" means any interment, deliberate or accidental, which was made of human remains by prehistoric persons or events.
5. "Qualified archaeologist" means an individual who meets the minimum qualifications defined in section 40-02-02-05.
6. "Research design" means a written statement which provides organization and structure to theoretical concepts related to solving problems, and a listing and justification of problems to be solved.
7. "Scope of work" means a written statement describing activities which will be completed to provide solutions to problems presented in a research design.
8. "Superintendent" means the superintendent of the state historical board as set forth in North Dakota Century Code section 55-02-01, or the superintendent's designated representative.

**History:** Effective December 1, 1984.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 23-06-27

**40-02-03-02. Inadvertent disinterment - Protection of site.** When a burial mound, prehistoric grave, or prehistoric cemetery is inadvertently opened by a person, the grave, human remains, and any grave goods noted must be left in place and protected from further disturbance by activities of the person who opened the grave until the state department of health and the superintendent have been notified by the person who opened the grave, and clearance to proceed has been granted by the superintendent. When a burial mound, prehistoric grave, or prehistoric cemetery is discovered by a person to have been inadvertently opened by natural processes such as erosion or stream bank collapse, the grave, human remains, and any grave goods noted must be left in place and the state department of health and superintendent must be notified. This provision is not applicable when evaluation and mitigation of adverse effects to such resources are provided for by other state or federal laws or regulations.

**History:** Effective December 1, 1984.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 23-06-27

**40-02-03-03. Inadvertent disinterment - Notification.** When a burial mound, prehistoric grave, or prehistoric cemetery is inadvertently opened, noted, and protected as specified in section 40-02-03-02, one of the following must be done by the person who opened the grave, or discovered the grave to have been opened by natural

processes, to provide adequate notification to the state department of health and the superintendent:

1. If the grave or remains are in danger or imminent destruction or loss through human or natural actions, contact both the state department of health and the superintendent as soon as possible. Verbal permission from the superintendent to proceed with the activity which caused the disinterment, or an onsite inspection, may result from this contact. If verbal permission to proceed without further consideration of the prehistoric human remains is given, written confirmation of this permission will be provided to the caller within ten days.
2. If the grave or remains noted are not imminently endangered by destruction or loss, contact the state department of health and the superintendent in writing providing a complete description of the remains noted, the circumstances surrounding the opening and the present status of protection provided to the grave or remains.

**History:** Effective December 1, 1984.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 23-06-27

**40-02-03-04. Inadvertent disinterment - Study.** If graves or remains reported as specified in section 40-02-03-03 are confirmed to be prehistoric, either through documentation provided by the finder or an onsite inspection by a qualified archaeologist, one of the following must be done:

1. Where feasible, and after basic recording by a qualified archaeologist, the grave will be filled back in, stabilized and protected from further disturbance by the activity or action which caused the disinterment. Data recorded in this process will be filed with the superintendent. The grave will then be considered to be recorded with the state historical board.
2. Where backfilling and protection of the grave is not feasible, and the grave is in imminent danger of loss or destruction of its context through natural processes, the superintendent may salvage the remains and such contextual data and grave goods as can be retrieved immediately through excavation and recording. In such cases a report of the work completed and data recovered will be filed with the superintendent, and a reasonable effort will be made to secure appropriate analysis of the remains by a physical anthropologist.
3. Where backfilling and protection of the grave is not feasible, and the disinterment is the result of natural

processes, but the grave is not in imminent danger of loss of context or destruction, the superintendent may develop a research design and scope-of-work for the completion of disinterment and allocate sufficient funding and staffing to excavate the grave, analyze the materials recovered, secure the analysis of the human remains by a physical anthropologist, and complete a report describing the results of the work completed. Alternatively, the superintendent may provide information regarding the location, nature, and present status of the site to the professional or avocational, or both, archaeological community in North Dakota so that they may arrange to perform, at their own expense under a research design and scope-of-work approved by the superintendent, the excavation of the site, analysis of the materials recovered and completion of a report for filing with the superintendent.

4. Where backfilling and protection of the grave is not feasible, the disinterment is the result of a development such as those listed in North Dakota Century Code section 23-06-27, and is not otherwise regulated regarding the evaluation and mitigation of adverse effects to such sites, the superintendent may do one of the following:
  - a. Salvage the remains and such contextual data and grave goods as can be retrieved through excavation and recording during an initial inspection. In this case a report of the work completed will be retained by the superintendent, and a reasonable effort will be made to secure appropriate analysis of the human remains by a physical anthropologist.
  - b. Negotiate with the developer, or landowner as appropriate, for a specific period of time to be allocated prior to the continuation of the activity which caused the disinterment to allow the superintendent to either seek alternative funding and staffing sources to develop a research design and scope-of-work for the completion of the disinterment, analysis and report preparation, and complete those excavations, or to notify the professional or avocational, or both, archaeological community in North Dakota of the site's impending destruction so that they may arrange to perform at their own expense under a research design and scope-of-work approved by the superintendent the excavations, analysis and preparation of a report to be filed with the superintendent. Alternative funding and staffing sources may include, but are not limited to, regular biennial appropriations, special appropriations, private grants, and donated labor and expertise.

**History:** Effective December 1, 1984.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 23-06-27

**40-02-03-05. Inadvertent disinterment - Reinterment.** When graves or remains are excavated pursuant to section 40-02-03-04, the human remains, following analysis, will be permanently stored at a facility approved by the superintendent or at the request of the developer or landowner, as appropriate, returned to the developer or landowner for reinterment at the developer's or landowner's expense pursuant to existing regulations of the state department of health related to the interment of human remains. If reinterment of the human remains is the selected disposition, and the remains have been identified as those of a prehistoric native American, the North Dakota Indian affairs commission must be offered an opportunity to arrange an appropriate memorial service.

Any grave goods recovered must, following analysis, be returned to the landowner, or if the landowner wishes, permanently stored at a facility designated by the superintendent.

**History:** Effective December 1, 1984.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 23-06-27

**40-02-03-06. Planned disinterment - Notification.** If a developer desires to disinter and move prehistoric human remains which are recorded with the state historical board all of the following must be provided in writing to the state department of health and the superintendent:

1. A description of the burial site for which the disinterment action is proposed, including the site number, if any.
2. Copies of all site forms, descriptions, and technical reports related to the burial site unless already on file with the superintendent.
3. A description of the development which necessitates the proposed disinterment.
4. A statement justifying the need to disinter rather than avoid the remains.
5. A research design and scope-of-work for the proposed disinterment, including coverage of excavation, analyses, expertise to be employed, and report preparation and dissemination considerations.
6. The current credentials of a qualified archaeologist who has agreed to conduct the work described in the research design and scope-of-work submitted, if not already on file with the superintendent, or a commitment to obtain the services of such an individual and to submit that individual's credentials for approval by the superintendent if not already on file with the superintendent.

7. A plan for storage of reinterment of the human remains and all grave goods which are recovered from the burial site.

The information and notification must be given to the superintendent at least thirty days prior to the initiation of disinterment or the developer will be in violation of North Dakota

Century Code section 23-06-27. This provision is not applicable when evaluation and mitigation of adverse effects to cultural resources are provided for by other state and federal laws or regulations.

**History:** Effective December 1, 1984.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 23-06-27

**40-02-03-07. Planned disinterment - Study.** Any disinterment made as specified in section 40-02-03-06 will be conducted by or under the direct supervision of a qualified archaeologist and in conformance with a research design and scope-of-work approved by the superintendent. The disinterment may not be initiated until the superintendent has indicated in writing the superintendent's satisfaction that preservation of the scientific values of the remains and reasonable and respectful treatment of the deceased is provided for adequately. The superintendent will provide written response to the developer within thirty days of receipt of notice of intent to disinter, either approving the disinterment or listing the deficiencies in the notice. Any developer who proceeds with disinterment of recorded prehistoric graves or remains under a research design or scope-of-work which has been deemed deficient by the superintendent, or who proceeds to cause a disinterment to happen without proper notification having been completed, is in violation of North Dakota Century Code section 23-06-27.

**History:** Effective December 1, 1984.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 23-06-27

**40-02-03-08. Planned disinterment - Reinterment.** When graves or remains are excavated pursuant to section 40-02-03-07, the human remains, following analysis, will be permanently stored at a facility approved by the superintendent or at the request of the developer or landowner, as appropriate, returned to the developer or landowner for reinterment at the developer's or landowner's own expense pursuant to existing regulations of the state department of health related to the interment of human remains. If reinterment is the selected disposition, and the remains have been identified as those of a prehistoric native American, the North Dakota Indian affairs commission must be offered an opportunity to arrange an appropriate memorial service. Any grave goods

recovered must, after analysis, be returned to the landowner, or if the landowner wishes, permanently stored at a facility designated by the superintendent.

**History:** Effective December 1, 1984.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 23-06-27



JANUARY 1985

STAFF COMMENT: Chapter 40-02-02 contains all new material but is not underscored so as to improve readability.

CHAPTER 40-02-02  
PERMIT FOR CULTURAL RESOURCE INVESTIGATION

Section	
40-02-02-01	Definitions
40-02-02-02	Application for Permit - Fee
40-02-02-03	Waiver of Permit Application Fee
40-02-02-04	Waiver of Report Filing Fee
40-02-02-05	Professional Qualifications - Exceptions
40-02-02-06	Revocation of Permit - Grounds
40-02-02-07	Revocation of Permit - Procedures

**40-02-02-01. Definitions.** The terms used throughout this title have the same meaning as in North Dakota Century Code chapter 55-03, except:

1. "Board" means the state historical board as defined in North Dakota Century Code section 55-01-01.
2. "Contractor" means any person, real or corporate, who performs cultural resources work for profit or cost reimbursement on behalf of a project sponsor.
3. "Cultural resources work" means all of those processes, procedures, and efforts normally construed by state and federal regulations as necessary for the conduct of investigations, evaluations, or mitigation of adverse effects of proposed projects to historic buildings, structures, or

objects, including preproject planning, planning, execution, and reporting of results.

4. "Direct supervision" means active supervision of field and office/laboratory activities by a qualified individual at least seventy-five percent of the time expended for those activities as documented by project records.
5. "Instrumentality of the state" means all agencies, departments, boards, and commissions, and all political subdivisions, of state government.
6. "Permit application fee" means the payment for an annual permit required to conduct cultural resources work.
7. "Project sponsor" means any person, real or corporate, including agencies, departments, companies, nonprofit corporations, corporations, instrumentalities of government, partnerships, political subdivisions, or institutions, which pays for cultural resources work projects.
8. "Report filing fee" means the payment required to accompany a cultural resources work report by a contractor which is deposited with the state historical board of North Dakota, and which report will subsequently be considered in review of proposed projects considered under the laws and regulations described in North Dakota Century Code section 55-03-01.
9. "Superintendent" means the superintendent of the state historical board of North Dakota as set forth in North Dakota Century Code 55-02-01.

**History:** Effective January 1, 1985.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 55-03-01

**40-02-02-02. Application for permit - Fee.** All applications for permits issued under North Dakota Century Code section 55-03-01 must be made on forms available from:

Superintendent  
State Historical Board of North Dakota  
North Dakota Heritage Center  
Bismarck, ND 58505

Instructions for completion of forms, a list of supporting documentation required, and copies of standards established by the board for the conduct and reporting of cultural resource work projects are also available on request.

All applications for permit must be accompanied by a check made payable to:

State Historical Society of North Dakota.

An application for permit form is attached hereto, incorporated by reference, and labeled Appendix A.

**History:** Effective January 1, 1985.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 55-03-01

**40-02-02-03. Waiver of permit application fee.** The superintendent may waive the annual permit application fee required by North Dakota Century Code section 55-03-01 if the applicant is an instrumentality of the state and if the complete and acceptable application is accompanied by a letter from the chief administrative officer of the instrumentality requesting waiver of the permit fee.

**History:** Effective January 1, 1985.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 55-03-01

**40-02-02-04. Waiver of report filing fee.** Reports of cultural resources work conducted under a permit issued pursuant to North Dakota Century Code section 55-03-01 and filed by a permittee on behalf of a nonprofit corporation formed under North Dakota Century Code chapters 10-24 through 10-28 need not be accompanied by a report filing fee payment if notification that the project sponsor is a nonprofit corporation is provided at the time of filing.

**History:** Effective January 1, 1985.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 55-03-01

**40-02-02-05. Professional qualifications - Exceptions.** All activities performed under a permit issued pursuant to North Dakota Century Code chapter 55-03 must be conducted by or under the direct supervision of a professionally qualified individual. Evaluations of archaeological, architectural, historical, or paleontological resources must be made by an individual professionally qualified in that particular discipline. The minimum professional qualifications are:

1. **Archaeology.** A graduate degree in archaeology, anthropology, or closely related field plus all of the following:
  - a. At least one year of full-time experience or equivalent specialized training in archaeological research, administration, or management.
  - b. At least four months of supervised field and analytic experience in general North American archaeology.

- c. A demonstrated ability to carry research to completion, usually documented through the completion of reports of such work.

In addition to the above minimum qualifications, a professional in prehistoric archaeology must have at least one year of full-time experience at a supervisory level in the study of archaeological resources of the prehistoric period. A professional in historic archaeology must have at least one year of full-time experience at a supervisory level in the study of archaeological resources of the historic period.

- 2. **Architectural history.** A graduate degree in architectural history, art history, historic preservation, or closely related field, with coursework in American architectural history; or a bachelor's degree in architectural history with concentration in American architecture; or a bachelor's degree in architectural history, art history, historic preservation, or closely related field plus one of the following:
  - a. At least two years of full-time experience in historic structures survey and research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution or private company.
  - b. A documentably substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.
- 3. **History.** A graduate degree in history or closely related field; or a bachelor's degree in history or closely related field plus one of the following:
  - a. At least two years of full-time experience in historical or closely related field research, writing, teaching, interpretation, or other demonstrable professional activity with an academic institution, historical organization or agency, museum, other professional institution, or private company.
  - b. A documentably substantial contribution through research and publication to the body of scholarly knowledge in the field of history.
- 4. **Paleontology.** A graduate degree in paleontology or closely related field plus all of the following:
  - a. At least one year of full-time experience or equivalent specialized training in paleontological research, administration, or management.

- b. At least four months of supervised field and analytic experience in general North American paleontology.
- c. A demonstrated ability to carry research to completion, usually documented through the completion of reports of such work.

Exceptions to these minimum qualification standards may be granted by the superintendent after receipt, review, and acceptance of documentation of an individual's ability to plan, execute, and report such activities within a discipline. Such documentation will usually consist of reports describing such work previously completed by the applicant, and which would be acceptable by all standards other than those of professional qualifications.

**History:** Effective January 1, 1985.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 55-03-02

**40-02-02-06. Revocation of permit - Grounds.** A permit issued pursuant to North Dakota Century Code chapter 55-03 may be revoked when the superintendent determines that the permittee has:

1. Allowed activities related to the permit to be performed without supervision by qualified personnel as defined in section 40-02-02-05, or by personnel whose credentials have not been filed with and approved by the superintendent.
2. Filed inadequately documented reports or site forms.
3. Deliberately falsified data used in activities or reports related to activities conducted under the permit.
4. Failed to provide for storage and care of artifacts or excavation records from activities conducted under the permit.
5. Been convicted of participating in illegal activities related to obtaining or trafficking artifacts.
6. Misrepresented the permittee's credentials or qualifications, or that an academic degree which was used by the permittee to represent the permittee's qualifications upon application for permit has been revoked or withdrawn by the granting institution.

**History:** Effective January 1, 1985.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 55-03-03

**40-02-02-07. Revocation of permit - Procedure.** When the superintendent has determined that grounds exist to revoke a permit, the

procedures set forth in North Dakota Century Code section 28-32-05 must be followed.

**History:** Effective January 1, 1985.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 55-03-03

APPLICATION FOR PERMIT RELATED TO  
NORTH DAKOTA CENTURY CODE SECTIONS  
55-03-01 OR 55-03-01.1

1. Applicant's Name: \_\_\_\_\_ Tel. #( ) \_\_\_\_\_ Ext. \_\_\_\_\_  
Business Address: \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_
2. The applicant is an (check one): \_\_\_ individual/ \_\_\_  
organization/ \_\_\_ institution/ \_\_\_ company/ \_\_\_  
instrumentality of the state of North Dakota.
3. On a separate sheet of paper, or by attachment of a  
prospectus, describe the following as available to the  
applicant:
  - a. Support facilities and personnel (include lab. as  
appropriate).
  - b. Artifact storage facilities or storage agreements.
4. a. List the name(s) and area(s) of expertise of all  
individuals the applicant will utilize to perform  
supervisory or in-office evaluation work, or both,  
conducted under the permit applied for here (use  
continuation sheets as necessary):
  - b. Attach a standard vita for each individual listed at 4a,  
above.
  - c. List the name(s) of any individual(s) noted at 4a, above,  
for whom the applicant requests an exception to the  
minimum professional qualifications described at North  
Dakota Administrative Code (NDAC) section 40-02-02-05 (use  
continuation sheets as necessary): For each individual so  
listed, enclose documentation to justify the exception  
requested.
5. Type of permit applied for (check one):
  - \_\_\_ a. Annual permit required by North Dakota Century Code (NDCC)  
section 55-03-01 for activities related to satisfaction of  
state or federal review and compliance procedures.
  - \_\_\_ b. One-time permit required by NDCC section 55-03-01.1 for  
activities related to research to be conducted on land  
owned by an instrumentality of the state and not related  
to review and compliance procedures.
6. Enclose with this application one of the following as  
appropriate (check which enclosed):

- \_\_\_ a. Annual permit fee (\$50.00).
- \_\_\_ b. One-time permit fee (\$100.00). Also enclose a description of the legal location, the SITS number, and a copy of the research design for the activities proposed to be conducted under this permit.
- \_\_\_ c. Documentation described at NDAC section 40-02-02-03. (For annual permit only.)

Permit fees must be made by check payable to: "State Historical Society of North Dakota." One-time permits granted will cover only those activities described in the research design submitted (6b, above).

7. Read and sign the following:

Application is herewith made for a permit related to NDCC section 55-03-01 or 55-03-01.1, which sections I have read and understand. The information provided above, and as attachments to this application, is correct and complete to the best of my knowledge.

\_\_\_\_\_  
 (Signature of applicant or authorized representative)

STATE OF \_\_\_\_\_ )  
 COUNTY OF \_\_\_\_\_ )ss.

On this \_\_\_\_\_ day of \_\_\_\_\_ in the year of 19 \_\_\_\_\_  
 before me personally appeared \_\_\_\_\_ known to me to  
 be the person who is described in and who executed the written  
 instrument and acknowledged to me that the  
 \_\_\_\_\_ executed the same.

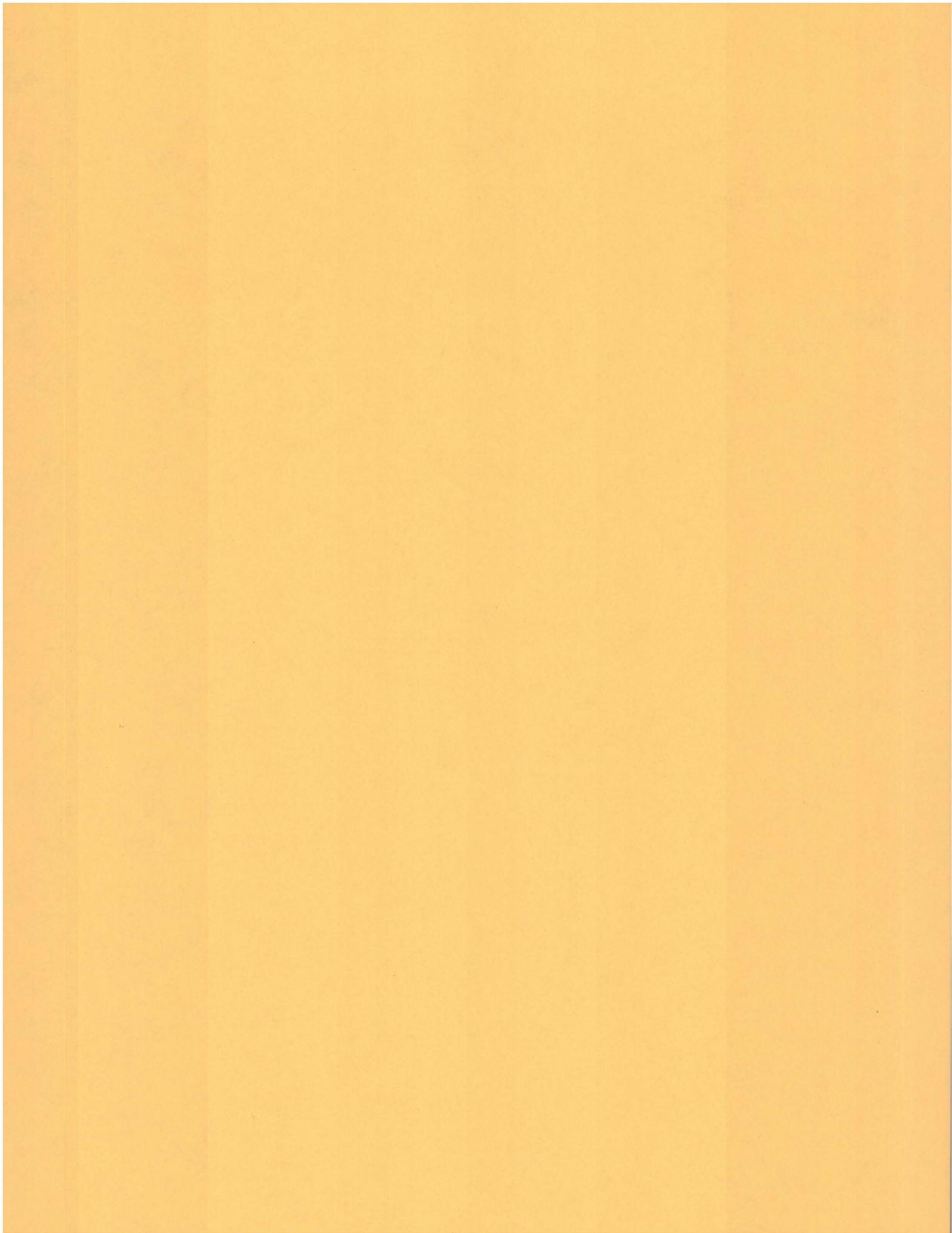
(SEAL)

\_\_\_\_\_  
 Notary Public  
 My Commission Expires:

SHSND USE ONLY

Date received: \_\_\_\_\_  
 Reviewed by: \_\_\_\_\_ Date reviewed: \_\_\_\_\_  
 Action taken: \_\_\_\_\_ Date of action: \_\_\_\_\_

1888



**TITLE 45**  
**Insurance, Commissioner of**



JANUARY 1985

STAFF COMMENT: Chapters 45-04-05, 45-04-06, and 45-04-08 contain all new material but are not underscored so as to improve readability.

CHAPTER 45-04-05  
UNIVERSAL LIFE INSURANCE

Section	
45-04-05-01	Definitions
45-04-05-02	Scope
45-04-05-03	Valuation
45-04-05-04	Nonforfeiture
45-04-05-05	Mandatory Policy Provisions
45-04-05-06	Disclosure Requirements
45-04-05-07	Periodic Disclosure to Policyowner Requirements
45-04-05-08	Interest-Indexed Universal Life Insurance Policies
45-04-05-09	Separability

**45-04-05-01. Definitions.** As used in this chapter:

1. "Cash surrender value" means the net cash surrender value plus any amounts outstanding as policy loans.
2. "Fixed premium universal life insurance policy" means a universal life insurance policy other than a flexible premium universal life insurance policy.
3. "Flexible premium universal life insurance policy" means a universal life insurance policy which permits the policyowner to vary, independently of each other, the amount or timing of one or more premium payments or the amount of insurance.

4. "Interest-indexed universal life insurance policy" means any universal life insurance policy where the interest credits are linked to an external referent.
5. "Net cash surrender value" means the maximum amount payable to the policyowner upon surrender.
6. "Policy value" means the amount to which separately identified interest credits and mortality, expense, or other charges are made under a universal life insurance policy.
7. "Universal life insurance policy" means any individual life insurance policy under the provisions of which separately identified interest credits (other than in connection with dividend accumulations, premium deposit funds, or other supplementary accounts) and mortality and expense charges are made to the policy. A universal life insurance policy may provide for other credits and charges, such as charges for the cost of benefits provided by rider.

**History:** Effective January 1, 1985.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26-03

#### **45-04-05-02. Scope.**

1. This chapter encompasses all individual universal life insurance policies except those policies defined under subsection 14 of section 45-04-04-01.
2. All companies shall be in full compliance with this rule on or before one year from January 1, 1985.

**History:** Effective January 1, 1985.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26-03

#### **45-04-05-03. Valuation.**

##### **1. Requirements.**

- a. The minimum valuation standard for universal life insurance policies shall be the commissioners reserve valuation method, as described below for such policies, and the tables and interest rates specified below. The terminal reserve for the basic policy and any benefits or riders, or both, for which premiums are not paid separately as of any policy anniversary must be equal to the net level premium reserves less (C) and less (D), where:

Reserves by the net level premium method must be equal to  $((A) - (B))r$  where (A), (B) and  $r$  are as defined below:

(A) is the present value of all future guaranteed benefits at the date of valuation.

(B) is the quantity  $ax+t$ , where PVFB is the present value of all benefits guaranteed at issue assuming future guaranteed maturity premiums are paid by the policyowner and taking into account all guarantees contained in the policy or declared by the insurer.

$ax$  and  $ax+t$  are present values of an annuity of one per year payable on policy anniversaries beginning at ages  $x$  and  $x+t$ , respectively, and continuing until the highest attained age at which a premium may be paid under the policy. ( $x$ ) is defined as the issue age and ( $t$ ) is defined as the issue age and ( $t$ ) is defined as the duration of the policy.

The guaranteed maturity premium for flexible premium universal life insurance policies must be that level gross premium, paid at issue and periodically thereafter over the period during which premiums are allowed to be paid, which will mature the policy on the latest maturity date, if any, permitted under the policy (otherwise at the highest age in the valuation mortality table), for an amount which is in accordance with the policy structure. The guaranteed maturity premium is calculated at issue based on all policy guarantees at issue (excluding guarantees linked to an external referent). The guaranteed maturity premium for fixed premium universal life insurance policies must be the premium defined in the policy which at issue provides the minimum policy guarantees.

$r$  is equal to one, unless the policy is a flexible premium policy and the policy value is less than the guaranteed maturity fund, in which case  $r$  is the ratio of the policy value to the guaranteed maturity fund.

The guaranteed maturity fund at any duration is that amount which, together with future guaranteed maturity premiums, will mature the policy based on all policy guarantees at issue.

(C) is the quantity  $((a)-(b))$  where (a)-(b) is as described in [Section Four of the NAIC Standard Valuation Law, as amended in 1980] for the plan of insurance defined at issue by the guaranteed maturity premiums and all guarantees contained in the policy or declared by the insurer.

${}^a_{x+t}$  and  ${}^a_x$  are defined in (B) above.

(D) is the sum of any additional quantities analogous to (C) which arise because of structural changes in the policy, with each such quantity being determined on a basis consistent with that of (C) using the maturity date in effect at the time of the change.

The guaranteed maturity premium, the guaranteed maturity fund and (B) above must be recalculated to reflect any structural changes in the policy. This recalculation must be done in a manner consistent with the descriptions above. Future guaranteed benefits are determined by (a) projecting the greater of the guaranteed maturity fund and the policy value, taking into account future guaranteed maturity premiums, if any, and using all guarantees of interest, mortality, expense deductions, etc., contained in the policy or declared by the insurer; and (b) taking into account any benefits guaranteed in the policy or by declaration which do not depend on the policy value.

All present values shall be determined using (a) an interest rate (or rates) specified by [the NAIC Standard Valuation Law, as amended in 1980] for policies issued in the same year; (b) the mortality rates specified by [the NAIC Standard Valuation Law, as amended in 1980] for policies issued in the same year or contained in such other table as may be approved by the commissioner for this purpose; and (c) any other tables needed to value supplementary benefits provided by a rider which is being valued together with the policy.

## 2. Alternative minimum reserves.

- a. If, in any policy year, the guaranteed maturity premium on any universal life insurance policy is less than the valuation net premium for such policy, calculated by the valuation method actually used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such contract shall be the greater of (1) or (2).
  - (1) The reserve calculated according to the method, the mortality table, and the rate of interest actually used.
  - (2) The reserve calculated according to the method actually used but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the guaranteed maturity premium in each policy year for which the

valuation net premium exceeds the guaranteed maturity premium.

For universal life insurance reserves on a net level premium basis, the valuation net premium and for reserves on a commissioners reserve valuation method, the valuation net premium is

**History:** Effective January 1, 1985.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 26-03

**45-04-05-04. Nonforfeiture.**

**1. Minimum cash surrender values for flexible premium universal life insurance policies.**

- a. Minimum cash surrender values for flexible premium universal life insurance policies must be determined separately for the basic policy and any benefits and riders for which premiums are paid separately. The following requirements pertain to a basic policy and any benefits and riders for which premiums are not paid separately.

The minimum cash surrender value (before adjustment for indebtedness and dividend credits) available on a date as of which interest is credited to the policy shall be equal to the accumulations to that date of the premiums paid minus the accumulations to that date of (1) the benefit charges, (2) the averaged administrative expense charges for the first policy year and any insurance-increase years, (3) actual administrative expense charges for other years, (4) initial and additional acquisition expense charges not exceeding the initial or additional expense allowances, respectively, (5) any service charges actually made (excluding charges for cash surrender or election of a paid-up nonforfeiture benefit) and (6) any deductions made for partial withdrawals; all accumulations being at the actual rate or rates of interest at which interest credits have been made unconditionally to the policy (or have been made conditionally, but for which the conditions have since been met), and minus any unamortized unused initial and additional expense allowances.

Interest on the premiums and on all charges referred to in items (1) through (6) above must be accumulated from and to such dates as are consistent with the manner in which interest is credited in determining the policy value.

The benefit charges must include the charges made for mortality and any charges made for riders or supplementary

benefits for which premiums are not paid separately. If benefit charges are substantially level by duration and develop low or no cash values, then the commissioner may require higher cash values unless the insurer provides adequate justification that the cash values are appropriate in relation to the policy's other characteristics.

The administrative expense charges must include charges per premium payment, charges per dollar of premium paid, periodic charges per thousand dollars of insurance, periodic per policy charges, and any other charges permitted by the policy to be imposed without regard to the policyowner's request for services.

The averaged administrative expense charges for any year must be those which would have been imposed in that year if the charge rate or rates for each transaction or period within the year had been equal to the arithmetic average of the corresponding charge rates which the policy states will be imposed in policy years two through twenty in determining the policy value.

The initial acquisition expense charges must be the excess of the expense charges, other than service charges, actually made in the first policy year over the averaged administrative expense charges for that year. Additional acquisition expense charges must be the excess of the expense charges, other than service charges, actually made in an insurance-increase year over the averaged administrative expense charges for that year. An insurance-increase year must be the year beginning on the date of increase in the amount of insurance by policyowner request (or by the terms of the policy).

Service charges include charges permitted by the policy to be imposed as the result of a policyowner's request for a service by the insurer (such as the furnishing of future benefit illustrations) or of special transactions.

The initial expense allowance must be the allowance provided by subdivisions b, c, and d of subsection 1 of North Dakota Century Code section 26-03.2-04 or by subdivisions b and c of subsection 1 of North Dakota Century Code section 26-03.2-06.1 as applicable for a fixed premium, fixed benefit endowment policy with a face amount equal to the initial face amount of the flexible premium universal life insurance policy, with level premiums paid annually until the highest attained age at which a premium may be paid under the flexible premium universal life insurance policy, and maturing on the latest maturity date permitted under the policy, if any, otherwise at the highest age in the valuation mortality

table. The unused initial expense allowance must be the excess, if any, of the initial expense allowance over the initial acquisition expense charges as defined above.

If the amount of insurance is subsequently increased upon request of the policyowner (or by the terms of the policy), an additional expense allowance and an unused additional expense allowance must be determined on a basis consistent with the above and with subsection 5 of North Dakota Century Code section 26-03.2-06.1 using the face amount and the latest maturity date permitted at that time under the policy.

The unamortized unused initial expense allowance during the policy year beginning on the policy anniversary at age  $x+t$  (where  $x$  is the issue age) must be the unused initial expense allowance multiplied by  $\frac{a_{x+t}}{a_x}$  where  $a_{x+t}$  and  $a_x$  are present values of an annuity of one per year payable on policy anniversaries beginning at ages  $x+t$  and  $x$ , respectively, and continuing until the highest attained age at which a premium may be paid under the policy, both on the mortality and interest bases guaranteed in the policy. An unamortized unused additional expense allowance must be the unused additional expense allowance multiplied by a similar ratio of annuities, with  $a_x$  replaced by an annuity beginning on the date as of which the additional expense allowance was determined.

**2. Minimum cash surrender values for fixed premium universal life insurance policies.**

- a. For fixed premium universal life insurance policies, the minimum cash surrender values must be determined separately for the basic policy and any benefits and riders for which premiums are paid separately. The following requirements pertain to a basic policy and any benefits and riders for which premiums are not paid separately.

The minimum cash surrender value (before adjustment for indebtedness and dividend credits) available on a date as of which interest is credited to the policy must be equal to  $((A)-(B)-(C)-(D))$ , where:

- (A) is the present value of all future guaranteed benefits.
- (B) is the present value of future adjusted premiums. The adjusted premiums are calculated as described in North Dakota Century Code sections 26-03.2-05 and 26-03.2-06 or in subsection 1 of North Dakota Century Code section 26-03.2-06.1 as applicable. If subsection 1 of North Dakota Century Code section

26-03.2-06.1 is applicable, the nonforfeiture net level premium is equal to the quantity  $\frac{PVFB}{a_x}$  where PVFB is the present value of all benefits guaranteed at issue assuming future premiums are paid by the policyowner and all guarantees contained in the policy or declared by the insurer.

$a_x$  is the present value of an annuity of one per year payable on policy anniversaries beginning at age  $x$  and continuing until the highest attained age at which a premium may be paid under the policy.

(C) is the present value of any quantities analogous to the nonforfeiture net level premium which arise because of guarantees declared by the insurer after

the issue date of the policy.  $a_x$  shall be replaced by an annuity beginning on the date as of which the declaration became effective and payable until the end of the period covered by the declaration.

(D) is the sum of any quantities analogous to (B) which arise because of structural changes in the policy.

Future guaranteed benefits are determined by (1) projecting the policy value, taking into account future premiums, if any, and using all guarantees of interest, mortality, expense deductions, etc., contained in the policy or declared by the insurer; and (2) taking into account any benefits guaranteed in the policy or by declaration which do not depend on the policy value.

All present values shall be determined using (1) an interest rate (or rates) specified by North Dakota Century Code chapter 26-03.2 for policies issued in the same year and (2) the mortality rates specified by North Dakota Century Code chapter 26-03.2 for policies issued in the same year or contained in such other table as may be approved by the commissioner for this purpose.

3. **Minimum paid-up nonforfeiture benefits.** If a universal life insurance policy provides for the optional election of a paid-up nonforfeiture benefit, it must be such that its present value must be at least equal to the cash surrender value provided for by the policy on the effective date of the election. The present value must be based on mortality and interest standards at least as favorable to the policyowner as (1) in the case of a flexible premium universal life insurance policy, the mortality and interest basis guaranteed in the policy for determining the policy value, or (2) in the case of a fixed premium policy the mortality and interest standards permitted for paid-up nonforfeiture benefits by North Dakota

Century Code chapter 26-03.2. In lieu of the paid-up nonforfeiture benefit, the insurer may substitute, upon proper request not later than sixty days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit which provides a greater amount or longer period of death benefits, or, if applicable, a greater amount or earlier payment of endowment benefits.

**History:** Effective January 1, 1985.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26-03

**45-04-05-05. Mandatory policy provisions.** The policy shall provide the following:

1. **Periodic disclosure to policyowner.** The policy must provide that the policyowner will be sent, without charge, at least annually, a report which will serve to keep such policyowner advised as to the status of the policy. The end of the current report period must be not more than three months previous to the date of the mailing of the report. Specific requirements of this report are detailed in section 45-04-05-06.
2. **Illustrative reports.** The policy must provide for an illustrative report which will be sent to the policyowner upon request. Minimum requirements of such report are the same as those set forth in section 45-04-05-05. The insurer may charge the policyowner a reasonable fee for providing the report.
3. **Policy guarantees.** The policy must provide guarantees of minimum interest credits and maximum mortality and expense charges. All values and data shown in the policy must be based on guarantees. No figures based on nonguarantees may be included in the policy.
4. **Calculation of cash surrender values.** The policy must contain at least a general description of the calculation of cash surrender values including the following information:
  - a. The guaranteed maximum expense charges and loads.
  - b. Any limitation on the crediting of additional interest. Interest credits may not remain conditional for a period longer than twelve months.
  - c. The guaranteed minimum rate or rates of interest.
  - d. The guaranteed maximum mortality charges.
  - e. Any other guaranteed charges.

- f. Any surrender or partial withdrawal charges.
5. **Changes in basic coverage.** If the policyowner has the right to change the basic coverage, any limitation on the amount or timing of such change must be stated in the policy. If the policyowner has the right to increase the basic coverage, the policy must state whether a new period of contestability, or suicide, or both, is applicable to the additional coverage.
  6. **Grace period and lapse.** The policy must provide for written notice to be sent to the policyowner's last known address at least thirty days prior to termination of coverage. A flexible premium policy must provide for a grace period of at least thirty days (or as required by North Dakota law) after lapse. Unless otherwise defined in the policy, lapse occurs on that date on which the net cash surrender value first equals zero.
  7. **Misstatement of age or sex.** If there is a misstatement of age or sex in the policy, the amount of the death benefit must be that which would be purchased by the most recent mortality charge at the correct age or sex. The commissioner may approve other methods which are deemed satisfactory.
  8. **Maturity date.** If a policy provides for a "maturity date," "end date," or similar date, then the policy shall also contain a statement, in close proximity to that date, that it is possible that coverage may not continue to the maturity date even if scheduled premiums are paid in a timely manner, if such is the case.

**History:** Effective January 1, 1985.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26-03

**45-04-05-06. Disclosure requirements.** In connection with any advertising, solicitation, negotiation, or procurement of a universal life insurance policy:

1. Any statement of policy cost factors or benefits must contain:
  - a. The corresponding guaranteed policy cost factors or benefits, clearly identified.
  - b. A statement explaining the nonguaranteed nature of any current interest rates, charges, or other fees applied to the policy, including the insurer's rights to alter any of these factors.
  - c. Any limitations on the crediting of interest, including identification of those portions of the policy to which a specified interest rate shall be credited.

(Note: Policy cost factors are those amounts which affect the price per thousand of life insurance coverage or other benefits. They include: interest, mortality, expense charges and fees, including any surrender or withdrawal charges, but not persistency assumptions.)

2. Any illustration of the policy value must be accompanied by the corresponding net cash surrender value.
3. Any statement regarding the crediting of a specific current interest rate must also contain the frequency and timing by which such rate is determined.
4. If any statement refers to the policy being interest-indexed, the index must be described. In addition, a description must be given of the frequency and timing of determining the interest rate and of any adjustments made to the index in arriving at the interest rate credited under the policy.
5. Any illustrated benefits based upon nonguaranteed interest, mortality, or expense factors must be accompanied by a statement indicating that these benefits are not guaranteed.
6. If the guaranteed cost factors or initial policy cost factor assumptions would result in policy values becoming exhausted prior to the policy's maturity date, such fact must be disclosed, including notice that coverage will terminate under such circumstances.

**History:** Effective January 1, 1985.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26-03

**45-04-05-07. Periodic disclosure to policyowner requirements.**

The policy must provide that the policyowner will be sent, without charge, at least annually, a report which will serve to keep such policyowner advised of the status of the policy. The end of the current report period may be not more than three months previous to the date of the mailing of the report.

The report must include the following:

1. The beginning and end of the current report period.
2. The policy value at the end of the previous report period and at the end of the current report period.
3. The total amounts which have been credited or debited to the policy value during the current report period, identifying each by type (e.g., interest, mortality, expense and riders).

4. The current death benefit at the end of the current report period on each life covered by the policy.
5. The net cash surrender value of the policy as of the end of the current report period.
6. The amount of outstanding loans, if any, as of the end of the current report period.
7. For fixed premium policies: If, assuming guaranteed interest, mortality and expense loads and continued scheduled premium payments, the policy's net cash surrender value is such that it would not maintain insurance in force until the end of the next reporting period, a notice to this effect must be included in the report.
8. For flexible premium policies: If, assuming guaranteed interest, mortality and expense loads, the policy's net cash surrender value will not maintain insurance in force until the end of the next reporting period unless further premium payments are made, a notice to this effect must be included in the report.

**History:** Effective January 1, 1985.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26-03

**45-04-05-08. Interest-indexed universal life insurance policies.**

1. **Initial filing requirements.** The following information must be submitted in connection with any filing of interest-indexed universal life insurance policies ("interest-indexed policies"). All such information received must be treated confidentially to the extent permitted by law.
  - a. A description of how the interest credits are determined, including:
    - (1) A description of the index.
    - (2) The relationship between the value of the index and the actual interest rate to be credited.
    - (3) The frequency and timing of determining the interest rate.
    - (4) The allocation of interest credits, if more than one rate of interest applies to different portions of the policy value.
  - b. The insurer's investment policy, which includes a description of the following:

- (1) How the insurer addressed the reinvestment risks.
  - (2) How the insurer plans to address the risk of capital loss on cash outflows.
  - (3) How the insurer plans to address the risk that appropriate investments may not be available or not available in sufficient quantities.
  - (4) How the insurer plans to address the risk that the indexed interest rate may fall below the minimum contractual interest rate guaranteed in the policy.
  - (5) The amount and type of assets currently held for interest-indexed policies.
  - (6) The amount and type of assets expected to be acquired in the future.
- c. If policies are linked to an index for a specified period less than to the maturity date of the policy, a description of the method used (or currently contemplated) to determine interest credits upon the expiration of such period.
  - d. A description of any interest guarantee in addition to or in lieu of the index.
  - e. A description of any maximum premium limitations and the conditions under which they apply.

**2. Additional filing requirements.**

- a. Annually, every insurer shall submit a statement of actuarial opinion by the insurer's actuary similar to the example contained in subsection 3.
- b. Annually, every insurer shall submit a description of the amount and type of assets currently held by the insurer with respect to its interest-indexed policies.
- c. Prior to implementation, every domestic insurer shall submit a description of any material change in the insurer's investment strategy or method of determining the interest credits. A change is considered to be material if it would affect the form or definition of the index (i.e., any change in the information supplied in subdivision a above) or if it would significantly change the amount or type of assets held for interest-indexed policies.

**3. Statement of actuarial opinion for interest-indexed universal life insurance policies.**

I, \_\_\_\_\_, am \_\_\_\_\_  
(name) (position or relationship to Insurer)  
for the XYZ Life Insurance Company (The Insurer)  
in the state of \_\_\_\_\_.  
(State of Domicile of Insurer)

I am a member of the American Academy of Actuaries (or if not, state other qualifications to sign annual statement actuarial opinions).

I have examined the interest-indexed universal life insurance policies of the insurer in force as of December 31, 19\_\_\_\_, encompassing \_\_\_\_ number of policies and \$ \_\_\_\_ of insurance in force.

I have considered the provisions of the policies. I have considered any reinsurance agreements pertaining to such policies, the characteristics of the identified assets and the investment policy adopted by the insurer as they affect future insurance and investment cash flows under such policies and related assets. My examination included such tests and calculations as I considered necessary to form an opinion concerning the insurance and investment cash flows arising from the policies and related assets.

I relied on the investment policy of the insurer and on projected investment cash flows as provided by \_\_\_\_\_, Chief Investment Officer of the insurer.

The tests were conducted under various assumptions as to future interest rates, and particular attention was given to those provisions and characteristics that might cause future insurance and investment cash flows to vary with changes in the level of prevailing interest rates.

In my opinion, the anticipated insurance and investment cash flows referred to above make good and sufficient provision for the contractual obligations of the insurer under these insurance policies.

\_\_\_\_\_  
Signature of Actuary

**History:** Effective January 1, 1985.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 26-03

**45-04-05-09. Separability.** If any provision of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the chapter and the application of

such provision to other persons or circumstances is not affected thereby.

**History:** Effective January 1, 1985.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26-03

## CHAPTER 45-04-06 SMOKER/NONSMOKER MORTALITY TABLES

Section	
45-04-06-01	Definitions
45-04-06-02	Alternate Tables
45-04-06-03	Conditions
45-04-06-04	Separability
45-04-06-05	Effective Date

### 45-04-06-01. Definitions. As used in this chapter:

1. "Composite mortality tables" refers to the mortality tables defined in subsections 3 through 6 of this section as they were originally published with rates of mortality that do not distinguish between smokers and nonsmokers.
2. "Smoker and nonsmoker mortality tables" refers to the mortality tables with separate rates of mortality for smokers and nonsmokers derived from the tables defined in subsections 3 through 6 of this section which were developed by the society of actuaries task force on smoker/nonsmoker mortality and the California insurance department staff and recommended on the NAIC technical staff actuarial group.
3. "1958 CET Table" means that mortality table developed by the society of actuaries special committee on new mortality tables, incorporated in the NAIC Model Standard Nonforfeiture Law for Life Insurance, and referred to in that model as the Commissioners 1958 Extended Term Insurance Table.
4. "1958 CSO Table" means that mortality table developed by the society of actuaries special committee on new mortality tables, incorporated in the NAIC Model Standard Nonforfeiture Law for Life Insurance, and referred to in that model as the Commissioners 1958 Standard Ordinary Mortality Table.
5. "1980 CET Table" means that mortality table consisting of separate rates of mortality for male and female lives, developed by the society of actuaries committee to recommend

new mortality tables for valuation of standard individual ordinary life insurance, incorporated in the 1980 NAIC amendments to the Model Standard Nonforfeiture Law for Life Insurance, and referred to in those models as the Commissioners 1980 Extended Term Insurance Table.

6. "1980 CSO Table, with or without ten-year select mortality factor" means that mortality table, consisting of separate rate of mortality for male and female lives, developed by the society of actuaries committee to recommend new mortality tables for valuation of standard individual ordinary life insurance, incorporated in the 1980 NAIC amendments to the Model Standard Valuation Law and Standard Nonforfeiture Law for Life Insurance, and referred to in those models as the Commissioners 1980 Standard Ordinary Mortality Table, with or without ten-year select mortality factors. The same select factors will be used for both smokers and nonsmokers tables.

**History:** Effective January 1, 1985.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26-03.2

#### **45-04-06-02. Alternate tables.**

1. For any policy of insurance delivered or issued for delivery in this state after the operative date of section 26-03.2-06.1(11) for that policy form and before January 1, 1989, at the option of the company and subject to the conditions stated in section 45-04-06-05:
  - a. The 1958 CSO Smoker and Nonsmoker Mortality Tables may be substituted for the 1980 CSO Table, with or without ten-year select mortality factors; and
  - b. The 1958 CET Smoker and Nonsmoker Mortality Tables may be substituted for the 1980 CET Table,

for use in determining minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits.

Provided, that for any category of insurance issued on female lives with minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits determined using the 1958 CSO or 1958 CET Smoker and Nonsmoker Mortality Tables, such minimum values may be calculated according to an age not more than six years younger than the actual age of the insured.

Provided, further, that the substitution of the 1958 CSO or 1958 CET Smoker and Nonsmoker Mortality Tables is available only if made for each policy of insurance on a policy form

delivered or issued for delivery on or after the operative date for that policy form and before a date not later than January 1, 1989.

2. For any policy of insurance delivered or issued for delivery in this state after the operative date of section 26-03.2-06.1(11) for that policy form, at the option of the company and subject to the conditions stated in section 45-04-06-05:

- a. The 1980 CSO Smoker and Nonsmoker Mortality Tables, with or without ten-year select mortality factors, may be substituted for the 1980 CSO Table, with or without ten-year select mortality factors; and

- b. The 1980 CET Smoker and Nonsmoker Mortality Tables may be substituted for the 1980 CET Table,

for use in determining minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits.

**History:** Effective January 1, 1985.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26-03.2

**45-04-06-03. Conditions.** For each plan of insurance with separate rates for smokers and nonsmokers an insurer may:

1. Use composite mortality tables to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits;
2. Use smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by North Dakota Century Code section 26-10.1-08 and use composite mortality tables to determine the basic minimum reserves, minimum cash surrender values and amounts of paid-up nonforfeiture benefits; or
3. Use smoker and nonsmoker mortality to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits.

**History:** Effective January 1, 1985.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26-03.2

**45-04-06-04. Separability.** If any provision of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application

of such provision to other persons or circumstances is not affected thereby.

**History:** Effective January 1, 1985.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26-03.2

**45-04-06-05. Effective date.** The effective date of this chapter is January 1, 1985.

**History:** Effective January 1, 1985.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26-03.2

### CHAPTER 45-04-08 1983 ANNUITY TABLES

Section

45-04-08-01	Definitions
45-04-08-02	Individual Annuity or Pure Endowment Contracts
45-04-08-03	Group Annuity or Pure Endowment Contracts
45-04-08-04	Separability

**45-04-08-01. Definitions.** As used in this chapter:

1. "1983 GAM Table" means that mortality table developed by the society of actuaries committee on annuities and adopted as a recognized mortality table for annuities in December 1983 by the national association of insurance commissioners.
2. "1983 Table 'a'" means that mortality table developed by the society of actuaries committee to recommend a new mortality basis for individual annuity valuation and adopted as a recognized mortality table for annuities in June 1982 by the national association of insurance commissioners.

**History:** Effective January 1, 1985.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26-10.1

**45-04-08-02. Individual annuity or pure endowment contracts.**

1. The 1983 Table "a" is recognized and approved as an individual mortality table for valuation and, at the option of the company, may be used for purposes of determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after July 1, 1983.

2. The 1983 Table "a" is to be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 1986.

**History:** Effective January 1, 1985.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26-10.1

**45-04-08-03. Group annuity or pure endowment contracts.**

1. The 1983 GAM Table and the 1983 Table "a" are recognized and approved as group annuity mortality tables for valuation and, at the option of the company, either table may be used for purposes of valuation for any annuity or pure endowment purchased on or after July 1, 1983, under a group annuity or pure endowment contract.
2. The 1983 GAM Table is to be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after January 1, 1986, under a group annuity or pure endowment contract.

**History:** Effective January 1, 1985.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26-10.1

**45-04-08-04. Separability.** If any provision of this chapter or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances is not affected thereby.

**History:** Effective January 1, 1985.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26-10.1

**45-08-01-01. Coordination of benefit provisions.** Group insurance policies, group-type individual policies (as described in the fourth paragraph of subdivision d of subsection 2), group subscriber policies, and individual or family nongroup subscriber policies issued in North Dakota by nonprofit service corporations or health maintenance organizations, may contain coordination of benefit provisions for the control of over-insurance. No such policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth below unless such provisions are in the words in which they appear in this section. However, the insurer may, at its option, use in lieu of any such provision a corresponding provision of

different wording approved by the commissioner which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption appearing herein or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve. Plans of coverage designed to be supplementary over the policyholder's underlying basic plan of coverage may provide that the coverage is in excess to that specific policyholder's plan of basic coverage from whatever source provided. Nothing in this section conflicts with North Dakota Century Code section 26-03-48.1.

1. Benefits subject to these provisions. All of the benefits provided under this policy are subject to these provisions.

(Note: Where the policy provides both integrated major medical expense benefits and the underlying basic benefits, but these provisions apply to major medical only, then use the following alternate wording: Only the major medical expense benefits provided under this policy are subject to these provisions.)

2. Definitions.

- a. "Allowable expense" means any necessary, reasonable, and customary item of expense, at least a portion of which is covered under one or more of the plans covering the person for whom claim is made or service is provided.

The difference between the cost of a private hospital room and the cost of a semiprivate hospital room may not be deemed to be an "allowable expense," except for the period of time during which the patient's confinement to a private hospital room is deemed medically necessary in terms of generally accepted medical practice.

If "medicare" or similar governmental benefits are included in the term "plan" such benefits shall be taken into consideration without expanding this definition of allowable expense beyond the hospital, medical, and surgical benefits as may be provided under such governmental benefits.

Where a plan provides benefits in the form of services rather than cash payments, the reasonable cash value of each service rendered shall be deemed to be both an allowable expense and a benefit paid.

- b. "Claim determination period" means \_\_\_\_\_.

(Note: Insert here an appropriate period of time, such as "calendar year" or "benefit period as defined elsewhere in this policy".)

- c. "Insurer", wherever used herein, means the applicable insurance company, nonprofit service corporation or health maintenance organization.
- d. "Plan" means any plan providing benefits or services for or by reason of medical or dental care or treatment, which benefits or services are provided by (1) group, blanket, or franchise insurance coverage, (2) group subscriber policies and individual or family nongroup subscriber policies issued in North Dakota by nonprofit service corporations or health maintenance organizations, (3) a nonprofit hospital, medical, or dental service corporation, group practice, individual practice, and other prepayment coverage, (4) any coverage under labor-management trustee plans, union welfare plans, employer organization plans, or employee benefit organization plans, and (5) any coverage under governmental programs, and any coverage required or provided by a statute.

"Plan" does not include individual or family policies, or individual or family subscriber policies, except as provided in item (2) above and except as provided in the next succeeding paragraph.

"Plan" includes all group or group subscriber policies as well as such group-type policies as are not available to the general public and can be obtained and maintained only because of the covered person's membership in or connection with a particular organization or group. Group-type policies answering this description shall be included in the term "plan" whether or not individual policy forms are used and whether the group-type coverage is designated as "franchise" or "blanket" or in some other fashion.

"Plan" shall be construed separately with respect to each policy, contract, or other arrangement for benefits or services and separately with respect to that portion of any such policy, contract, or other arrangement which reserves the right to take the benefits or services of other plans into consideration in determining its benefits, and that portion which does not.

The term "plan" does not include group or group-type hospital indemnity benefits, written on a non-expense-incurred basis, up to the first thirty dollars per day of such benefits. The amount of such hospital indemnity benefits, in excess of thirty dollars per day, shall be included in the term "plan".

School accident coverages, whether written on a blanket, group, or franchise basis, shall not be included in the

term "plan". In this context, school accident coverages shall mean coverages covering grammar school or high school students for accidents only, including athletic injuries, either on a twenty-four-hour basis or on a "to and from school" basis, for which the parent pays the entire premium.

The term "plan" includes both group and individual automobile "no-fault" contracts for the purpose of coordination of benefits pursuant to subsection 3 of North Dakota Century Code section 26-41-10.

A plan may not coordinate or design benefits so that the benefits payable are altered solely on the basis that:

- (1) Another plan exists;
- (2) Except with respect to part B of medicare, that the claimant is or could have been covered under another plan; or
- (3) The claimant has elected an option under another plan providing a lower level of benefits than another option for which the claimant was eligible.

- e. "Policy", wherever used herein, means policy or contract.
- f. "This plan" means that portion of this policy which provides the benefits that are subject to these provisions.

(Note: Any benefits provided under this policy that are not subject to these provisions shall constitute another plan.)

### 3. Effect on benefits.

- a. These provisions shall apply in determining the benefits as to a person covered under this plan for any claim determination period if, for the allowable expenses incurred as to such person during such period, the sum of the following would exceed such allowable expenses:
  - (1) The benefits that would be payable under this plan in the absence of these provisions; and
  - (2) The benefits that would be payable under all other plans in the absence therein of provisions of similar purpose to these provisions.
- b. As to any claim determination period with respect to which this provision is applicable, the benefits that would be payable under this plan in the absence of this provision

for the allowable expenses incurred as to such person during such claim determination period shall be reduced to the extent necessary so that the sum of such reduced benefits and all the benefits payable for such allowable expenses under all other plans, except as provided in subdivision c, shall not exceed the total of such allowable expenses. Benefits payable under another plan include the benefits that would have been payable had claim been duly made therefor.

c. If (1) another plan which is involved in subdivision b and which contains a provision coordinating its benefits with those of this plan would, according to its rules, determine its benefits after the benefits of this plan have been determined, and (2) the rules set forth in subdivision d would require this plan to determine its benefits before such other plan, then the benefits of such other plan will be ignored for the purposes of determining the benefits under this plan. Plans coordinating benefits with "no-fault" coverage must follow the provisions of subsection 3 of North Dakota Century Code section 26-41-10.

d. For the purposes of subdivision c, the rules establishing the order of benefit determination are:

(1) The benefits of a plan which covers the person on whose expenses claim is based other than as a dependent shall be determined before the benefits of a plan which covers such person as a dependent.

(2) ~~The~~ Until June 30, 1985, the benefits of a plan which covers the person on whose expenses claim is based as a dependent of a male person shall be determined before the benefits of a plan which covers such person as a dependent of a female person; except that in the case of a person for whom claim is made as a dependent child:

(a) When the parents are separated or divorced and the parent with custody of the child has not remarried, the benefits of a plan which covers the child as a dependent of the parent with custody of the child will be determined before the benefits of a plan which covers the child as a dependent of the parent without custody.

(b) When the parents are divorced and the parent with custody of the child has remarried, the benefits of a plan which covers the child as a dependent of the parent with custody shall be determined before the benefits of a plan which covers that child as a dependent of the

stepparent, and the benefits of a plan which covers that child as a dependent of the stepparent will be determined before the benefits of a plan which covers that child as a dependent of the parent without custody.

Notwithstanding subparagraphs a and b, if there is a court decree which would otherwise establish financial responsibility for the medical, dental, or other health care expenses with respect to the child, the benefits of a plan which covers the child as a dependent of the parent with such financial responsibility must be determined before the benefits of any other plan which covers the child as a dependent child.

(3) Effective July 1, 1985:

(a) Except for cases of a person for whom claim is made as a dependent child whose parents are separated or divorced, the benefits of a plan which covers the person on whose expenses claim is based as a dependent of a person whose date of birth, excluding year of birth, occurs earlier in a calendar year, must be determined before the benefits of a plan which covers such person as a dependent of a person whose date of birth, excluding year of birth, occurs later in a calendar year. If either plan does not have the provisions of this subparagraph regarding dependents, which results either in each plan determining its benefits before the other or in each plan determining its benefits after the other, the provisions of this subparagraph do not apply, and the rule set forth in the plan which does not have the provisions of this subparagraph determine the order of benefits.

(b) In the case of a person for whom claim is made as a dependent child whose parents are separated or divorced and the parent with custody of the child has not remarried, the benefits of a plan which covers the child as a dependent of the parent with custody of the child will be determined before the benefits of a plan which covers the child as a dependent of the parent without custody.

(c) In the case of a person for whom claim is made as a dependent child whose parents are divorced and the parent with custody of the child has remarried, the benefits of a plan which covers the child as a dependent of a parent with

custody must be determined before benefits of a plan which covers that child as a dependent of the stepparent, and the benefits of a plan which covers that child as a dependent of the stepparent will be determined before the benefits of a plan which covers that child as a dependent of the parent without custody.

(d) In the case of a person for whom claim is made as a dependent child whose parents are separated or divorced, where there is a court decree which would otherwise establish financial responsibility for the medical, dental, or other health care expenses with respect to the child, then, notwithstanding subparagraphs b and c, the benefits of a plan which covers the child as a dependent of the parent with such financial responsibility shall be determined before the benefits of any other plan which covers the child as a dependent child.

(3) (4) When paragraphs 1 and 2 do not establish an order of benefit determination, the benefits of a plan which has covered the person on whose expenses claim is based for the longer period of time shall be determined before the benefits of a plan which has covered such person the shorter period of time; provided, that:

(a) The benefits of a plan covering the person on whose expenses claim is based as a laid-off or retired employee or dependent of such person, must be determined after the benefits of any other plan covering such person as an employee, other than a laid-off or retired employee, or dependent of such person; and

(b) If either plan does not have a provision regarding laid-off or retired employees which results in each plan determining its benefits after the other, then the provisions of subparagraph a do not apply.

e. (Note: This paragraph may be omitted if the plan provides only one benefit.)

Where these provisions operate to reduce the total amount of benefits otherwise payable as to a person covered under this plan during any claim determination period, each benefit that would be payable in the absence of this provision shall be reduced proportionately, and such reduced amount shall be charged against any applicable benefit limit of this plan.

4. Right to receive and release necessary information. For the purposes of determining the applicability of and implementing the terms of these provisions of this plan or any provisions of similar purpose of any other plan, the insurer may, without the consent of or notice to any person, release to or obtain from any other insurance company or other organization or person any information, with respect to any person, which the insurer deems to be necessary for such purposes. Any person claiming benefits under this plan shall furnish to the insurer such information as may be necessary to implement these provisions.
5. Facility of payment. Whenever payments which should have been made under this plan in accordance with these provisions have been made under any other plans, the insurer shall have the right, exercisable alone and in its sole discretion, to pay over to any organizations making such other payments any amounts it shall determine to be warranted in order to satisfy the intent of these provisions, and amounts so paid shall be deemed to be benefits paid under this plan and, to the extent of such payments, the insurer shall be fully discharged from liability under this plan.
6. Right of recovery. Whenever payments have been made by the insurer with respect to allowable expenses in a total amount, at any time, in excess of the maximum amount of payment necessary at that time to satisfy the intent of these provisions, the insurer shall have the right to recover such payments, to the extent of such excess, from among one or more of the following, as the insurer shall determine: any persons to or for or with respect to whom such payments were made, any other insurance companies, or any other organizations.

**History:** Amended effective January 1, 1982; January 1, 1985.

**General Authority:** NDCC 26-03-48

**Law Implemented:** NDCC 26-03-48

**45-08-01-02. Guidelines.** In the course of implementing the coordination of benefit provisions, if any, included in a policy, each insurer shall be guided by the following guidelines:

**1. Order of benefit determination.**

- a. In determining the length of time a person has been covered under a given plan, two successive plans of a given group shall be deemed to be one continuous plan so long as the claimant was eligible for coverage within twenty-four hours after the prior plan had terminated. Thus, a change in the amount or scope of benefits provided by a plan, a change in the insurer insuring the plan, or a change from one type of plan to another, e.g., single employer to multiple employer plan, or vice versa, or

single employer to a Taft-Hartley welfare plan, would not constitute the start of a new plan for purposes of this guideline.

- b. If a claimant's effective date of coverage under a given plan is subsequent to the date the insurer first contracted to provide the plan for the group concerned (employer, union, association, etc.), then, in the absence of specific information to the contrary, the insurer shall assume, for purposes of this guideline, that the claimant's length of time covered under that plan shall be measured from the claimant's effective date of coverage. If a claimant's effective date of coverage under a given plan is the same as the date of the insurer first contracted to provide the plan for the group concerned, then the insurer shall request the group concerned to furnish the date the claimant first became covered under the earliest of any prior plans the group may have had. If such date is not readily available, the date the claimant first became a member of the group shall be used as the date from which to determine the length of time the claimant's coverage under that plan has been in force.

2. **Excess coverages, i.e., self-insurance and other nonregulated group plans.** Insurers are urged to use the following claims administration procedures when one plan is "excess" to all other coverage and the other policy (group health) contains coordination of benefit provisions: Such other group policy shall pay first if it would be primary under the coordination of benefit order of benefit determination. In those cases where such other group policy would normally be considered secondary, the applicable insurer should make every effort to coordinate in the secondary position with benefits available through such "excess" plan. The insurer should try to secure the necessary information from the "excess" plan. But if such plan is unwilling to provide the insurer with the necessary information, then the insurer should assume the primary position since it has no legal authority to do otherwise.

3. **Coordinating benefit payments.** Insurers are urged to use the following claims administration procedures to expedite claim payments where coordination of benefits is involved:

- a. Improving exchange of benefit information.

- (1) There should be continued and improved education of claims personnel, stressing the need for accurate and prompt completion of the HIC Duplicate Coverage Inquiry (DUP-1) form by the inquiring insurer and the responding insurer. This educational effort should also be encouraged through local claims associations.

- (2) Claims personnel should be encouraged to make every effort, including use of the telephone, to speed up exchange of coordination of benefits information.
  - (3) Insurer should encourage the administration of each plan to build a local data file with respect to other group plans in the area, with at least basic information on plans of major local employers.
- b. Each insurer should establish a time limit after which full or partial payment should be made. Where payment of a claim is necessarily delayed for reasons other than the application of coordination of benefit provisions, investigation of other valid coverage should be conducted concurrently so as to minimize further delay in the ultimate payment of benefits. Occasionally this will necessitate an insurer making payment as the primary insurer, with a right of recovery in the event of subsequent investigation proving that payment as a secondary insurer should have been made.
4. **Subrogation.** The concept of coordination of benefits is clearly distinguishable from that of subrogation. Provisions for either may be included in a group health insurance policy without compelling the inclusion or exclusion of the other.
  5. **Small claim waivers.** Insurers are urged to waive the investigation of possible other coverage for coordination of benefit purposes with respect to claims of less than fifty dollars. However, should a subsequent additional incurred liability raise the aggregate claim above fifty dollars, then the entire liability should be included in the coordination of benefits computation.
  6. **Public education.** Each insurer has an affirmative obligation to urge its respective group clients to take reasonable steps to assure that those insured under the group policy or subscriber contract have been exposed to reasonably concise explanations, with as little technical terminology as is commensurate with thoroughness, as to the purpose and operation of coordination of benefits. Such educational effort may, for example, take the form of articles in the employer's magazine or newspaper, speeches before the appropriate labor organization in the case of a unionized employer, brochures enclosed in pay envelopes, notices on the employer's bulletin board, or materials used by the personnel department in counseling employees.
  7. **Retroactivity and effective date.** Group and group-type policies which are in force as of the effective date of this chapter and which contain coordination of benefit provisions not fully in compliance with this chapter shall be brought into compliance by the later of the next anniversary of such

policy or the expiration of the applicable collectively bargained contract, if any.

The January 1, 1985, amendments of this chapter become effective January 1, 1985, except that the amendment to paragraph 2 of subdivision d of subsection 3 of section 45-08-01-01 becomes effective on July 1, 1985. The provisions of the amendments to this chapter apply to all policy and contract forms subject to this chapter that are issued on or after these effective dates, and all policy and contract forms subject to this chapter that were issued prior to the effective dates must be brought into compliance with the requirements of this chapter, as amended hereby, by the later of the next anniversary date or renewal date of the group policy or contract, or the expiration of any applicable collectively bargained contract pursuant to which they are written.

**History:** Amended effective January 1, 1985.

**General Authority:** NDCC 26-03-48

**Law Implemented:** NDCC 26-03-48



FEBRUARY 1985

STAFF COMMENT: Chapter 45-04-07 contains all new material but is not underscored so as to improve readability.

CHAPTER 45-04-07  
MIXED-GENDER MORTALITY TABLES

Section	
45-04-07-01	Definitions
45-04-07-02	Tables
45-04-07-03	Unfair Discrimination
45-04-07-04	Separability
45-04-07-05	Retroactive Effective Date

**45-04-07-01. Definitions.** As used in this chapter:

1. "1980 CET Table" means that mortality table consisting of separate rates of mortality for male and female lives, developed by the society of actuaries committee to recommend new mortality tables for valuation of standard individual ordinary life insurance, incorporated in the 1980 national association of insurance commissioners' amendments to the model standard valuation law and standard nonforfeiture law for life insurance, and referred to in those models as the commissioners' 1980 extended term insurance table.
2. "1980 CET Table (F)" means that mortality table consisting of the rates of mortality for female lives from the 1980 CET Table.
3. "1980 CET Table (M)" means that mortality table consisting of the rates of mortality for male lives from the 1980 CET Table.

4. "1980 CSO Table, with or without ten-year select mortality factors" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the society of actuaries committee to recommend new mortality tables for valuation of standard individual ordinary life insurance, incorporated in the 1980 national association of insurance commissioners' amendments to the model standard valuation law and standard nonforfeiture law for life insurance, and referred to in those models as the commissioners' 1980 standard ordinary mortality table, with or without ten-year select mortality factors.
5. "1980 CSO Table (F), with or without ten-year select mortality factors" means that mortality table consisting of the rates of mortality for female lives from the 1980 CSO Table, with out without ten-year select mortality factors.
6. "1980 CSO Table (M), with or without ten-year select mortality factors" means that mortality table consisting of the rates of mortality for male lives from the 1980 CSO Table, with or without ten-year select mortality factors.

**History:** Effective February 1, 1985.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26-03.2

#### 45-04-07-02. Tables.

1. For any policy of insurance on the life of either a male or female insured delivered or issued for delivery in this state and after the operative date of subsection 11 of North Dakota Century Code section 26-03.2-06.2 for that policy form:
  - a. A mortality table which is a blend of the 1980 CSO Table (M) and the 1980 CSO Table (F) with or without ten-year select mortality factors may at the option of the company be substituted for the 1980 CSO Table, with or without ten-year select mortality factors; and
  - b. A mortality table which is of the same blend as used in (i) but applied to form a blend of the 1980 CET Table (M) and the 1980 CET Table (F) may at the option of the company be substituted for the 1980 CET Table,

for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits.
2. The following tables will be considered as the basis for acceptable tables:
  - a. 100% Male 0% Female for tables to be designated as the "1980 CSO-A" and "1980 CET-A" tables.

- b. 80% Male 20% Female for tables to be designated as the "1980 CSO-B" and "1980 CET-B" tables.
- c. 60% Male 40% Female for tables to be designated as the "1980 CSO-C" and "1980 CET-C" tables.
- d. 50% Male 50% Female for tables to be designated as the "1980 CSO-D" and "1980 CET-D" tables.
- e. 40% Male 60% Female for tables to be designated as the "1980 CSO-E" and "1980 CET-E" tables.
- f. 20% Male and 80% Female for tables to be designated as the "1980 CSO-F" and "1980 CET-F" tables.
- g. 0% Male 100% Female for tables to be designated as the "1980 CSO-G" and "1980 CET-G" tables.

Tables A and G are not to be used with respect to policies issued on or after January 1, 1985, except where the proportion of persons insured is anticipated to be ninety percent, or more of one sex or the other except for certain policies converted from group insurance. Such group conversions issued on or after January 1, 1986, must use mortality tables based on the blend of lives by sex expected for such policies if such group conversions are considered as extensions of the Norris decision. This consideration has not been clearly defined by court or legislative action in all jurisdictions. The values of 10000qx for blended tables B, C, D, E, and F are shown in Appendix I. The letter in Appendix II states the method by which selection factors may be obtained. Table A is the same as 1980 CSO Table (M) and 1980 CET Table (M) and Table G is the same as 1980 CSO Table (F) and 1980 CET Table (F).

**History:** Effective February 1, 1985.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 26-03.2

**45-04-07-03. Unfair discrimination.** It is not a violation of North Dakota Century Code section 26.1-04-03 for an insurer to issue the same kind of policy of life insurance on both a sex-distinct and sex-neutral basis.

**History:** Effective February 1, 1985.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 26-03.2

**45-04-07-04. Separability.** If any provision of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the chapter and the application of

such provision to other persons or circumstances is not affected thereby.

**History:** Effective February 1, 1985.

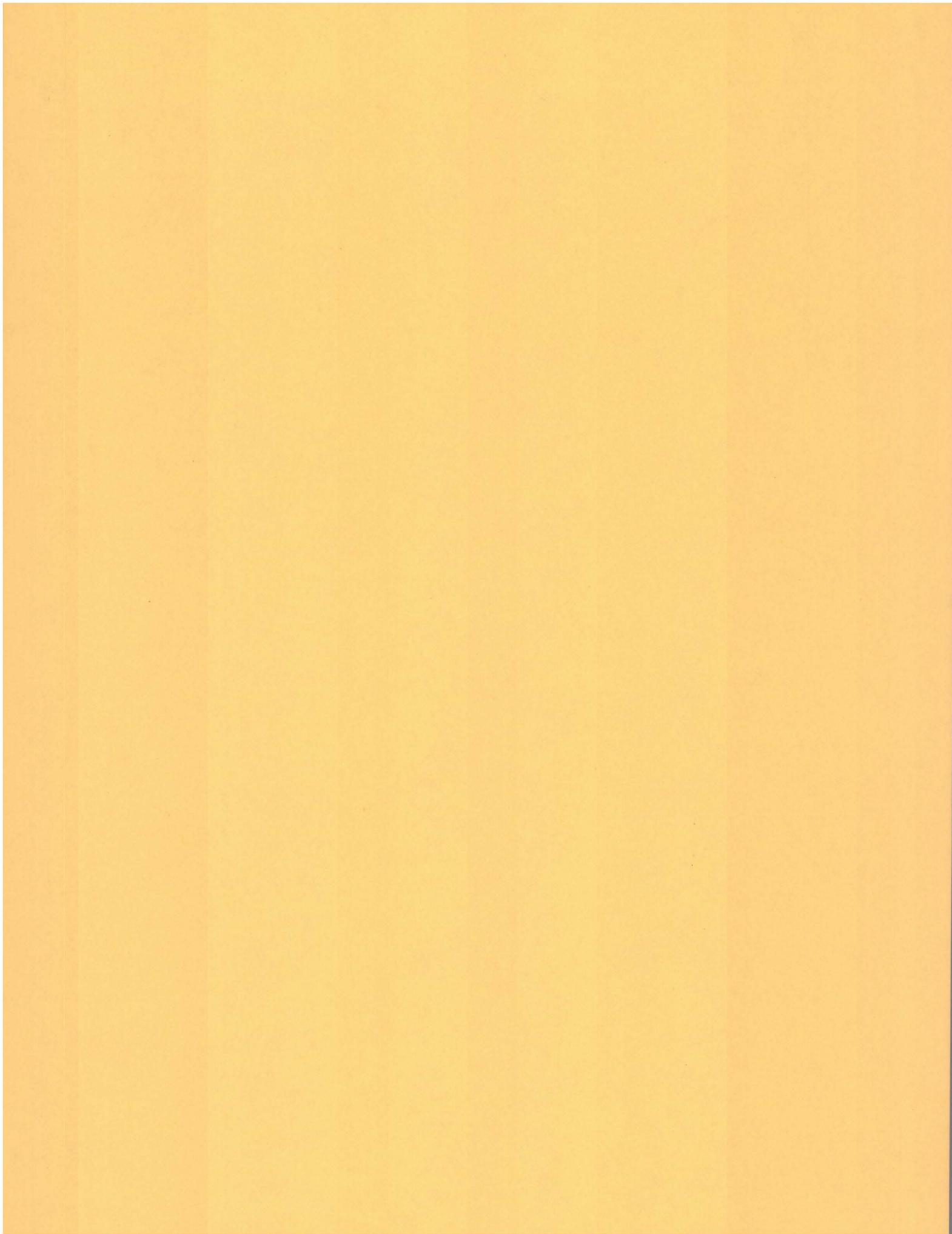
**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26-03.2

**45-04-07-05. Retroactive effective date.** The effective date of this chapter is August 1, 1983, to comply with the Norris decision (Norris v. Arizona Governing Committee).

**History:** Effective February 1, 1985.





**TITLE 48**  
**Livestock Sanitary Board**



FEBRUARY 1985

48-03-01-05. Cleaning and disinfecting of commercial trucks hauling livestock to auction markets and public markets. It being determined that trucks or other conveyances distribute infectious diseases of livestock from place to place, auction markets or public markets after January 1, 1950, must provide suitable equipment for cleaning, washing, and disinfecting trucks delivering livestock.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08

Repealed effective February 1, 1985.

48-04-01-10. Cleaning and disinfection in regard to the transportation of swine. All vehicles used for transporting hogs into North Dakota must be cleaned and disinfected prior to use.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08

Repealed effective February 1, 1985.

48-10-01-01. Salaries of agents of the North Dakota livestock sanitary board. Whenever an agent of the livestock sanitary board is engaged in livestock sanitary work of any kind, the agent shall receive for such services, if paid on a per diem basis, an amount not to exceed ~~fifty~~ two hundred dollars per day and actual expenses. When working only portions of days, however, the agent shall figure the agent's time at ~~six~~ twenty-five dollars per hour.

History: Amended effective February 1, 1985.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-10

APRIL 1985

48-04-01-12. Sale or use of virulent products. All persons, firms, or corporations are prohibited from distributing, or selling, or using any products containing any live germs, cultures, or viruses for the treatment or vaccination of any domestic animals without the approval of the state veterinarian written permit by the executive officer of the livestock sanitary board. Nontransferable permits will be issued to all qualified applicants as determined by the livestock sanitary board and may be obtained only upon written application by the North Dakota person, firm, or corporation selling the product at retail levels. A written application for a permit shall be provided in a form as approved by the executive officer of the livestock sanitary board. The livestock sanitary board may revoke a permit to sell virulent products for violation of North Dakota Century Code chapter 36-01, or any rules adopted pursuant to that chapter. This section does not apply to licensed veterinarians practicing in North Dakota.

**History:** Amended effective June 1, 1983; April 1, 1985.

**General Authority:** NDCC 36-01-08

**Law Implemented:** NDCC 36-01-08

48-04-01-13. Permit requirements. An applicant for a permit shall:

1. Agree not to sell or distribute the following vaccines.
  - a. All brucella vaccines.
  - b. All pseudorabies vaccines.
  - c. All rabies vaccines.
  - d. All anthrax vaccines.

e. Contagious ecthyma (modified live).

f. Erysipelas (live cultures).

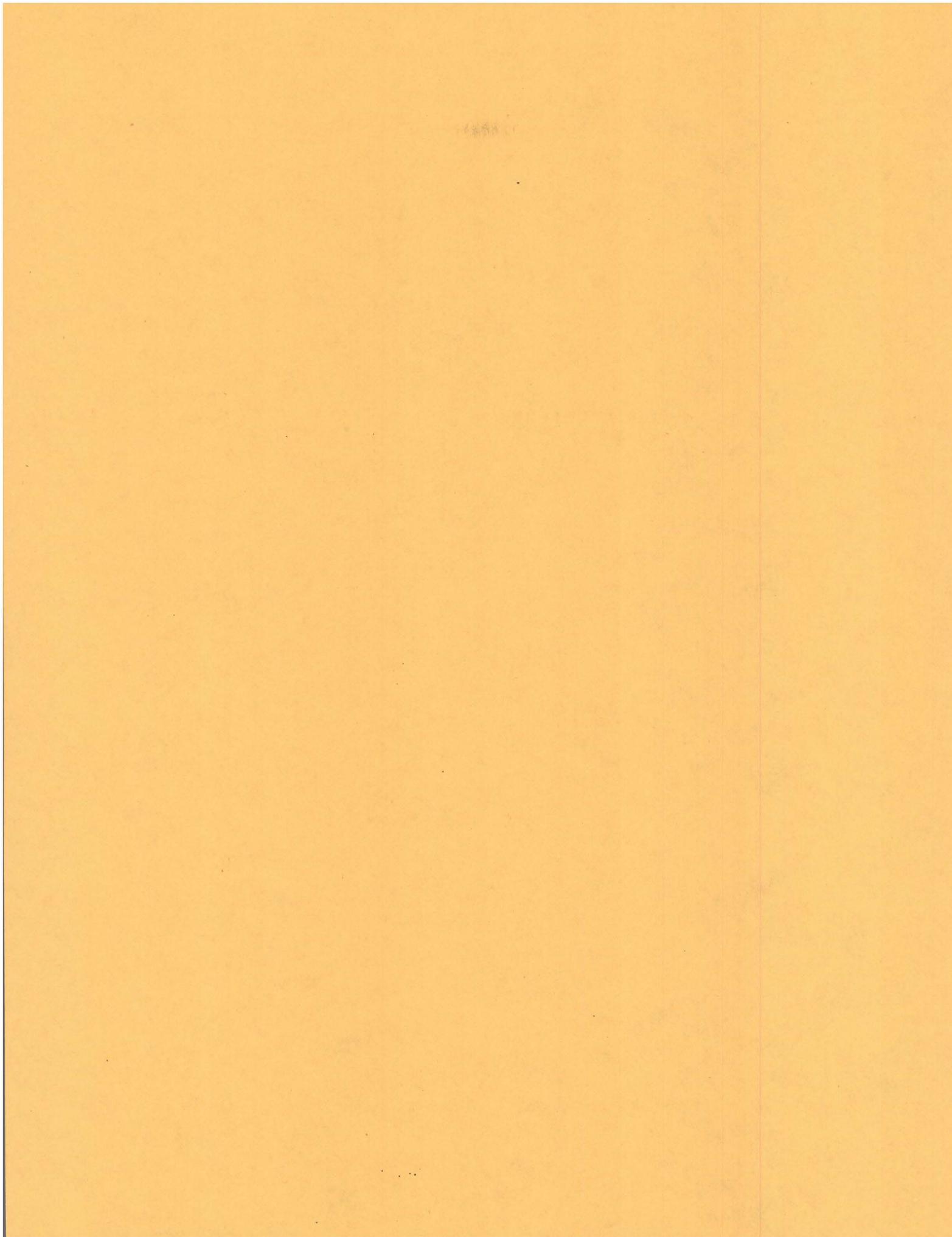
This list may be modified from time to time by the state veterinarian.

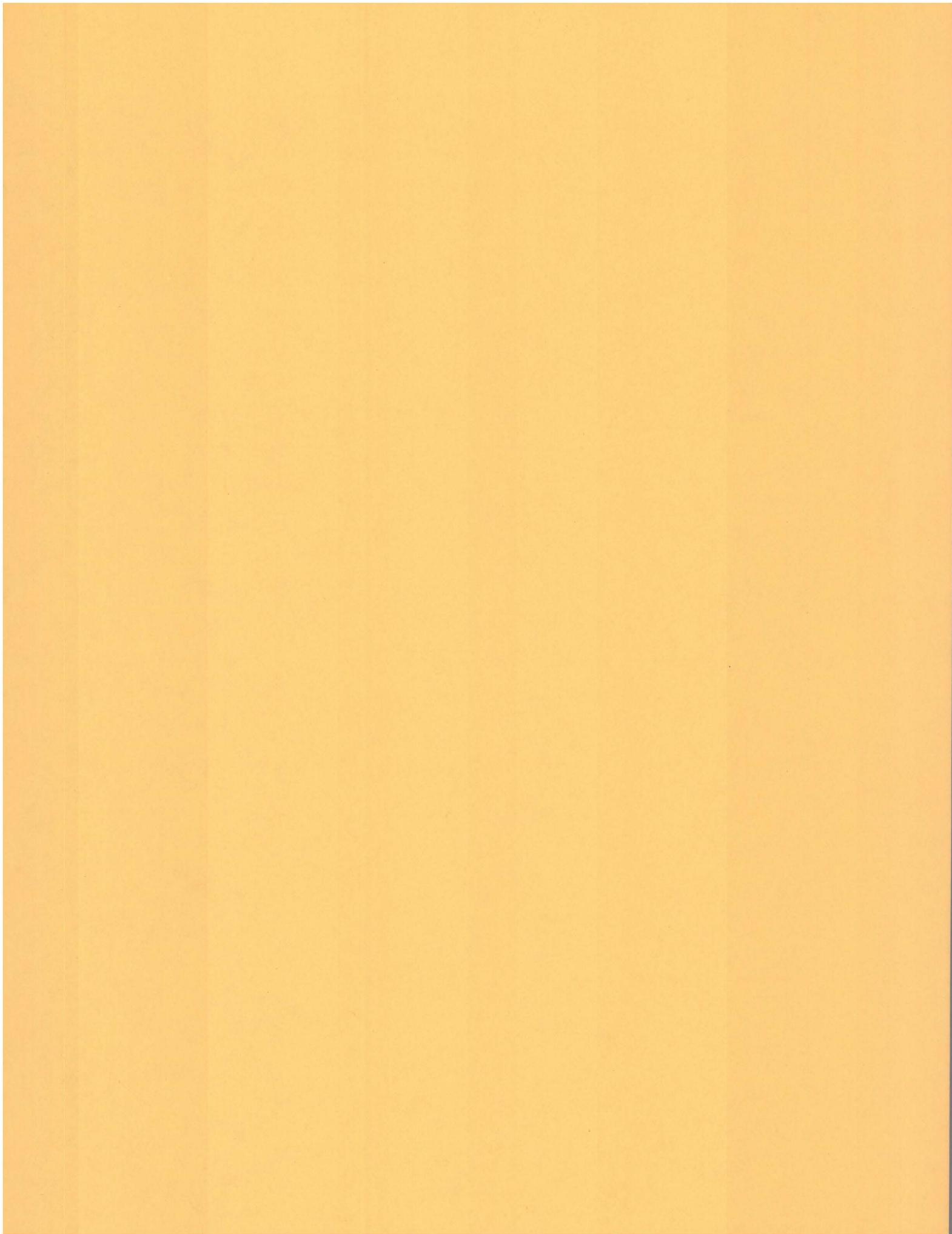
2. Require four hours of training annually for the applicant and all employees pertaining to the use of virulent vaccines. Certification of this training must be furnished by the principal biological suppliers or other qualified persons as determined by the livestock sanitary board.
3. Store live germs, cultures, or viruses offered for sale, or sold, in a dark place at a temperature of not more than forty-five degrees Fahrenheit [7.22 degrees Celsius] and not less than thirty-five degrees Fahrenheit [1.67 degrees Celsius] until such time as they are sold. Live germs, cultures, or viruses may not be sold after their expiration date.
4. Offer for sale, products in their original containers only.
5. Agree not to accept for return retail purchases of live germs, cultures, or viruses.
6. Comply with subsections 1 through 5 with respect to on the farm sales.

History: Effective April 1, 1985.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08





**TITLE 50**  
**Medical Examiners, Board of**



FEBRUARY 1985

50-02-02-01. Special license requirements. In the best interests of this state, the board may grant a special license to special applicants. The special applicant must appear before the board for such examination into the applicant's qualifications as may be required by the board. This A special license is reviewable annually by the board, has the regular licensure fee and must be recorded in accordance with North Dakota Century Code section 43-17-23. The special license may be converted to a regular license upon meeting all statutory and board requirements.

History: Amended effective February 1, 1985.

General Authority: NDCC 43-17-13

Law Implemented: NDCC 43-17-21

50-02-02-02. Special license requirements for foreign medical school graduates. If the applicant is a graduate of a foreign medical school, except Canada, the applicant must have a standard certificate from the educational commission for foreign medical graduates. In extraordinary circumstances and in the best interest of this state, this requirement may be waived for a special license when the physician is employed by the state of North Dakota.

General Authority: NDCC 43-17-13

Law Implemented: NDCC 43-17-21

Repealed effective February 1, 1985.

50-02-05-06. FLEX examination requirements. Any person wishing to write the federation licensing examination in this state must meet the following requirements:

1. Satisfactory completion of one year of internship or residency training in a United States hospital approved by the American medical association or a Canadian hospital approved by the Canadian medical association. An applicant participating in the American medical association approved fifth pathway program must also have completed one year of supervised clinical training in the United States.
2. Possession of a standard educational commission for foreign medical graduates certificate where required for licensure under these rules.
3. Payment of the applicable examination fee.

**History:** Effective February 1, 1985.

**General Authority:** NDCC 43-17-13

**Law Implemented:** NDCC 43-17-20

50-02-05-07. Passing requirements for FLEX examination. The minimum passing score for each component of the federal licensing examination is seventy-five percent as scored by the federation of state medical boards. Any examinee who has not previously written the examination in this state is required to write component I and component II during a single administration of the test. A candidate who obtains a passing score on component I but fails component II may retake component II during subsequent administrations of the test. A candidate who fails to obtain a passing score on component I will not be deemed to have passed component II, regardless of score. Thus, a candidate must pass both components of the federal licensing examination during a single administration of the test or, in the alternative, must pass component II subsequent to passing component I. No candidate may write component I unless the candidate also writes component II during that administration of the examination. Any candidate who fails to obtain a passing score on both components of the examination within three years of the date on which that candidate first wrote the examination, or a portion thereof in any state, must complete one year of residency training in an American medical association or Canadian medical association approved hospital in the United States or Canada. That residency program must be completed between the expiration of that three-year period and any reapplication to retake the federal licensing examination in this state.

**History:** Effective February 1, 1985.

**General Authority:** NDCC 43-17-13

**Law Implemented:** NDCC 43-17-20

50-02-05-08. Fees for examination. A candidate writing the entire federal licensing examination will be assessed a fee of four hundred dollars per examination. A candidate writing only component II of the federal licensing examination will be assessed a fee of two hundred twenty-five dollars.

History: Effective February 1, 1985.  
General Authority: DCC 43-17-13  
Law Implemented: DCC 43-17-22

50-02-07-01. Regular license License fee. The regular fee for licensure in North Dakota is one hundred dollars, whether it be by examination, reciprocity, or endorsement is as fixed from time to time by the state board of medical examiners.

History: Amended effective February 1, 1985.  
General Authority: NDCC 43-17-13  
Law Implemented: NDCC 43-17-22

50-02-07-02. Provisional temporary license fee. The fee for a provisional temporary license is one hundred dollars.

General Authority: NDEC 43-17-13  
Law Implemented: NDEC 43-17-22

Repealed effective February 1, 1985.

50-02-07-03. Special license fee. The fee for a special license is one hundred dollars.

General Authority: NDEC 43-17-13  
Law Implemented: NDEC 43-17-22

Repealed effective February 1, 1985.

50-02-07-04. Locum tenens fee. The fee for a "locum tenens" is fifty dollars.

General Authority: NDEC 43-17-13  
Law Implemented: NDEC 43-17-22

Repealed effective February 1, 1985.

50-02-07-05. Annual registration fee. The annual registration fee is twenty dollars for either resident or nonresident.

General Authority: NDEC 43-17-13  
Law Implemented: NDEC 43-17-25

Repealed effective February 1, 1985.

**50-02-07-06. Annual registration - Good standing required.** No application for annual registration shall be granted, nor shall the fee therefor be accepted, from a licensed physician whose license to practice medicine has been revoked or canceled by another state in which the physician has been practicing medicine, or whose license to practice in another state is conditioned by terms of probation, or may be affected by pending disciplinary proceedings in another state, until the applicant appears personally before the board and demonstrates that annual registration is consistent with the public interest.

**History:** Effective November 1, 1982; amended effective February 1, 1985.

**General Authority:** NDCC 43-17-13

**Law Implemented:** NDCC 43-17-22

Chapters 50-02-09 and 50-03-03 contain all new material but are not underscored so as to improve readability.

#### CHAPTER 50-02-09 INFORMAL DISCIPLINARY ACTION

Section

50-02-09-01	Informal Disciplinary Action
50-02-09-02	Reconsideration of Censure or Probation

**50-02-09-01. Informal disciplinary action.** Upon receipt of information concerning a licensed physician which might warrant disciplinary action by the board, the board may request an informal interview with the physician concerned. If the physician refuses or ignores the interview request, or the interview indicates good cause may exist for revocation or suspension of the physician's license, the board shall issue a formal complaint against the physician. If the board, following the informal interview and such further investigation as it deems appropriate, concludes the circumstances do not warrant the initiation of formal proceedings for the revocation or suspension of the physician's license, the board may:

1. Inform the physician that its investigation is complete, and no disciplinary action appears necessary or appropriate.
2. Issue a letter of concern warning the physician that repetition of specified inappropriate conduct may jeopardize the physician's right to practice medicine in this state.
3. Issue a letter of censure which constitutes a part of the board's official record relating to the physician's license to practice in this state.

4. Place the physician on probation on such terms and for such period as the board determines appropriate to protect the public health and safety and rehabilitate the physician.

**History:** Effective February 1, 1985.

**General Authority:** NDCC 43-17-13

**Law Implemented:** NDCC 43-17-31, 43-17.1-06

**50-02-09-02. Reconsideration of censure or probation.** Any physician feeling aggrieved by censure or probation informally imposed by the board pursuant to this chapter may petition the board for reconsideration. Upon receipt of the petition, the board shall issue a formal complaint and notice of hearing thereon pursuant to North Dakota

Century Code chapter 28-32 and, following hearing, shall issue such order as the facts and law may warrant.

**History:** Effective February 1, 1985.

**General Authority:** NDCC 43-17-13

**Law Implemented:** NDCC 43-17-31

## CHAPTER 50-03-03 EMERGENCY MEDICAL TECHNICIANS

### Section

50-03-03-01	Scope of Services Regulated
50-03-03-02	Certification Required
50-03-03-03	Certification Requirement Exemption
50-03-03-04	Certification of Emergency Medical Technicians
50-03-03-05	Supervision
50-03-03-06	Agreement Termination

**50-03-03-01. Scope of services regulated.** This chapter applies to all persons except physicians licensed under North Dakota Century Code chapter 43-17, providing, or offering to provide, emergency medical services except control of bleeding, immobilization of fractures, nonelectrical heart stimulation, basic airway management, basic treatment of shock, and other services of the same level of basic life support.

**History:** Effective February 1, 1985.

**General Authority:** NDCC 43-17-13

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

**50-03-03-02. Certification required.** No person except as provided by section 50-03-03-03 may hold oneself out to provide, nor be employed in this state to provide, emergency medical services within the scope of this chapter unless certified as provided in this chapter and acting under the direction of a licensed physician.

**History:** Effective February 1, 1985.

**General Authority:** NDCC 43-17-13

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

**50-03-03-03. Certification requirement exemption.** Any person possessing emergency medical services skills over and above those found in the emergency medical technician basic national standard training curriculum may perform those skills only if under the direction of a physician who has assumed responsibility for the services of that person through a written statement on file with the office of the board of medical examiners. That person must have met the training requirements of the North Dakota state department of health for such skills.

**History:** Effective February 1, 1985.

**General Authority:** NDCC 43-17-13

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

**50-03-03-04. Certification of emergency medical technicians.** The certification of emergency medical technicians as required by this chapter means certification by the division of emergency health services of the North Dakota state department of health as EMT-1 or EMT-P. It does not include certification for basic services.

**History:** Effective February 1, 1985.

**General Authority:** NDCC 43-17-13

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

**50-03-03-05. Supervision.** Every emergency medical technician certified to perform emergency medical services must be under the direction and responsibility of at least one physician licensed to practice medicine in this state. This responsibility must be by the written express agreement of the physician or physicians, a copy of which is on file in the office of the state board of medical examiners.

**History:** Effective February 1, 1985.

**General Authority:** NDCC 43-17-13

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

**50-03-03-06. Agreement termination.** When any physician terminates an agreement to supervise and be responsible for a certified emergency medical technician or any other person as stated in this chapter, the termination is not effective until written notification

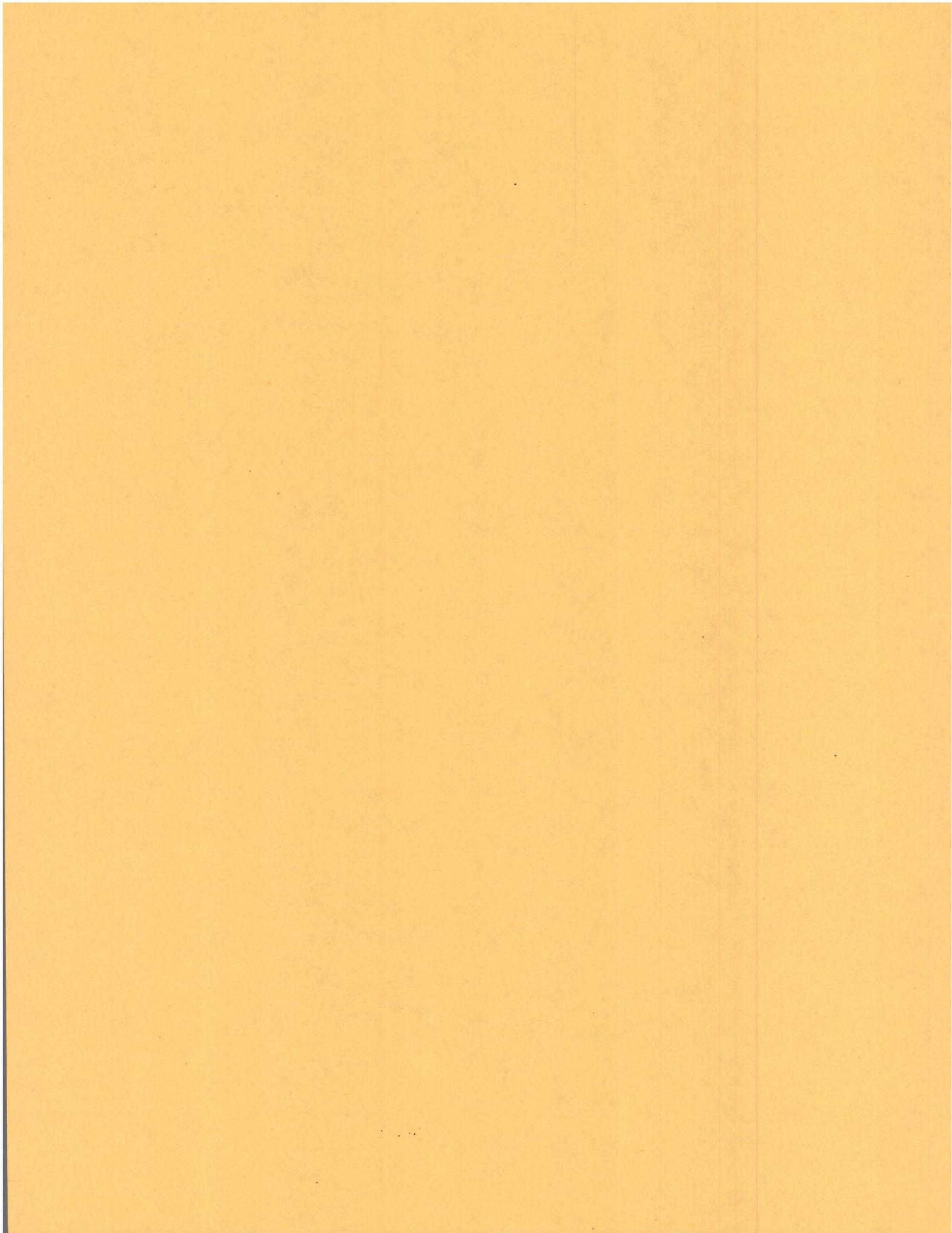
thereof has been received by the board of medical examiners at its office in Bismarck, North Dakota:

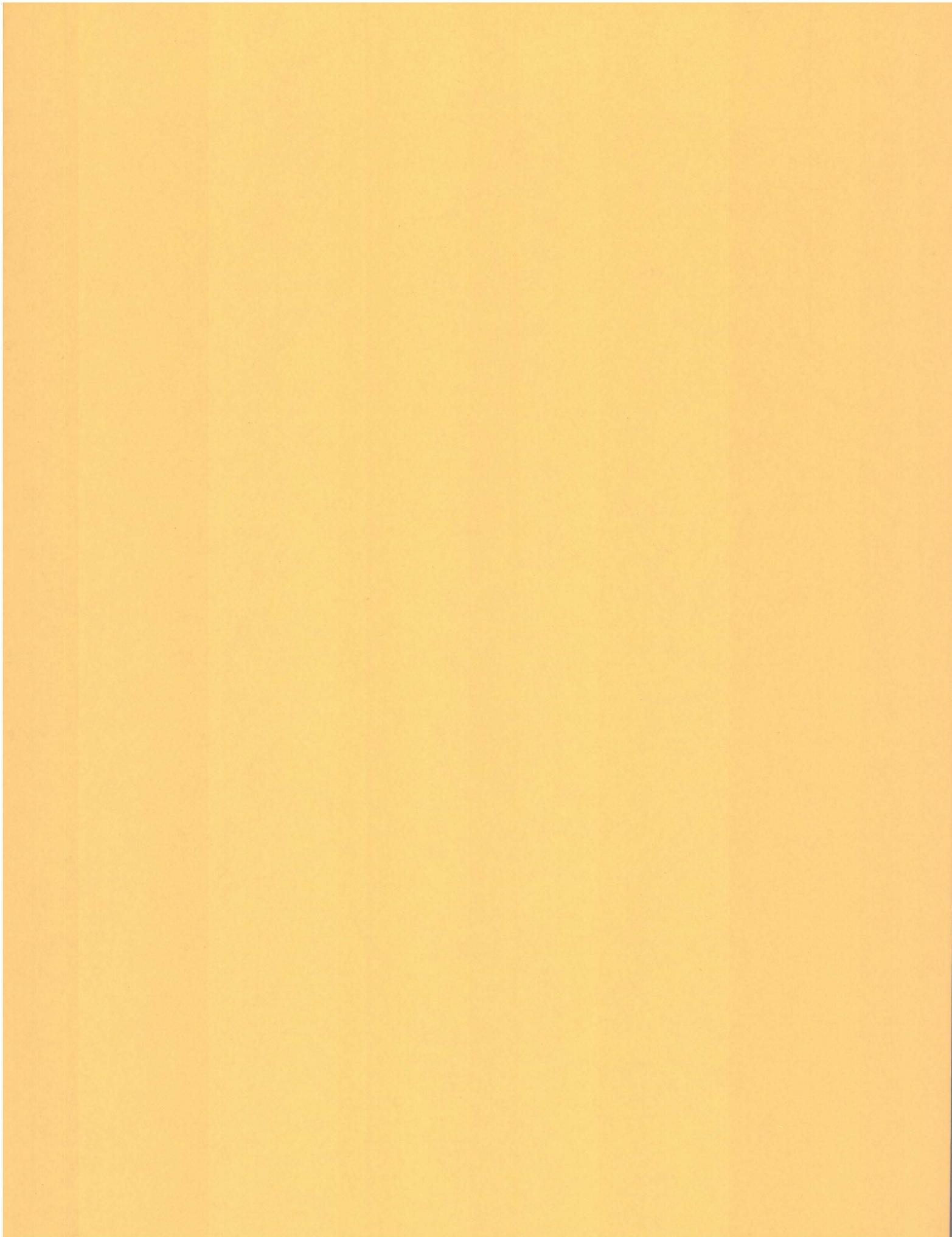
**History:** Effective February 1, 1985.

**General Authority:** NDCC 43-17-13

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







**TITLE 60**  
**Pesticide Control Board**



JUNE 1985

**60-03-01-02. Definitions.** As used in this chapter, the following words shall have the meaning given to them below, unless otherwise made inappropriate by use and context. Words not defined in this section shall have the meaning given to them in North Dakota Century Code chapter 4-35.

1. "Board" means the North Dakota pesticide control board created pursuant to North Dakota Century Code section 4-35-02.
2. "Bulk pesticide" means any volume of pesticide greater than fifty-five United States gallons [189.27 liters] which is transported or held in an individual container which is capable of holding, in undivided quantities, one hundred ten United States gallons [416.40 liters] or greater, or two hundred pounds [90.72 kilograms] net dry weight.
3. "Certification" means ~~that~~ certification of private applicators provided for by North Dakota Century Code section 4-35-14.
- ~~3-~~ 4. "Commissioner" means the North Dakota commissioner of agriculture.
- ~~4-~~ 5. "Custom applicator" means any person who uses or supervises the use of a general use pesticide for compensation upon the land of another person.
6. "Custom mix" means any diluted mixture of pesticide prepared by a dealer when prepared to the specifications of the end-user and which is not held in inventory.
7. "End-use labeling" means the label application recommendations for any pesticide.

8. "End-user" means the person who applies the pesticide.
- 5- 9. "General use pesticide" means any pesticide formulation which is not classified for restricted use by the board.
- 6- 10. "License" means a license to use, supervise the use of, sell, or distribute any pesticide as provided for by North Dakota Century Code sections 4-35-09 and 4-35-12.
- 7- 11. "Pesticide applicator" means any person who applies any pesticides.
12. "Repackaging" means the transfer of a pesticide in bulk quantities from one container to another in an unaltered state.

History: Amended effective April 15, 1985.

General Authority: NDCC 4-35-06, 28-32-02

Law Implemented: NDCC 4-35-06

60-03-01-06. Application, storage, transportation, and disposal of pesticides.

1. Application.

- a. All pesticides shall be applied in accordance with the label.
- b. Pesticide applicators and persons assisting with an application shall follow all safety precautions as specified on the container label.
- c. All equipment used in pesticide application must be operationally sound and properly calibrated so as to prevent unreasonable adverse effects on the environment.

2. Storage.

- a. All pesticides, except bulk pesticides, shall be stored in their original container and in accordance with label recommendations. All labels of stored pesticides shall be plainly visible.
- b. All pesticides shall be stored in dry, well ventilated spaces, and in a manner which will not endanger humans, animals, or the environment, nor contaminate food or feed.

3. Transportation.

- a. ~~Pesticides~~ All pesticides shall be transported in their original containers and transported in such a manner as to

avoid breakage of containers, spills, or any other manner of contamination.

- b. Pesticides shall not be transported with foodstuffs, feed, or any other product or material so as to pose a hazard to humans, animals, or the environment.
- c. Equipment contaminated in the transportation of pesticides shall be cleaned and decontaminated prior to any other use.

#### 4. Disposal.

- a. Empty pesticide containers shall be stored in accordance with label recommendations and in a manner which will not endanger humans, animals, or the environment.
- b. Nonreturnable empty pesticide containers shall be rinsed and secondary use of such containers that would endanger humans, animals, or the environment is prohibited.
- c. Pesticide containers shall be disposed of in accordance or consistent with its labeling and in a manner which will not endanger humans, animals, or the environment.

**History:** Amended effective April 15, 1985.

**General Authority:** NDCC 4-35-06, 28-32-02

**Law Implemented:** NDCC 4-35-06, 4-35-15, 4-35-20

60-03-01-10. Registration, packaging, repackaging, storage, and transportation of bulk pesticides.

##### 1. Registration.

- a. Any person that repackages bulk pesticides or custom mixes any quantity of pesticide to be applied by another person must have an environmental protection agency establishment number.
- b. The environmental protection agency establishment number and end-use labeling must be attached to bulk pesticide storage tanks.
- c. The environmental protection agency establishment number and end-use labeling must accompany or be attached to the mobile bulk pesticide container.

##### 2. Storage and transportation.

- a. The transportation and storage of all bulk pesticides must be in compliance with the manufacturer's label requirements.

- b. The transportation of bulk pesticides must meet all applicable standards of state and United States department of transportation rules and regulations.
- c. Bulk pesticide storage tanks must be made of materials and so constructed to be compatible with the pesticide stored and the conditions of storage, including any specifications that may appear on the pesticide labels and labeling.
- d. Nonmobile bulk pesticide storage containers must be on a site with additional structure constructed as a means of containment. The structure must be constructed of sufficient size and material so as to contain any spilled or discharged materials and have a capacity of a minimum of one hundred ten percent of the single largest nonmobile bulk pesticide storage container.
- e. Bulk containers and permanent loading areas must be constructed and located on a site in a manner so that pesticides will not contaminate streams and water supplies.
- f. All bulk storage tanks must be equipped with a locking withdrawal valve. The valves must be locked when no bulk pesticide is being transferred.

### 3. Prohibitions.

- a. The transfer of bulk pesticides must be under the control of the repackager. Filling or refilling of containers which are not capable of holding, in undivided quantities, one hundred ten United States gallons [416.40 liters] or greater, or two hundred pounds [90.72 kilograms] net dry weight, with pesticides is prohibited.
- b. Bulk pesticide storage tanks may not be placed underground.

**History:** Effective April 15, 1985.

**General Authority:** NDCC 4-35-06, 28-32-02

**Law Implemented:** NDCC 4-35-06, 4-35-15, 4-35-20

AGENCY SYNOPSIS: (Letter from Agriculture Commissioner Kent Jones).

April 18, 1985

Mr. Jay Buringrud  
Assistant Director  
Legislative Council  
State Capitol  
Bismarck, ND 58505

Dear Mr. Buringrud:

Enclosed are the proposed amendments and additions to Title 60 of the North Dakota Administrative Code (Pesticide Control Board). These rules have been approved by the Attorney General as to their legality and finally adopted as emergency rules by the Pesticide Control Board in accordance with N.D.C.C. Ch. 28-32.

Please file and publish these rules, which become effective immediately upon approval by the Attorney General, pursuant to the provisions of N.D.C.C. §28-32-03. These rules accompany changes to the Pesticide Act and adopt provisions relating to the use of bulk pesticides.

The traditional and conventional method of handling pesticides in five, ten, thirty, and fifty-gallon steel containers has created some pesticide container disposal problems over the past years. Since these containers are not returnable to the manufacturer, the end-user (applicator) is responsible for proper disposal of the containers. Oftentimes the containers are not disposed of properly, creating a potential hazard to man and the environment. The need for improved handling methods, as well as public safety and preventing adverse effects on the environment, are the ultimate concern of these rules.

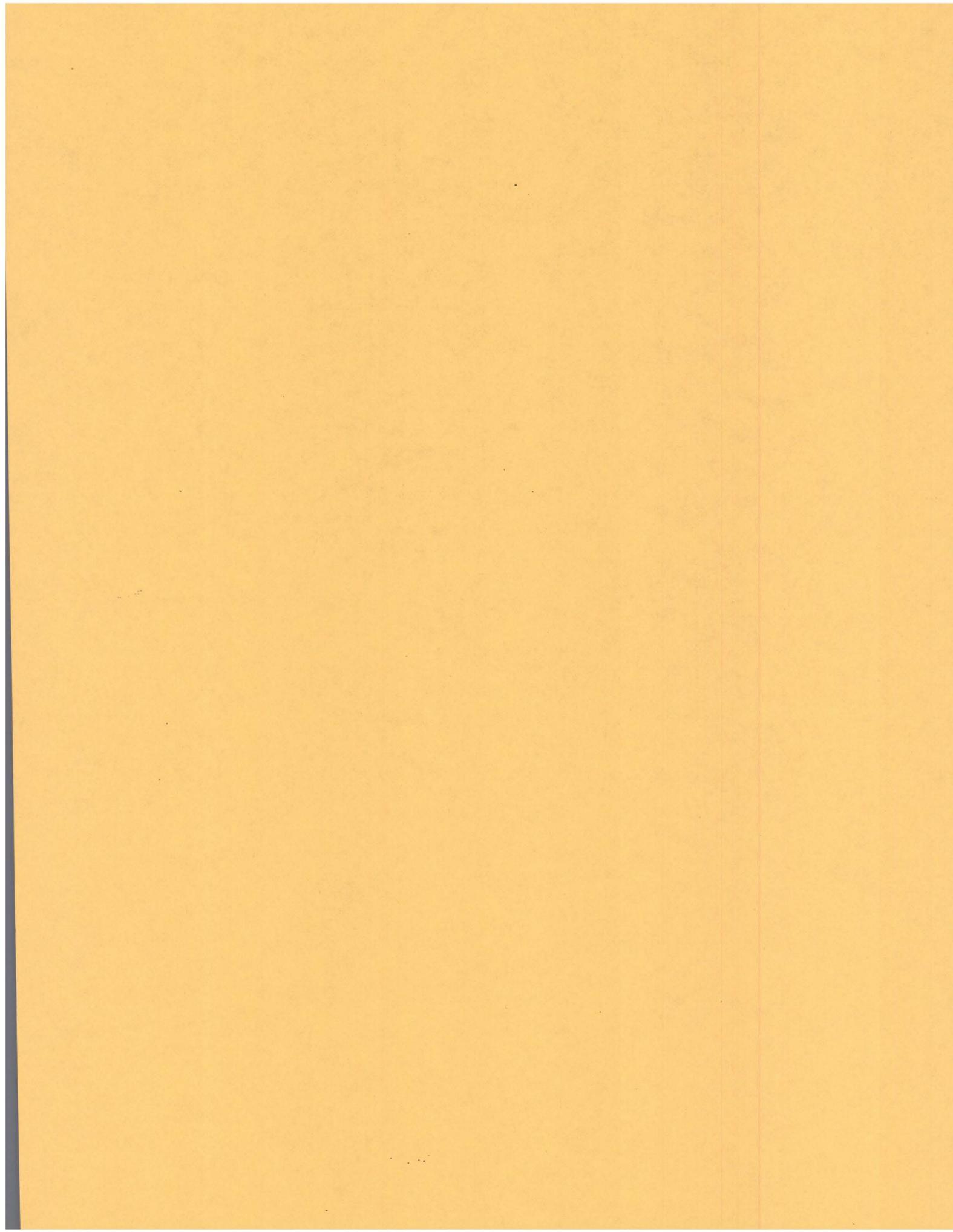
A significant amount of pesticides are sprayed annually by the state's 2,500 commercial applicators. If commercial applicators and private applicators (farmers) who deal in huge quantities were to handle pesticides in bulk quantities, the pesticide container disposal dilemma would be partially alleviated. When properly handled, bulk pesticides will make a significant and positive impact on the disposal of pesticide containers.

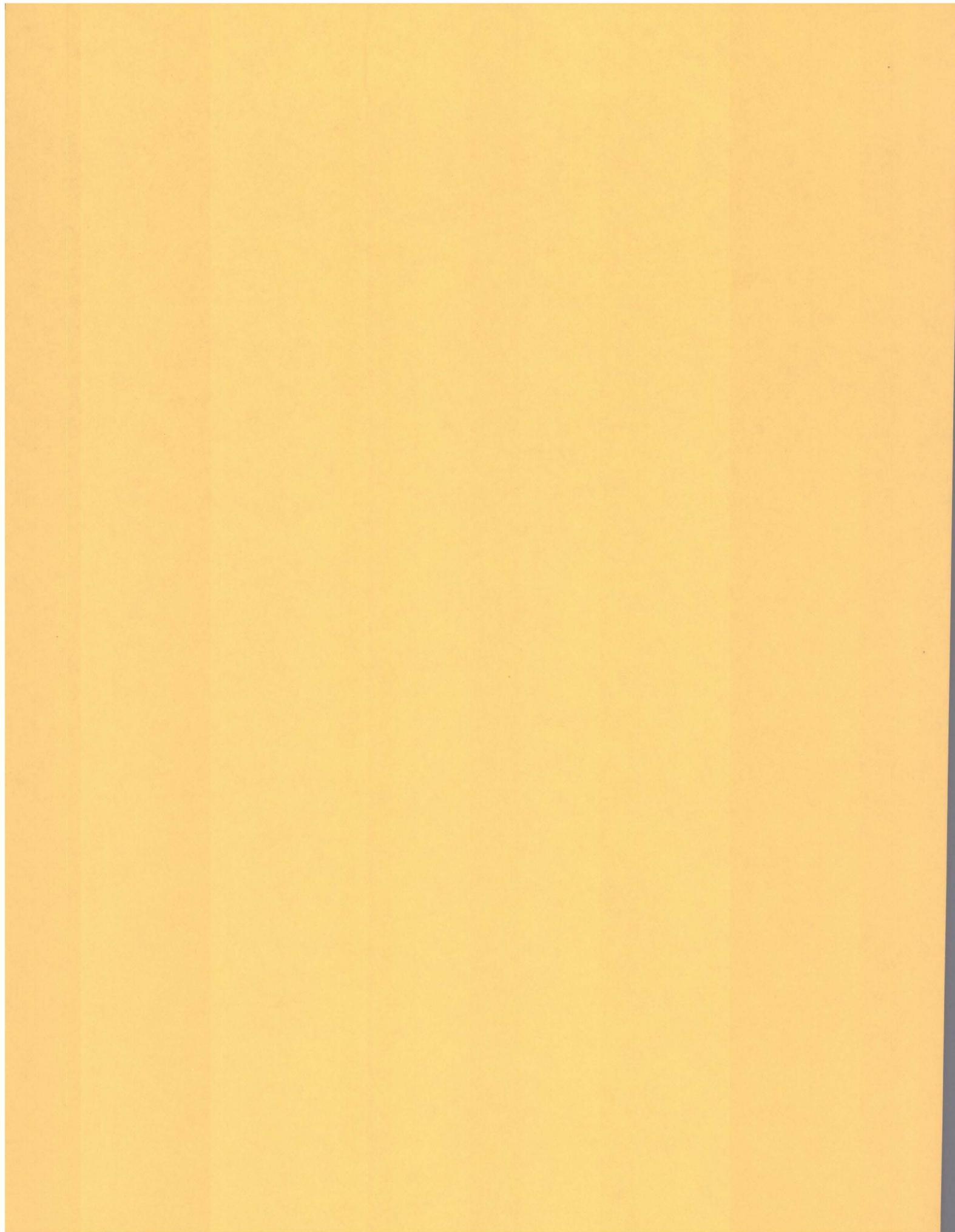
In order to implement these rules for the usage of bulk pesticides in North Dakota for the 1985 pesticide use season and to prevent further disposal problems during the 1985 season, the Board has also approved these rules as emergency rules due to the possible imminent peril to public health, safety, and welfare.

Sincerely,

Kent Jones  
Commissioner of Agriculture







**TITLE 62**  
**Plumbing Board**



JULY 1985

STAFF COMMENT: New subsections are underscored, existing subsections have been renumbered accordingly.

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

1. "A.B.S." means acrylonitrile-butadiene-styrene.
2. "Accessible" means having access thereto but which first may require the removal of an access panel, door, or similar obstruction. "Readily accessible" means direct access without the necessity of removing or moving any panel, door, or similar obstruction.
3. "Acid waste" means corrosive waste.
4. "Administrative authority" means the individual official, board, department, or agency established and authorized by a state, county, city, or other political subdivision created by law to administer and enforce the provisions of the plumbing code as adopted or amended.
5. "A.G.A." means American gas association.
6. "Air break (drainage system)" means a piping arrangement in which a drain from a fixture, appliance, or device discharges indirectly into a fixture, receptacle, or interceptor at a

point below the flood level rim of the receptacle so installed as to prevent backflow or siphonage.

7. "Air chamber" means a pressure surge absorbing device operating through the compressibility of air.
8. "Airgap (drainage systems)" means the unobstructed vertical distance through the free atmosphere between the outlet of waste pipe and the flood level rim of the receptacle into which it is discharging.
9. "Airgap (water distribution system)" means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture, or other device and the flood level rim of the receptacle.
10. "A.N.S.I." means the American national standards institute.
11. "Anchors" means supports.
12. "Antiscald valve" means a valve that is designed to control water temperature to reduce the risk of scalding.
13. "Approved" means accepted or acceptable under an applicable standard stated or cited in this article, or accepted as suitable for the proposed use under procedures and powers of the administrative authority.
14. "Area drain" means a receptacle designed to collect surface or storm water from an open area.
15. "A.S.M.E." means the American society of mechanical engineers.
16. "Aspirator" means a fitting or device supplied with water or other fluid under positive pressure which passes through an integral orifice or "constriction" causing a vacuum.
17. "Autopsy table" means a fixture or table used for the postmortem examination of a body.
18. "B and S" means Brown and Sharpe.
19. "Backflow" means the flow of water or other liquids, mixtures, or substances into the distributing pipes of a potable supply of water from any source or sources other than its intended source. Backsiphonage is one type of backflow.
20. "Backflow connection" means any arrangement whereby backflow can occur.
21. "Backflow drainage" means a reversal of flow in the drainage system.

22. "Backflow preventer" means a device or means to prevent backflow.
23. "Backflow preventer, reduced pressure zone type" means an assembly of differential valves and check valves including an automatically opened spillage port to the atmosphere.
24. "Backflow, water distribution" means the flow of water or other liquids, mixtures, or substances into the distributing pipes of a potable supply of water from any source or sources other than its intended source. Backsiphonage is one type of backflow.
25. "Back pressure backflow" means a condition, which may occur in the potable water distribution system, whereby a higher pressure than the supply pressure is created which causes a reversal of flow into the potable water piping.
26. "Backsiphonage" means the flowing back of used, contaminated, or polluted water from a plumbing fixture or vessel or other sources into a potable water supply pipe due to a negative pressure in the pipe.
27. "Back vent" means individual vent.
28. "Backwater valve" means a device installed in a drain or ~~in the drainage pipe~~ to prevent ~~drainage from backing into a low level~~ backflow.
29. "Bathroom group" means, unless specifically cited in the body of the code, a water closet, a lavatory, and a bathtub or shower stall or both.
30. "Battery of fixtures" means any group of two or more similar adjacent fixtures which discharge into a common horizontal waste or soil branch.
31. "Bedpan steamer" means a fixture used for scalding bedpans or urinals by direct application of steam.
32. "Bedpan washer" means a fixture designed to wash bedpans and to flush the contents into the soil drainage system. It may also provide for steaming the utensils with steam or hot water.
33. "Bedpan washer hose" means a device supplied with hot and cold water and located adjacent to a water closet or clinic sink to be used for cleansing bedpans.
34. "Boiler blowoff" means an outlet on a boiler to permit emptying or discharge of sediment.

35. "Boiler blowoff tank" means a vessel designed to receive the discharge from a boiler blowoff outlet and to cool the discharge to a temperature which permits its safe discharge to the drainage system.
36. "Branch" means any part of the piping system other than a riser, main, or stack.
37. "Branch, fixture" means fixture branch.
38. "Branch, horizontal" means horizontal branch.
39. "Branch interval" means a distance along a soil or waste stack corresponding in general to a story height, but in no case less than eight feet [2.44 meters], within which the horizontal branches from one floor or story of a building are connected to the stack.
40. "Branch vent" means a vent connecting one or more individual vents with a vent stack or stack vent.
41. "Building" means a structure having walls and a roof designed and used for the housing, shelter, enclosure, or support of persons, animals, or property.
42. "Building classification" means the arrangement adopted by the administrative authority for the designation of buildings in classes according to occupancy.
43. "Building drain" means that part of the lowest piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer beginning three feet [91.44 centimeters] outside the building wall.
44. "Building drain - combined" means a building drain which conveys both sewage and storm water or other drainage.
45. "Building drain - sanitary" means a building drain which conveys sewage only.
46. "Building drain - storm" means a building drain which conveys storm water or other drainage but no sewage.
47. "Building sewer" means that part of the drainage system which extends from the end of the building drain and conveys its discharge to a public sewer, private sewer, individual sewage-disposal system, or other point of disposal.
48. "Building sewer - combined" means a building sewer which conveys both sewage and storm water or other drainage.

49. "Building sewer - sanitary" means a building sewer which conveys sewage only.
50. "Building sewer - storm" means a building sewer which conveys storm water or other drainage but no sewage.
51. "Building subdrain" means that portion of a drainage system which does not drain by gravity into the building sewer.
52. "Building trap" means a device, fitting, or assembly of fittings installed in the building drain to prevent circulation of air between the drainage system of the building and the building sewer.
53. "Cesspool" means a lined and covered excavation in the ground which receives the discharge of domestic sewage or other organic waste from a drainage system, so designed as to retain the organic matter and solids, but permitting the liquids to seep through the bottom and sides.
54. "Chemical waste" means special wastes such as, but not limited to, corrosive wastes or industrial wastes containing chemicals.
55. "Circuit vent" means a branch vent that serves two or more traps and extends from the downstream side of the highest fixture connection of a horizontal branch to the vent stack.
56. "Clear water waste" means cooling water and condensate drainage from refrigeration, and air-conditioning equipment; cooled condensate from steam heating systems; cooled boiler blowdown water; wastewater drainage from equipment rooms and other areas where water is used without an appreciable addition of oil, gasoline, solvent, acid, etc., and treated effluent in which impurities have been reduced below a minimum concentration considered harmful.
57. "Clinic sink (bedpan hopper)" means a sink designed primarily to receive wastes from bedpans provided with a flush rim, integral trap with a visible trap seal, having the same flushing and cleansing characteristics as a water closet.
58. "Code" means this article, subsequent amendments thereto, or any emergency rule or regulation which the administrative authority having jurisdiction may lawfully adopt.
59. "Combination fixture" means a fixture combining one sink and laundry tray or a two- or three-compartment sink or laundry tray in one unit.
60. "Combination waste and vent system" means a specially designed system of waste piping embodying the horizontal wet venting of one or more sinks or floor drains by means of a common waste

and vent pipe adequately sized to provide free movement of air above the flow line of the drain.

61. "Combined building drain" means building drain - combined.
62. "Combined building sewer" means building sewer - combined.
63. "Commercial" means public or public use.
64. "Common vent" means a vent connected at a common connection of two fixture drains and serving as a vent for both fixtures.
65. "Conductor" means the water conductor from the roof to the building storm drain, combined building sewer, or other means of disposal and located inside of the building.
66. "Continuous vent" means a vertical vent that is a continuation of the drain to which it connects.
67. "Continuous waste" means a drain from two or more fixtures connected to a single trap.
68. "Corrosive waste" means waste derived from laboratories or classrooms used for laboratory or demonstration purposes, or from industrial or commercial processes, or from any sink or fixture made to receive discarded chemicals, whereby acid or other harmful chemicals are disposed of, which may destroy or cause damage to the materials and equipment of a plumbing installation, if such materials and equipment are not of a type selected, manufactured, or installed for such special use.
69. "Critical level" on a backflow prevention device or vacuum breaker means a point established by the manufacturer and usually stamped on the device by the manufacturer which determines the minimum elevation above the flood level rim of the fixture or receptacle served at which the device may be installed. When a backflow prevention device does not bear a critical level marking, the bottom of the vacuum breaker, combination valve, or the bottom of any approved device shall constitute the critical level.
70. "Cross-connection" means any connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other either water of unknown or questionable safety or steam, gas, or chemical whereby there may be a flow from one system to the other, the direction of flow depending on the pressure differential between the two systems. (See backflow and backsiphonage.)
71. "Dead end" means a branch leading from a soil, waste, or vent pipe, building drain, or building sewer, and terminating at a

developed length of two feet [60.96 centimeters] or more by means of a plug, cap, or other closed fitting.

72. "Department having jurisdiction" means administrative authority.
73. "Developed length" means the length of a pipeline measured along the centerline of the pipe and fittings.
74. "Diameter" means the nominal diameter as designated commercially.
75. "Double check valve assembly" means a backflow prevention device consisting of two independently acting check valves, internally force loaded to a normally closed position between two tightly closing shutoff valves, and with means of testing for tightness.
76. "Double offset" means two changes of direction installed in succession or series in a continuous pipe.
77. "Downspout" means the rainleader from the roof to the building storm drain, combined building sewer, or other means of disposal and located outside of the building.
78. "Domestic sewage" means the water-borne wastes derived from ordinary living processes.
79. "Drain" means any pipe which carries wastewater or water-borne wastes in a building drainage system.
80. "Drainage pipe" means drainage system.
81. "Drainage system" means all the piping, within public or private premises, which conveys sewage, rainwater, or other liquid wastes to a point of disposal. It does not include the mains of a public sewer system or private or public sewage-treatment or disposal plant.
82. "Drainage system, building gravity" means a drainage system which drains by gravity into the building sewer.
83. "Drainage system, sub-building" means building subdrain.
84. "Dry well" means leaching well.
85. "Dual vent" means common vent.
86. "Durham system" means a soil, waste, or vent pipe system where all piping is of threaded pipe using recessed drainage fittings.

87. "Dwelling unit - multiple" means one or more rooms with provision for living, sanitary, sleeping, cooking, and eating facilities arranged for the use of one family or individual a room or group of rooms forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking, and eating; and whose sewer connections and water supply within its own premise are shared with one or more other dwelling units.
88. "Dwelling unit - single" means a room or group of rooms forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking, and eating; and whose sewer connections and water supply are within its own premise separate from and completely independent of any other dwelling.
89. "D.W.V." means drainage, waste, and venting.
90. "Effective opening" means the minimum cross-sectional area at the point of water supply discharge, measured or expressed in terms of (a) diameter of a circle, or (b) if the opening is not circular, the diameter of a circle of equivalent cross-sectional area.
91. "Existing work" means a plumbing system or any part thereof installed prior to the effective date of this article.
92. "Family" means one or more individuals living together and sharing the same facilities.
93. "Fixture" means plumbing fixture.
94. "Fixture branch" means a pipe connecting several fixtures water supply pipe between the fixture supply and water distributing pipe.
95. "Fixture branch - drainage" means a drain serving one or more fixtures which discharges into another drain.
96. "Fixture drain" means the drain from the trap of a fixture to the junction of that drain with any other drainpipe.
97. "Fixture supply" means the water supply pipe connecting a fixture to a branch water supply pipe or directly to a main water supply pipe.
98. "Fixture unit (drainage - d.f.u.)" means a measure of the probable discharge into the drainage system by various types of plumbing fixtures. The drainage fixture-unit value for a particular fixture depends on its volume rate of drainage discharge, on the time duration of a single drainage operation, and on the average time between successive operations.

99. "Fixture unit (supply - s.f.u.)" means a measure of the probable hydraulic demand on the water supply by various types of plumbing fixtures. The supply fixture-unit value for a particular fixture depends on its volume rate of supply, on the time duration of a single supply operation, and on the average time between successive operations.
100. "Flood level" means flood level rim.
101. "Flood level rim" means the edge of the receptacle from which water overflows.
102. "Flooded" means the condition which results when the liquid in a container or receptacle rises to the flood-level rim.
103. "Flow pressure" means the pressure in the water supply pipe near the faucet or water outlet while the faucet or water outlet is wide-open and flowing.
104. "Flushing type floor drain" means a floor drain which is equipped with an integral water supply, enabling flushing of the drain receptor and trap.
105. "Flush valve" means a device located at the bottom of a tank for flushing water closets and similar fixtures.
106. "Flushometer valve" means a device which discharges a predetermined quantity of water to fixtures for flushing purposes and is closed by direct water pressure.
107. "Frostproof closet" means a hopper with no water in the bowl and with the trap and water supply control valve located below frostline.
108. "F.U." means fixture units.
109. "Funnel drain" means a funnel-shaped receptor for receiving the discharge of an indirect waste pipe.
110. "G.P.M." means gallons per minute.
111. "Grade" means the fall (slope) of a line of pipe in reference to a horizontal plane. In drainage it is usually expressed as the fall in a fraction of an inch per foot length of pipe.
112. "Grease interceptor" means interceptor.
113. "Grease trap" means interceptor.
114. "Ground water" means subsurface water occupying the zone of saturation.

- a. "Confined ground water" is a body of ground water overlain by material sufficiently impervious to sever free hydraulic connection with overlying ground water.
  - b. "Free ground water" is ground water in the zone of saturation extending down to the first impervious barrier.
- 115. "Hangers" means supports.
  - 116. "Health authority" means the state department of health or a county, city, or multi or combined county or city health unit.
  - 117. "Horizontal branch drain" means a drain branch pipe extending laterally from a soil or waste stack or building drain, with or without vertical sections or branches, which receives the discharge from one or more fixture drains and conducts it to the soil or waste stack or to the building drain.
  - 118. "Horizontal pipe" means any pipe or fitting which makes an angle of less than forty-five degrees with the horizontal.
  - 119. "Hot water" means water supplied to plumbing fixtures at a temperature of not less than one hundred ten degrees Fahrenheit ~~{37.78 degrees Celsius}~~ [-12.22 degrees Celsius], and not more than one hundred forty degrees Fahrenheit [60 degrees Celsius], except that commercial dishwashing machines and similar equipment shall be provided with water one hundred eighty degrees Fahrenheit [82.22 degrees Celsius] for sterilization purposes.
  - 120. "House drain" means building drain.
  - 121. "House sewer" means building sewer.
  - 122. "House trap" means building trap.
  - 123. "Individual sewage disposal system" means a system for disposal of domestic sewage by means of a septic tank, cesspool, or mechanical treatment, designed for use apart from a public sewer to serve a single establishment or building.
  - 124. "Indirect waste pipe" means a waste pipe which does not connect directly with the drainage system, but which discharges into the drainage system through an air break or airgap into a trap, fixture, receptor, or interceptor.
  - 125. "Individual vent" means a pipe installed to vent a fixture drain. It connects with the vent system above the fixture served or terminates outside the building into the open air.
  - 126. "Individual water supply" means a supply other than an approved public water supply which serves one or more families.

127. "Industrial wastes" means liquid or liquid-borne wastes resulting from the processes employed in industrial and commercial establishments.
128. "Insanitary" means contrary to sanitary principles - injurious to health.
129. "Interceptor" means a device designed and installed so as to separate and retain deleterious, hazardous, or undesirable matter from normal wastes while permitting normal sewage or liquid wastes to discharge into the drainage system by gravity.
130. "Installed" means altered, changed, or a new installation.
131. "Interval" means branch interval.
132. "Invert" means the lowest portion of the inside of a horizontal pipe.
- ~~124. "Invert elevation" means the lowest portion of the inside of any horizontal pipe.~~
133. "Leaching well or pit" means a pit or receptacle having porous walls which permit the contents to seep into the ground.
134. "Leader" means an exterior vertical drainage pipe for conveying storm water from roof or gutter drains.
135. "Liquid waste" means the discharge from any fixture, appliance, area, or appurtenance, which does not contain human or animal waste matter.
136. "Load factor" means the percentage of the total connected fixture until flow which is likely to occur at any point in the drainage system.
137. "Local ventilating pipe" means a pipe on the fixture side of the trap through which vapor or foul air is removed from a room or a fixture.
138. "Loop vent" means a circuit vent which loops back to connect with a stack vent instead of a vent stack.
139. "Main" means the principal pipe artery to which branches may be connected.
140. "Main sewer" means public sewer.
141. "Main vent" means the principal artery of the venting system to which vent branches may be connected.
142. "May" is permissive.

143. "Multiple dwelling" means a building containing two or more dwelling units.
144. "Nonpotable water" means water not safe for drinking or for personal or culinary use.
145. "Nuisance" means public nuisance at common law or in equity jurisprudence; whatever is dangerous to human life or detrimental to health; whatever building, structure, or premise is not sufficiently ventilated, sewerred, drained, cleaned, or lighted, in reference to its intended or actual use; and whatever renders the air or human food or drink or water supply unwholesome.
146. "Offset" means a combination of elbows or bends which brings one section of the pipe out of line but into a line parallel with the other section.
147. "Oil interceptor" means interceptor.
148. "P.E." means polyethylene.
149. "Person" means a natural person, the natural person's heirs, executors, administrators or assigns, and includes a firm, partnership, or corporation, its or their successors or assigns. Singular includes plural and male includes female.
150. "Pitch" means grade.
151. "Plumbing" means the act of installing in buildings the pipes, fixtures, and other facilitating apparatus for bringing water into, and using the water in, buildings and for removing liquids and water-carried wastes therefrom.
152. "Plumbing appliance" means any one of a special class of plumbing fixture which is intended to perform a special plumbing function. Its operation or control may be dependent upon one or more energized components, such as motors, controls, heating elements, or pressure or temperature-sensing elements. Such fixtures may operate automatically through one or more of the following actions: a time cycle, a temperature range, a pressure range, a measured volume or weight; or the fixture may be manually adjusted or controlled by the user or operator.
153. "Plumbing appurtenance" means a manufactured device, or a prefabricated assembly, or an on-the-job assembly of component parts, and which is an adjunct to the basic piping system and plumbing fixtures. An appurtenance demands no additional water supply, nor does it add any discharge load to a fixture or the drainage system. It is presumed that it performs some useful function in the operation, maintenance, servicing, economy, or safety of the plumbing system.

154. "Plumbing fixture" means a receptacle or device which is either permanently or temporarily connected to the water distribution system of the premises, and demands a supply of water therefrom, or it discharges used water, liquid-borne waste materials, or sewage either directly or indirectly to the drainage system of the premises, or which requires both a water supply connection and a discharge to the drainage system of the premises. Plumbing appliances as a special class of fixture are further defined.
155. "Plumbing fixture" - private or private use means in the classification of plumbing fixtures, fixtures in residences, apartments, or condominiums, or single fixtures for the intended use of a family or individual.
156. "Plumbing fixture - public or public use" means in the classification of plumbing fixtures, every fixture not defined under private use and includes all installations where a number of fixtures are installed and their use may be restricted or unrestricted.
157. "Plumbing inspector" means administrative authority.
158. "Plumbing system" includes the water supply and distribution pipes, plumbing fixture, and traps; soil, waste, and vent pipes; sanitary and storm drains and building sewers, including their respective connections, devices, and appurtenances to an approved point of disposal.
159. "Pollution" means the addition of sewage, industrial wastes, or other harmful or objectionable material to water. Sources of sewage pollution may be privies, septic tanks, subsurface irrigation fields, seepage pits, sink drains, barnyard wastes, etc.
160. "Pool" means swimming pool.
161. "Potable water" means water free from impurities present in amounts sufficient to cause disease or harmful physiological effects and conforming in its bacteriological and chemical quality to the requirements of the public health service drinking water standards or the regulations of the public health authority having jurisdiction.
162. "Private or private use" means in the classification of plumbing fixtures, fixtures in residences and apartments and similar installations.
163. "Private sewage disposal system" means a system for disposal of domestic sewage by means of a septic tank or mechanical treatment, designed for use apart from a public sewer to serve a single establishment or building.

164. "Private sewer" means a sewer not directly controlled by public authority.
165. "P.S.I." means pounds per square inch.
166. "Public or public use" means, in the classification of plumbing fixtures, every fixture not defined under private use, and public includes all installations where a number of fixtures are installed and their use may be restricted or unrestricted.
167. "Public sewer" means a common sewer directly controlled by public authority.
168. "Public toilet room means an unrestricted toilet facility that serves the public."
169. "Public water main" means a water supply pipe for public use controlled by public authority.
170. "P.V.C." means polyvinyl chloride.
171. "Receptor" means a fixture or device which receives the discharge from indirect waste pipes.
172. "Relief vent" means an auxiliary vent which permits additional circulation of air in or between drainage and vent systems.
173. "Return offset" means a double offset installed so as to return the pipe to its original alignment.
174. "Revent pipe" means individual vent.
175. "Rim" means an unobstructed open edge of a fixture.
176. "Riser" means a water supply pipe which extends vertically one full story or more to convey water to branches or to a group of fixtures.
177. "Roof drain" means a drain installed to receive water collecting on the surface of a roof and to discharge it into a leader or a conductor.
178. "Roughing-in" means the installation of all parts of the plumbing system which can be completed prior to the installation of fixtures. This includes drainage, water supply, and vent piping, and the necessary fixture supports, or any fixtures that are built into the structure.
179. "Safe waste" means indirect waste.
180. "Sand filter" means a treatment device or structure, constructed above or below the surface of the ground, for

removing solid or colloidal material of a type that cannot be removed by sedimentation, from septic tank effluent.

181. "Sand interceptor" means interceptor.
182. "Sand trap" means interceptor.
183. "Sanitary sewer" means a sewer which carries sewage and excludes storm, surface and ground water.
184. "Scavenger" means any person engaged in the business of cleaning and emptying septic tanks, seepage pits, privies, or any other sewage disposal facility.
185. "Seepage well or pit" means leaching well.
186. "Separator" means interceptor.
187. "Septic tank" means a watertight receptacle which receives the discharge of a building sanitary drainage system or part thereof, and is designed and constructed so as to separate solids from the liquid, digest organic matter through a period of detention, and allow the liquids to discharge into the soil outside of the tank through a system of open joint or perforated piping, or a seepage pit.
188. "Sewage" means any liquid waste containing animal or vegetable matter in suspension or solution, and may include liquids containing chemicals in solution.
189. "Sewage ejectors" means a device for lifting sewage by entraining it in a high velocity jet of steam, air, or water.
190. "Sewage pump" means a permanently installed mechanical device other than an ejector for removing sewage or liquid waste from a sump.
191. "Shall" is mandatory.
192. "Shock arrestor (mechanical device)" means a device used to absorb the pressure surge (water hammer) that occurs when water flow is suddenly stopped.
193. "Side vent" means a vent connecting to the drainpipe through a fitting at an angle not greater than forty-five degrees to the vertical.
194. "Siphon" means an arrangement of plumbing piping, fittings, or device that will allow liquid to flow from a higher level to a lower level over an intervening level at a velocity sufficient to break the water seal of a trap.
195. "Size of pipe and tubing" means diameter.

196. "Slope" means grade.
197. "Soil pipe" means a pipe which conveys sewage containing human or animal waste to the building drain or building sewer.
198. "Soil vent" means stack vent.
199. "Special waste pipe" means a pipe which conveys special wastes.
200. "Special wastes" means wastes which require special treatment before entry into the normal plumbing system.
201. "S.P.S." means standard pipe size.
202. "Stack" means any vertical line of soil, waste, vent, or inside conductor piping. This does not include vertical fixture and vent branches that do not extend through the roof or that pass through not more than two stories before being reconnected to the vent stack or stack vent.
203. "Stack group" means a group of fixtures located adjacent to the stack so that by means of proper fittings, vents may be reduced to a minimum.
204. "Stack vent" means the extension of a soil or waste stack above the highest horizontal drain connected to the stack.
205. "Stack venting" means a method of venting a fixture or fixtures through the soil or waste stack.
206. "Static line pressure" means the pressure existence without any flow.
207. "Sterilizer, boiling type" means a fixture (nonpressure type) used for boiling instruments, utensils, or other equipment (used for disinfection) and may be portable or connected to the plumbing system.
208. "Sterilizer instrument" means a sterilizer, boiling type.
209. "Sterilizer, pressure, instrument washer" means a fixture (pressure vessel) designed to both wash and sterilize instruments during the operating cycle of the fixture.
210. "Sterilizer, pressure (autoclave)" means a fixture (pressure vessel) designed to use steam under pressure for sterilizing. See Sterilizer, boiling type.
211. "Sterilizer vent" means a separate pipe or stack, indirectly connected to the building drainage system at the lower terminal, which receives the vapors from nonpressure sterilizers, or the exhaust vapors from pressure sterilizers,

and conducts the vapors directly to the outer air. Sometimes called a vapor, steam, atmosphere, or exhaust vent.

- 212. "Sterilizer, water" means a device for sterilizing water and storing sterile water.
- 213. "Still" means a device used in distilling liquids.
- 214. "Storm drain" means building storm drain.
- 215. "Storm sewer" means a sewer used for conveying rainwater, surface water, condensate, cooling water, or similar liquid wastes.
- 216. "Subsoil drain" means a drain which collects subsurface or seepage water and conveys it to a place of disposal.
- 217. "Sump" means a tank or pit, which receives sewage or liquid waste, located below the normal grade of the gravity system and which must be emptied by mechanical means.
- 218. "Sump drainage" means a liquid and airtight tank that receives sewage or liquid waste, or both, located below the elevation of the gravity system, and is emptied by pumping.
- 219. "Sump pump" means a permanently installed mechanical device other than an ejector for removing sewage or liquid waste from a sump.
- 220. "Supports" means devices for supporting and securing pipe, fixtures, and equipment.
- 221. "Swimming pool" means any structure, basin, chamber, or tank containing an artificial body of water for swimming, diving, wading, or recreational bathing and having a depth of two feet {60-96 centimeters} or more at any point.
- 222. "Tailpiece" means a connection used from outlet of fixture strainer to trap connection.
- 223. "Tempered water" means water at a temperature of not less than ninety degrees Fahrenheit [32.22 degrees Celsius] and not more than one hundred five degrees Fahrenheit [40.56 degrees Celsius].
- 224. "Trap" means a fitting or device which provides a liquid seal to prevent the emission of sewer gases without materially affecting the flow of sewage or wastewater through it.
- 225. "Trap arm" means that portion of a fixture drain between a trap and its vent.

226. "Trap primer" means a device or system of piping to maintain a water seal in a trap.
227. "Trap seal" means the vertical distance between the crown weir and the top of the dip of the trap.
228. "Vacuum" means any pressure less than that exerted by the atmosphere.
229. "Vacuum breaker" means backflow preventer.
230. "Vacuum breaker, nonpressure type (atmospheric)" means a vacuum breaker which is not designed to be subject to static line pressure.
231. "Vacuum breaker, pressure type" means a vacuum breaker designed to operate under conditions of static line pressure.
232. "Vacuum relief valve" means a device to prevent excessive vacuum in a pressure vessel.
233. "Vent pipe" means part of the vent system.
234. "Vent stack" means a vertical vent pipe installed to provide circulation of air to and from the drainage system and which extends through one or more stories.
235. "Vent system" means a pipe or pipes installed to provide a flow of air to or from a drainage system or to provide a circulation of air within such system to protect trap seals from siphonage and back pressure.
236. "Vertical pipe" means any pipe or fitting which makes an angle of forty-five degrees or less with the vertical.
237. "Wall hung water closet" means a water closet installed in such a way that no part of the water closet touches the floor.
238. "Waste" means liquid waste and industrial waste.
239. "Waste pipe" means a pipe which conveys only waste.
240. "Water distributing pipe" means a pipe within the building or on the premises which conveys water from the water-service pipe to the point of usage.
241. "Water lifts" means sewage ejector.
242. "Water main" means a water supply pipe for public use.
243. "Water outlet" means a discharge opening through which water is supplied to a fixture, into the atmosphere (except into an open tank which is part of the water supply system), to a

boiler or heating system, to any devices or equipment requiring water to operate but which are not part of the plumbing system.

- 244. "Water riser pipe" means riser.
- 245. "Water service pipe" means the pipe from the water main or other source of potable water supply to the water distributing system of the building served.
- 246. "Water supply system" means the water service pipe, the water-distributing pipes, and the necessary connecting pipes, fittings, control valves, and all appurtenances in or adjacent to the building or premises.
- 247. "Wet vent" means a vent which receives the discharge of wastes other than from water closets and kitchen sinks.
- 248. "Yoke vent" means a pipe connecting upward from a soil or waste stack to a vent stack for the purpose of preventing pressure changes in the stack.

History: Amended effective July 1, 1985.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-02-08. Workmanship Installation practices. Plumbing systems shall be installed in workmanlike manner conforming to generally accepted good practice. Plumbing systems must be installed in a manner conforming to this article and industry installation standards.

History: Amended effective July 1, 1985.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-02-10. Exclusion of materials detrimental to the sewerage system. It shall be unlawful for any person to deposit by any means into the building drainage system or sewer any ashes, cinders, rags, flammable, poisonous, or explosive liquids, gases, oils, grease, or any other material which would or could either obstruct, damage, or overload such system or which could interfere with the normal operation of the sewage treatment processes. No material may be deposited into a building drainage system or sewer which would or could either obstruct, damage, or overload such system; which could interfere with the normal operation of sewage treatment processes; or which could be hazardous to people or property. This provision does not prohibit the

installation of special waste systems when approved by the administrative authority.

History: Amended effective July 1, 1985.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-02-16. Freezing or overheating. Water service piping shall be installed below recorded frost penetration but not less below grade than seven feet [2.13 meters]. Sewers shall be installed not less below grade than four feet [1.22 meters]. Water, soil, or waste piping are not permitted outside of a building, in an exterior wall, or in any area subject to freezing temperatures unless complete and proper provision is made to protect such pipe from freezing. The plumbing system must be protected from freezing or overheating. The following conditions must be met:

1. Water service piping must be installed below recorded frostlines. Minimum earth cover must be seven feet [2.13 meters].
2. Minimum earth cover for building sewers must be four feet [1.22 meter].
3. In systems which are used seasonally, water piping must be installed to be drained as permitted in subsection 1 of section 62-03-03.1-03.
4. Water, soil, or waste piping is not permitted outside of a building, in an exterior wall, or in any area subject to freezing temperatures unless complete and proper provision is made to protect such pipe from freezing.
5. Piping must be installed so that the contents will not be heated due to close proximity to any heat source or from direct solar radiation.

History: Amended effective November 1, 1979; July 1, 1985.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-02-19. Connection to water and sewer system.

1. General. The water distribution and drainage system of any building in which plumbing fixtures are installed shall have a private and individual connection to a public water supply and sewer system respectively if available. A public water supply system or public sewer system shall be deemed available to a

premise used for human occupancy if such a premise is within two hundred feet [60.96 meters], measured along a street, alley, or easement, of the public water supply or sewer system and a connection conforming with the standards set forth in this article may be made thereto. Exceptions to this subsection shall be approved in writing by the administrative authority.

2. **Private systems.** Where either a public water supply or sewer system, or both, are not available, a private individual water supply or individual sewage disposal system, or both, shall be provided, and the water distribution system and drainage system shall be connected thereto. Such private systems must meet the standards for installation and use as set forth in this article. See chapters 62-03-16 and 62-03-17.

**History:** Amended effective July 1, 1985.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

#### 62-03-02-22. Water closet connections.

1. **Lead connections.** Three-inch [7.62-centimeter] lead bends and stubs may be used on water closets or similar connections provided the inlet is dressed or swedged to receive a floor flange a four-inch by three-inch [10.16-centimeter by 7.62-centimeter] flange is installed to receive the closet fixture horn. Four-inch by three-inch [10.16-centimeter by 7.62-centimeter] closet bends are permitted.
2. **Iron connections.** Three-inch {7.62-centimeter} bends may be used on water closets or similar connections, provided a four-inch by three-inch {10.16-centimeter by 7.62-centimeter} flange is used to receive the fixture horn.
3. **Copper connections.** Three-inch {7.62-centimeter} bends may be used on water closets or similar connections provided a four-inch by three-inch {10.16-centimeter by 7.62-centimeter} flange is used to receive the closet fixture horn.
4. **Plastic connections.** Plastic water closet bends may be used if approved by the administrative authority and provided a suitable four-inch by three-inch {10.16-centimeter by 7.62-centimeter} flange is used to receive the fixture horn.

5- Reducing closet bends. Four-inch by three-inch  
{10-16-centimeter by 7-62-centimeter} closet bends  
are acceptable.

History: Amended effective July 1, 1985.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

## CHAPTER 62-03-03 MATERIALS

[Superseded by Chapter 62-03-03.1]

STAFF COMMENT: Chapter 62-03-03.1 contains all new material but is not underscored so as to improve readability.

## CHAPTER 62-03-03.1 MATERIALS

Section	
62-03-03.1-01	Materials
62-03-03.1-02	Special Materials
62-03-03.1-03	Fittings, Fixtures, Appliances, and Appurtenances
62-03-03.1-04	Central Vacuum or Disposal Systems
62-03-03.1-05	Chemical and Special Waste Systems
62-03-03.1-06	Sanitary Drainage and Indirect Waste Systems
62-03-03.1-07	Local Vent Systems
62-03-03.1-08	Potable Water Supply Systems
62-03-03.1-09	Storm Drainage Systems
62-03-03.1-10	Venting Systems
62-03-03.1-11	Air-Conditioning Condensate and Relief Valve Discharge Piping
62-03-03.1-12	Alternate Materials and Methods

### 62-03-03.1-01. Materials.

1. **Standards.** The standards cited in this chapter control all materials, systems, and equipment used in the construction, installation, alteration, repair, or replacement of any plumbing or drainage system or part thereof, except:
  - a. The administrative authority shall allow the extension, addition to, or relocation of, existing water, soil, waste vent pipes with materials of like grade or quality as permitted in subsection 2 of section 62-03-03.1-12.

b. Materials not covered by the standards cited in this chapter may be used with the approval of the administrative authority as permitted in subsection 2 of section 62-03-03.1-12.

2. **General requirements.** All materials, fixtures, or equipment used in the installation, repair, or alteration of any plumbing system must conform at least to the standards listed in this chapter except as otherwise approved by the administrative authority under the authority contained in section 62-03-03.1-12.

All materials installed in plumbing systems must be so handled and installed as to avoid damage so that the quality of the material will not be impaired.

No defective or damaged materials, equipment, or apparatus may be installed or maintained. (Sections 62-03-02-14 and 62-03-02-15).

All materials used must be installed in strict accordance with the standards under which the materials are accepted and approved, including the appendices of the standards, and in strict accordance with the manufacturer's instructions.

3. **Standards applicable to plumbing materials.** A material is considered approved if it meets one or more of the standards cited in Table 62-03-03.1, Standards for Approved Plumbing Materials and Equipment; and in the case of plastic pipe, also the listed standard of the national sanitation foundation. Materials not listed in Table 62-03-03.1 may be used only as provided for in subsection 2 of section 62-03-03.1-12 or as permitted elsewhere in this article.

Note: Abbreviations in Table 62-03-03.1 refer to the following organizations:

ANSI American National Standards Institute  
1430 Broadway  
New York, New York 10018

ARI Air Conditioning and Refrigeration Institute  
1815 North Fort Myer Drive  
Arlington, Virginia 22209

ASSE American Society of Sanitary Engineering  
P.O. Box 9712  
Bay Village, Ohio 44140

ASTM American Society for Testing and Materials  
1916 Race Street  
Philadelphia, Pennsylvania 19103

AWWA American Water Works Association  
521 Fifth Avenue  
New York, New York 10017

CISPI Cast Iron Soil Pipe Institute  
1499 Chain Bridge Road  
McLean, Virginia 22101

CMI Cultured Marble Institute  
435 North Michigan Avenue  
Chicago, Illinois 60611

CS Commercial Standards  
Commodity Standards Division  
Office of Industry and Commerce  
Washington, D.C. 20230

FS Federal Supply Service  
Standards Division  
General Services Administration  
Washington, D.C. 20405

IAPMO International Association of Plumbing  
and Mechanical Officials  
5032 Alhambra Avenue  
Los Angeles, California 90032

MSS Manufacturing Standardization Society  
5203 Leesburg Pike, Suite 502  
Falls Church, Virginia 22041

NSF National Sanitation Foundation  
Ann Arbor, Michigan 48106

PDI Plumbing and Drainage Institute  
5342 Boulevard Place  
Indianapolis, Indiana 46208

UL Underwriter's Laboratory  
333 Pfingsten Road  
Northbrook, Illinois 60062

4. **Identification of materials.** Materials must be identified as provided in the standard to which they conform.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 43-18-09  
**Law Implemented:** NDCC 43-18-09

62-03-03.1-02. **Special materials.**

1. **Copper and brass.** Sheet and tubular copper and brass for the following uses must weigh not less than:
  - a. General use - twelve ounces [34.02 decigrams] per square foot [929.03 square centimeters].
  - b. Flashing for vent pipes - eight ounces [22.68 decigrams] per square foot [929.03 square centimeters].
  - c. Trap and tailpiece fittings - Brown and Sharpe seventeen-gauge [.045in-1.14 millimeters].
2. **Lead.** See Table 62-03-03.1. Sheet lead may be not less than the following:
  - a. Shower pans - not less than four pounds [1.81 kilograms] per square foot [929.03 square centimeters] and be coated with an asphalt paint or equivalent.
  - b. Flashings of vent terminals - not less than three pounds [1.36 kilograms] per square foot [929.03 square centimeters].
  - c. Lead bends and lead traps may not be less than one-eighth inch [3.18 millimeters] wall thickness.
3. **Plastic.**
  - a. Trap and tailpiece fittings - minimum 0.062 inch [1.57 millimeter] wall thickness.
  - b. Piping - see specific application - sections 62-03-03.1-04 to 62-03-03.1-11.
  - c. Shower pans - approved plastic sheeting material.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

#### **62-03-03.1-03. Fittings, fixtures, appliances, and appurtenances.**

##### **1. Cleanout plugs and cap.**

- a. Cleanout plugs must be of brass, plastic, stainless steel, or other approved materials and must be raised or countersunk square heads, except that where raised heads will cause a tripping hazard, countersunk heads must be used.

- b. Cleanout caps must be of brass, plastic, reinforced neoprene, cast iron, or other approved material and shall be readily removable.

**2. Fixtures.**

- a. Plumbing fixtures must be constructed from approved materials having smooth, nonabsorbent surfaces and be free from defects, and except as permitted elsewhere in this article, must conform to the standards cited in Table 62-03-03.1-01.3.
- b. Materials for special use fixtures not otherwise covered in this article must be constructed of materials especially suited to the use for which the fixture is intended.

**3. Floor flanges and mounting bolts.**

- a. Floor flanges for water closets or similar fixtures may be not be less than one-eighth inch [3.18 millimeter] thick for brass, one-fourth inch [6.35 millimeter] thick and not less than one and one-half inches [38.1 millimeters] caulking depth for cast iron or galvanized malleable iron. Approved copper and plastic flanges may be used.
- b. If of hard lead, they must weigh not less than one pound nine ounces [70.87 decigrams] and be composed of lead alloy with not less than seven and seventy-five hundredths percent antimony by weight. Flanges must be soldered to lead bends, or shall be caulked, soldered, or threaded into other metal.
- c. All plastic flanges shall conform to current national sanitation foundation standards.
- d. Closet screws and bolts shall be brass.

- 4. Flush pipes and fittings.** Flush pipes and fittings must be of nonferrous material. When of brass or copper tube, the material must be at least three hundred thirteen ten-thousandths of an inch [.795 millimeters] in thickness [No. 20 U.S. gauge].

- 5. Hangers and supports.** Hangers, anchors, and supports must be of metal or other material of sufficient strength to support the piping and its contents. Piers may be of concrete, brick, or other approved material.

- 6. Interceptors.** Interceptors must comply, in all respects, with the type or model of each size thereof approved by the administrative authority.

7. **Pressure tanks and vessels.**

- a. Hot water storage tanks must meet construction requirements of American society of mechanical engineers, American gas association, or underwriter's laboratory as appropriate (see standards Table 62-03-03.1).
- b. Storage tanks less in volume than those requirements specified by American society of mechanical engineers shall be of durable materials and constructed to withstand one hundred twenty-five pounds per square inch with a safety factor of 2.

8. **Roof drains.** Roof drains must be of cast iron, copper, lead, or other approved corrosion-resisting materials.

9. **Safety devices for pressure tanks.** Safety devices must meet the requirements of the American national standards institute, American society of mechanical engineers, or the underwriters laboratories. Listing by underwriters laboratories, American gas association or national board of boiler and pressure vessel inspectors constitutes evidence of conformance with these standards. Where a device is not listed by any of these, it must have certification by an approved laboratory as having met these requirements.

10. **Septic tank.**

- a. Plans for all septic tanks must be submitted to the approving authority for approval. The plans must show all dimensions, reinforcing, structural calculations, and such other pertinent data as may be required.
- b. Septic tanks must be constructed of sound durable materials, not subject to excessive corrosion or decay, and must be watertight. (See subsections 4 and 5 of section 62-03-16-06).

**History:** Effective July 1, 1985.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

**62-03-03.1-04. Central vacuum or disposal systems** The piping of a central vacuum (fluid suction) system shall be of corrosion-resistant material having a smooth interior surface (see section 62-03-14-14).

**History:** Effective July 1, 1985.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

**62-03-03.1-05. Chemical and special waste systems.**

1. **Drainage piping.** Separate drainage systems for chemical wastes must be of corrosion-resistant material approved by the administrative authority. Materials acceptable for chemical waste drainage systems include chemically resistant glass pipe, high silicon content cast iron pipe, vitrified clay pipe, plastic lined pipe, and lead pipe.
2. **Vent piping.** Vent piping on chemical waste systems must conform to that required for chemical waste pipe except as may be otherwise authorized by the administrative authority, and must be installed independently through the roof.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

#### **62-03-03.1-06. Sanitary drainage and indirect waste systems.**

1. **Aboveground piping - sanitary and indirect drainage.** Soil and waste piping aboveground in buildings must be of brass pipe, copper pipe, copper tube drainage, waste and venting weight or heavier, cast iron soil pipe, galvanized steel pipe, lead pipe, or acrylonitrile-butadiene-styrene, or polyvinyl chloride, drainage, waste and venting, schedule 30 or heavier plastic pipe. When plastic pipe is installed each soil or waste stack (does not include stack vent) may not exceed thirty-five feet [10.67 meters] in height. Horizontal offsets in stacks, horizontal branches connected to stacks and building drains aboveground are limited to a maximum developed length of thirty-five feet [10.67 meters].
2. **Underground building sanitary drains.** All underground building drains must be cast iron soil pipe, hard-temper copper tube type L, or heavier, or acrylonitrile-butadiene-styrene, or polyvinyl chloride, drainage, waste and venting, schedule 40 or heavier plastic pipe. Where ferrous threaded joints are used underground, they must be coal tar coated or equivalent approved protection applied when installed.
3. **Building sanitary sewer.**
  - a. **In trench separate from water service.** If the building sewer is installed in a trench separate from the water service, the sewer pipe material must be asbestos cement, bituminized fiber, cast iron, concrete, vitrified clay, copper, acrylonitrile-butadiene-styrene, or polyvinyl chloride, drainage, waste and venting schedule 40 or heavier, or acrylonitrile-butadiene-styrene, or polyvinyl chloride, sewer pipe (SDR 35 or heavier) plastic pipe. Joints must be watertight and rootproof.

b. **In trench with water service.** If the building sewer is installed in the same trench as the water service, the sewer pipe material must be cast iron, acrylonitrile-butadiene-styrene, or polyvinyl chloride, drainage, waste and venting, schedule 40 or heavier. The conditions in subsection 1 of section 62-03-10-06 must also be met.

4. **Fittings.** The materials of which drainage system pipe fittings are made must conform to the type of piping materials used in the drainage system. The fittings may have no ledges, shoulders, or reductions which can retard or obstruct flow in the piping. Threaded drainage pipe fittings must be of the recessed drainage type, black or galvanized.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

**62-03-03.1-07. Local vent systems.** Material for local vents serving bedpan washers and sterilizer vents serving sterilizers, must be sufficiently rustproof, erosion and corrosion resistant to withstand intermittent wetting and drying from steam vapors, the distilled water solvent action of the steam vapors, and frequent and immediate changes of temperatures.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

**62-03-03.1-08. Potable water supply systems.**

1. **Water service pipe.** Water service pipe to point of entrance to the building must be made of asbestos cement pipe, brass pipe, copper tube or copper pipe, cast iron water pipe, or galvanized steel pipe, or approved plastic pipe (minimum pressure rating - 160 pounds per square inch - 73F). Copper tube when used underground may not be less than type L. All threaded ferrous pipe and fittings must be galvanized or cement lined and, when used underground in corrosive soil or filled ground, must be coal tar enamel-coated and threaded joints must be coated and wrapped when installed (see subsection 4).

2. **Water distribution system pipe.** Water distribution system pipe must be of brass pipe, copper tube or copper pipe, galvanized steel pipe, or approved plastic pipe (see subsection 4).

3. **Fittings.** The materials of which water supply system pipe fittings are made must be compatible with the type of piping materials used in the water supply system (see subsection 4).
4. **Material strength.**
  - a. All materials used for water piping must be suitable for use with the maximum temperature, pressure, and velocity that may be encountered in the installation, including temporary increases and surges.
  - b. When the standards for the piping material used for hot and cold water distribution limit the working pressure or temperature to values lower than usually encountered, the relief valve may be set no higher than the limits of the standard.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

#### **62-03-03.1-09. Storm drainage systems.**

1. **Interior conductors.** Interior conductors installed aboveground in buildings must be of brass pipe, copper pipe, copper tube, drainage, waste and venting weight or heavier, cast iron soil pipe, galvanized steel pipe, lead pipe, acrylonitrile-butadiene-styrene or polyvinyl chloride, drainage, waste and venting schedule 40 or heavier plastic pipe, or acrylonitrile-butadiene-styrene or polyvinyl chloride sewer pipe SDR 35 or heavier for interior conductors six inches [15.24 centimeters] in diameter or larger.
2. **Exterior leaders.** Exterior leaders must be of approved sheet metal or other acceptable material.
3. **Underground building storm drains.** All underground building storm drains must be cast iron soil pipe, hard-temper copper tube type drainage, waste and venting, or heavier, acrylonitrile-butadiene-styrene or polyvinyl chloride drainage, waste and venting, schedule 40 or heavier plastic pipe or acrylonitrile-butadiene-styrene or polyvinyl chloride sewer pipe SDR 35 for building drains six inches [15.24 centimeters] in diameter or larger. Where ferrous threaded joints are used underground they must be coal tar coated or equivalent approved protection applied when installed.
4. **Building storm sewer.** The building storm sewer must be of asbestos cement, bituminized fiber, cast iron soil pipe, concrete, vitrified clay, copper tube type drainage, waste and venting, acrylonitrile-butadiene-styrene, or polyvinyl chloride drainage, waste and venting schedule 30 or heavier

plastic pipe, or acrylonitrile-butadiene-styrene, or polyvinyl chloride sewer pipe SRD 35 or heavier.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

**62-03-03.1-10. Venting systems.**

1. **Aboveground.** Vent piping aboveground in buildings must be of brass pipe, copper pipe, copper tube, drainage, waste and venting weight or heavier, cast iron soil pipe, galvanized steel pipe, lead pipe, or acrylonitrile-butadiene-styrene, or polyvinyl chloride drainage, waste and venting schedule 30 or heavier plastic pipe.
2. **Underground.** All underground vent piping must be cast iron soil pipe, hard-temper copper tube type drainage, waste and venting or heavier, acrylonitrile-butadiene-styrene, or polyvinyl chloride drainage, waste and venting schedule 40 or heavier plastic pipe. Where ferrous threaded joints are used underground, they must be coal tar coated or equivalent approved protection applied when installed.
3. **Fittings.** Fittings must be compatible with the type of pipe used in the vent system as required by subsections 1 and 2 or when used with galvanized pipe they may be black drainage fittings, black steam pattern fittings, or galvanized malleable fittings.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

**62-03-03.1-11. Air-conditioning condensate and relief valve discharge piping.** Air-conditioning condensate and relief valve discharge piping must be of any material approved for water distribution (subsection 2 of section 62-03-03.1-08) or sanitary drainage (subsection 1 of section 62-03-03.1-06) and listed in Table 62-03-03.1.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

**62-03-03.1-12. Alternate materials and methods.**

1. **Existing buildings.**
  - a. Plumbing work performed in existing buildings must conform to the requirements of this article, unless the

administrative authority finds that such conformance would result in an undue hardship.

- b. In such case, the administrative authority may grant a deviation to the extent necessary to ameliorate the undue hardship.
  - c. A record, open to the public, must be kept of each and every deviation granted under this section.
2. **Approval.** The administrative authority may approve the use of any material or method not expressly conforming to the requirements of this article provided all of the following are met:
- a. The material or method is not expressly prohibited by this article.
  - b. The material or method is determined to be of such design or quality as to appear suitable for the proposed use.
  - c. A record of such approval is kept and shall be available to the public.
3. **Tests.** When there is insufficient evidence to verify claims for alternate materials, the administrative authority may require as proof of suitability tests of compliance by an approved agency at the expense of the applicant.
4. **Test procedure.** Tests must be made in accordance with approved standards; but in the absence of such standards, the administrative authority shall specify the test procedure.
5. **Repeated tests.** The administrative authority may require tests to be repeated if, at any time, there is reason to believe that an alternate material no longer conforms to the requirements on which its approval was based.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 43-18-09  
**Law Implemented:** NDCC 43-18-09

TABLE 62-03-03.1

## STANDARDS FOR APPROVED PLUMBING MATERIALS AND EQUIPMENT

Description	ANSI	ASTM	FS	Other
Ferrous Pipe, Fittings and Valves				
Cast Iron Drainage Fittings, Threaded	B16.12-1977	None	WW-P-491b-1967	None
Cast Iron Fittings (UPC specials)	None	None	None	IAPMO PS 5-77
Cast Iron Screwed Fittings (Threaded)	B16.4-1977	None	WW-P-501d-1967	None
Cast Iron Pipe (Threaded) D.W.V.	A-40.5-1943	None	WW-P-356a-1967	None
Cast Iron Pipe Thickness Design of	A21.1-1967(R1977)	None	WW-P-421c-1967	None
Cast Iron Soil Pipe and Fittings Hub & Spigot	None	A74-72	WW-P-40e-1974	None
Cast Iron Water Pipe (2")	None	A377-66	WW-P-360b-1968	None
Cast Iron Water Pipe (Cast in metal molds)	None	A37-66	WW-P-421c-1967	None
Cast Iron Water Pipe (Cast in sand lined molds)	None	A377-66	WW-P-421c-1967	None
Cast Iron Water Pipe Fittings	A21.10-1977	A377-66	None	*AWWA C110-77
Ductile - Iron Pipe	A21.51-1976	A377-66	WW-P-421c-1967	*AWWA C151-81
Groove & Shoulder Type Joints (Split Couplings)	None	None	None	AWWA C 606-81
Cast Iron Soil Pipe and Fittings for Hubless Cast Iron Sanitary System	None	None	WW-P-104e-1974	CISPI 301-82
Malleable Iron Screwed Fittings, 150 lbs. & 300 lbs.	B16.3-1977	None	WW-P-521f-1968	None
Nipples, Pipe, Threaded	None	None	WW-N-351b(1)-1970	None
Pipe Fittings, Ferrous (Bushings, plugs, and locknuts) Threaded, 125 & 150 lb.	B16-14-1977	None	WW-P-471b-1970	None
Pipe Threads (Except Dry seal)	BSR/ASME B1.20.1-1982	None	None	NBS Handbook
Steel Pipe, Stainless	B125.16-1975	A312-75	None	None
Steel, Stainless, Water-DWV Tubes	None	A651-71	None	None
Steel Pipe, Welded or Seamless (for coiling) Black or Galvanized	None	A53-77a	WW-P-471b-1970 Int Amend 3-1971	None
Steel Pipe, Welded or Seamless Black or Galvanized	None	A120-77	WW-P-406d(1)-1973	None
Steel Pipe (Cement-mortar lining and Reinforced Cement-mortar coating)	A21.4-1980	None	SS-P385a(1)1968	AWWA C205-80

Steel Pipe (Coal tar enamel or cement mortar lining & coal tar enamel coated wrapped)	None	None	WW-P-1432-1970	*AWWA C203-78
Unions, Pipe, Steel or Malleable Iron Valves, Ball	B16.39-1977 None	None None	WW-U-531c-1965 WW-V-35a-1965 Int Amend 2-1970	None None
Valves, Cast Iron, Gate 125 & 250 lb.	None	None	WW-V-58b-1971	MSS-SP-70-1976
Valves, Cast Iron, Swing check	None	None	None	MSS-SP-71-1976
Wrought Iron Pipe, Welded, Black or Galvanized	None	A-72-68	None	None
<b>Non-Ferrous Metallic Pipe, Fittings and Valves</b>				
Brass Tube, Seamless	None	B135-82	WW-T-791a-1971	None
Brass, Red, Seamless, Pipe, Standard Sizes	None	B 43-80	WW-P-351a-1963	None
Bronze, Flanges and Flanged Fittings	B16.24-1979	None	None	None
Cast Bronze Fittings for Flared Copper Tubes	B16.26-1975	None	None	None
Cast Bronze Solder-joint Pressure Fittings	B16.18-1978	None	WW-T-00725-1967	None
Cast Bronze Solder-joint Drainage Fittings	B16.23-1976	None	None	None
Copper Pipe, Seamless, Standard Sizes	None	B 42-82	WW-P377d-1962	None
Copper Pipe, Threadless	None	B302-81	WW-P-377d-1962	None
Copper Tube, Drainage DWV	None	B306-81	None	None
Copper Tube, Seamless	None	B 75-81a	WW-T-797c-1963	None
Copper Tube Welded	None	B447-80	None	None
Copper Tube, Water, Seamless, Types K, L & M	None	B 88-81	WW-T-799d-1971	None
Copper & Copper Alloy Pipe & Tube, General Requirements	None	B251-81	None	None
Copper & Copper Alloy Tube, Welded	None	B543-82	None	None
		B587-80		
Copper Alloy Water Tube, Welded	None	B586-80	None	None
		B642-81		

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TABLE 62-03-03.1

## STANDARDS FOR APPROVED PLUMBING MATERIALS AND EQUIPMENT

Description	ANSI	ASTM	FS	Other
<b>Non-Ferrous Metallic Pipe, Fittings &amp; Valves</b>				
Copper Tube, Seamless, Welded, Distribution, Type "D"	None	B641-81	None	None
Lead Pipe, Bends, and Traps	None	None	WW-P-325a-1967	None
Pipe Fittings, Brass or Bronze, 125 and 250 lbs. Cast or Wrought	B16.15-1978	Non	WW-P-460b-1967	None
Pipe Nipples, Brass, Copper, Steel and Wrought Iron	None	None	None	CS-5-65
Solder-joint Fittings, Pressure, Copper Alloy	B16.22-1980	None	WW-T-00725-1967	None
Solder-joint Fittings, Drainage, Copper Alloy	B16.29-1980	None	None	None
Unions, Brass or Bronze, 250 lbs.	None	None	WW-V-35a-1965 Int Amend 2-1970	MSS-SP-72-1970
Valves, Angle, Check and Globe, Bronze, 125 lb. Screwed, Flanged or Solder	None	None	WW-V-51d-1967	None
<b>Non-Metallic Pipe and Fittings</b>				
Asbestos Cement Non-pressure Sewer Pipe	None	*C428-80	None	None
Asbestos Cement Non-pressure Small Diameter Sewer Pipe (4", 5", 6")	None	*C644-80	None	None
Asbestos Cement Underdrain Pipe	A165.2-1973	*C508-78a	None	None
Asbestos Cement Pressure Pipe	None	*C296-78	None	*AWWA C400-80
Asbestos Cement Storm Drain Pipe	A165.7-1974	*C663-78	None	None
Asbestos Cement Transmission Pipe	A165.8-1974	C668-76	None	*AWWA C-402-77
Bituminized Fiber Drain & Sewer Pipe Homogeneous Wall	A176.1-1971	*D1861-77	SS-P-1540a-1969 Int Amend 1-1970	
Bituminized Fiber Drain & Sewer Pipe Laminated Wall	A176.2-1972	*D1862-77	SS-P-1540a-1969 Int Amend 1-1970	
Bituminized Fiber Pipe, Perforated, for Septic Tank Disposal Fields, Homogeneous Wall	A176.4-1971	*D2312-77	SS-P-1540a-1969 Int Amend 1-1970	None

Bituminized Fiber Pipe, Perforated, for Septic Tank Disposal Fields, Laminated Wall	A176.5-1971	*D2313-77	SS-P-1540a-1969 Int Amend 1-1970	None
Clay Drain Tile, Specifications For	A6.1-1963(R1972)	C462-75	SS-P-1299a-1968	None
Clay Drain Tile, Perforated	None	C498-75	SS-P-359b-1960	None
Clay Pipe, Perforated, Standard & Extra Strength	A106.8-1978	*C700-78	SS-P-361E	None
Concrete Drain Tile	None	C412-78	None	None
Concrete Low Head Pressure Pipe, Reinforced	None	C361-78	None	None
Concrete Pipe, Perforated	None	*C444-79	None	None
Concrete Pipe (Sewer, Storm Drain & Culvert) Non-reinforced	None	*C14M-80	SS-P-371e-1968	None
Concrete Pipe, Pressure, Reinforced Concrete, pretensioned reinforcement (Steel Cylinder Type)	None	None	SS-P-381A(1)-1969 SS-P-381A(2)-1972	*AWWA C303-78
Concrete Pipe (Culvert, Storm Drain & Sewer) Reinforced	None	*C76M-80	SS-P-375d-1970	None
Acrylonitrile-Butadiene-Styrene (ABS) Plastic Pipe, Schedules 40 & 80	B72.5-1971	*D1527-77	None	NSF 14 See ASTM D2774 for underground installation procedures
Acrylonitrile-Butadiene-Styrene (ABS) Plastic Pipe, (SDR-PR and Class T)	B72.3-1975	*D2282-77	None	NSF14 See ASTM D2774 for underground installation procedures
Socket-Type Acrylonitrile-Butadiene-Styrene (ABS) Plastic Pipe Fittings, Scheduled 40	K65.164-1971	*D2468-80±	None	NSF 14
Socket-Type Acrylonitrile-Butadiene-Styrene (ABS) Plastic Pipe Fittings, Schedule 80	K65.163-1971	*D2469-76	None	NSF 14

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TABLE 62-03-03.1

## STANDARDS FOR APPROVED PLUMBING MATERIALS AND EQUIPMENT

Description	ANSI	ASTM	FS	Other
<b>Non-Metallic Pipe and Fittings</b>				
Threaded Acrylonitrile-Butadiene-Styrene (ABS) Plastic Pipe Fittings, Schedule 80	K65.165-1971	*D2465-73	None	NSF 14
Acrylonitrile-Butadiene-Styrene (ABS) Plastic Drain, Waste, & Vent Pipe and Fittings, Schedule 40	B72.18-1971	*D2661-81a	L-P-332B-1973	NSF 14 See ASTM Appendix XI for installation procedures
Acrylonitrile-Butadiene-Styrene (ABS) Plastic Drain, Waste & Vent Pipe, having a Foam Core Schedule 40	None	F268-79e	None	NSF 14 See ASTM Appendix AI for installation procedures
Acrylonitrile-Butadiene-Styrene (ABS) Sewer Pipe and Fittings	None	D2751-80	None	NSF 14 See ASTM D2321 for underground installation procedures
Solvent Cement for Acrylonitrile-Butadiene-Styrene (ABS) Plastic Pipe & Fittings	B72.23-1971	*D2235-81±	None	NSF 14
Polyethylene (PE) Plastic Pipe, Schedule 40	B72.8-1971	*D2104-74	None	NSF 14 See ASTM D2774 for underground installation procedures
Polyethylene (PE) Plastic Pipe, Schedules 40 & 80 Based on Outside Diameter	B72.13-1971	*D2447-74	None	NSF 14 See ASTM D2774 for underground installation procedures

Polyethylene (PE) Plastic Pipe,(SDR-PR)	872.1-1975	*D2239-81±	L-P-315c-1972 L-P-315c-2-1975	NSF 14 See ASTM D2774 for underground installation procedures
Butt Fusion Polyethylene (PE) Plastic Pipe Fittings, Schedule 40	K65.160-1971	*D2610-73	None	NSF 14
Butt Fusion Polyethylene (PE) Plastic Pipe Fittings, Schedule 80	K65.159-1971	*D2611-73	None	NSF 14
Plastic Insert Fittings for Polyethylene Plastic Pipe	None	D2609-74	L-F-001546-1968	NSF 14
Polybutylene (PB) Plastic Hot-Water Distribution Systems	None	*D3309-81b	None	NSF 14 See ASTM Appendix X2 for installation procedures
Polybutylene (PB) Plastic Pipe and Tubing for Cold Water Service Polybutylene (PB) Plastic Pipe (SDR-PR)	None	*D2662-81±	None	NSF 14 See ASTM D2774 for underground installation procedures
Polybutylene (PB) Plastic Tubing	None	D2666-81a±	None	NSF 14 See ASTM D2774 for underground installation procedures
Polybutylene (PB) Plastic Pipe (SDR-PR) Based on Outside Diameter	None	D3000-73 (1981)±	None	NSF 14 See ASTM D2774 for underground installation procedures

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Description	ANSI	ASTM	FS	Other
Non-Metallic Pipe and Fittings				
Type PSP Poly (Vinyl Chloride) Sewer Pipe and Fittings	None	*D3033-81	None	See ASTM D2321-74e for under-ground installation procedures
Polyethylene (PE) Plastic Tubing	None	D2737-81±	None	NSF 14 See ASTM D2774 for underground installation procedures
Chlorinated Poly (Vinyl Chloride) (CPVC) Plastic Hot-and Cold-water Distribution Systems	None	D2846-81±	None	NSD 14 See ASTM Appendix X2 for installation procedures
Socket-Type Chlorinated Poly Vinyl Chloride (CPVC) Plastic Pipe Fittings, Schedule 80	None	F439-77	None	NSF 14
Poly (Vinyl Chloride) (PVC) Plastic Pipe Schedules 40,80 and 120	B72.7-1971	*D1785-76e2± D2255-73	L-P-1035A-1974	NSF 14 See ASTM D2774 for under-ground installation procedures
Poly (Vinyl Chloride) (PVC) Plastic Pipe (SDR-PR)	None	D2241-80e1±	None	NSF 14 See ASTM D2774 for under-ground installation procedures
Chlorinated Poly (Vinyl Chloride) (CPVC) Plastic Pipe, Schedules 40 & 80	None	F441-77	None	NSF 14 See ASTM D2846 Appendix X2 for installation procedures

Socket-Type Polyvinyl Chloride (PVC) Plastic Pipe Fittings, Schedule 40	None	*D2466-78	None	NSF 14
Socket-Type Polyvinyl Chloride (PVC) Plastic Pipe Fittings, Schedule 80	None	*D2467-76a	None	NSF 14
Solvent Cements for Poly (Vinyl Chloride) (PVC) Plastic Pipe and Fittings	B72.16-1971	*D2564-80±	None	NSF 14
Primers for Solvent Cement Joints (PVC)	None	656-80±	None	None
Threaded Chlorinated Poly Vinyl Chloride (CPVC) Plastic Pipe Fittings, Sch. 80	None	F437-77	None	NSF 14
Threaded Polyvinyl Chloride (PVC) Plastic Pipe Fittings, Schedule 80	K65.166-1971	*D2464-76	None	NSF 14
Bell-End Poly (Vinyl Chloride) (PVC) Pipe	B72.20-1971	*D2672-80±	None	NSF 14 See ASTM D2774 for under- ground installation procedures
Poly (Vinyl Chloride) (PVC) Plastic Drain, Waste, & Vent Pipe & Fittings	K65.56-1971	*D2665-81e1	L-P-320a-1966	NSF 14 See ASTM Appendix X1 for installation procedures
Type PSM Poly (Vinyl Chloride) (PVC) Sewer Pipe and Fittings	None	*D3034-81	None	See ASTM D2321- 74e for under- ground installation procedures
Styrene-Rubber (SR) Plastic Drain Pipe and Fittings	None	*D2852-81	None	See ASTM D2321 for underground installation procedures

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## STANDARDS FOR APPROVED PLUMBING MATERIALS AND EQUIPMENT

Description	ANSI	ASTM	FS	Other
<b>Non-Metallic Pipe and Fittings</b>				
Solvent Cements for Styrene-Rubber (SR) Plastic Pipe & Fittings	None	*D3122-80	None	None
3.25-In. Outside Diameter Poly (Vinyl Chloride) (PVC) Plastic Drain, Waste, Vent Pipe and Fittings	None	D2949-78e	None	NSF 14 See ASTM Appendix X1 for installation procedures
Poly (Vinyl Chloride) (PVC) Sewer Pipe & Fittings	None	D2729-80	None	Perforated pipe only See ASTM F481 for leach field installation
Perforated Styrene Rubber (SR) Plastic Drain Pipe	None	D3298-81	None	See ASTM F481 for leach field installation
Corrugated Polyethylene (PE) Tubing & Fittings	None	F405-77ae	None	See ASTM F481 for leach field installation
<b>Pipe Joining Materials and Gaskets and Supports</b>				
Calking, Lead Wool and Lead Pig	None	None	QQ-C-40(2) 1970	None
Compression Joints & Vitrified Clay Bell and Spigot Pipe	A106.6-1977	*C425-77	None	None
Joints for Plastic Pipes Using Flexible Elastomeric Seals	None	*D3139-77 *D3212-81	None	None
Joints for Drain & Sewer Plastic Pipes Using Flexible Elastomeric Seals	None	*D3212-81	None	None
Fixture Setting Compound	None	None	TT-P-001536(1968) revision of HHC 536a-1954	None

Hubless Soil Pipe Couplings				CISPI 310-82
Stainless Steel Couplings	None	None	None	None
Cast Iron Couplings	None	A-126	None	None
Clamps	None	A-48	None	None
Gasket	None	C-564	None	None
Bolts	B-18.2.1	None	None	None
Nuts	B-18.2.2	None	None	None
Non-Metallic Gaskets for Pipe Flanges	B16.21-1972	None	None	None
Neoprene Rubber Gaskets for Hub Spigot				
Cast Iron Soil-Pipe & Fittings	None	C564-76	None	CISPI HSN 78
Pipe Hangers and Supports	None	None	WW-H-171d-1970	*MSS-SP-58-1975
Rubber Gaskets for Cast Iron Soil-Pipe & Fittings	None	C564-76	None	None
Rubber Gasket Joints for Cast Iron Pressure Pipe & Fittings	A21.11-1979	None	None	*AWWA C111-80
Rubber Gaskets, Molded or Extruded, for Concrete Non-Pressure Sewer Pipe	None	*C443-78	HH-G-160b-1968	None
Rubber Rings for Asbestos Cement Pipe	J8.7-1971	D-1869-78	None	None
Rubber Gaskets, Sheet	J7.2-1971	D-1330-66 (1972)	None	None
Sealing Compound, Preformed Plastic, for Expansion Joints & Pipe Joints	None	None	SS-S00210-(1965)	None
Sealing Compound, Sewer, Bituminous, Two-Component, Mineral-Filled, Cold Applied	None	None	SS-S-168(2)1962	None
Plumbing Appliances				
Dishwashing Machines, Commercial	A197.3-1973	None	Qo-D-431c(2) 1970	UL 921-1978 ASSE 1004-1967
Dishwashing Machines, Household	C33.69-1971	None	None	*UL 749-1978 ASSE-1006-1979

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Description	ANSI	ASTM	FS	Other
Plumbing Appliances				
Drinking Water Coolers, Self Contained Mechanically Refrigerated	A112.11.1-1973	None	None	*ARL-1010-78 *UL 399-1979
Food Waste Disposals, Commercial	None	None	None	ASSE 1009-1970
Food Waste Disposer Units, Household	C33.59-1970 A197.3-1973	None	QQ-G-001513-1968	*UL 430-78 ASSE 1008-1979
Home Laundry Equipment	C33.13-1972 A197.2-1973	None	None	*UL 560-1978 *ASSE 1007-1979
Hot Water Dispenser Household Storage Type, Electrical	None	None	None	*ASSE 1023-1979
Tanks for Domestic Use, Porcelain Enameled	None	None	None	CS115-60
Water Heaters, Automatic Storage Type	Z21.10.1a-1975	None	None	None
Water Heaters, Circulating Tank	Z21.10.3a-1975	None	None	None
Water Heater, Electric Storage Tank	None	None	W-H-196j(j)1971	*UL 174-1977
Water Heater, Instantaneous	None	None	WW-H-191b-1970	None
Water Heater, Oil Fired Storage Type	None	None	None	*UL 732-1975
Water Heater, Side Arm Type	Z21.10.1-1975	None	None	None
Plumbing Fixtures and Appurtenances				
Accessories (Land Use)	None	None	WW-P-541/8B-1981	None
Bathtubs	A112.19.1M-1979	None	WW-P-541/3B-1981	None
Plastic Bathtub Units	Z124.1-1980	None	WW-P-541/3B-1981	None
Drinking Fountains	A112.18.1M-1979	None	WW-P-541/6a-1971	None
Fittings, Plumbing Fixtures, Finished and Rough Brass	A122.18.1M-1979 (R1974)	None	WW-P-541/ALL-1981	None
Hand Held Showers, Performance Requirements	None	None	None	*ASSE 1014-1979
Individual Shower Control Valves, Anti-Scald Type	None	None	None	*ASSE 1016-1979
Lavatories	None	None	WW-P-541/4B-1981	None
Lavatory, Cultered Marble	Z124.3-1980	None	None	CMI LS-2
Lavatories, Plastic	Z124.3-1980	None	None	None
Plumbing Fixtures, General Specification	None	None	WW-P-541-GEN.-1981	None

Plumbing Fixtures, Enameled Cast Iron	A112.19.1M-1979	None	WW-P-541/3B± 5B-1981	None
Plumbing Fixtures, Stainless Steel	A112.19.3-1976	None	WW-P-541/5B-1981	None
Plumbing Fixtures, Vitreous China	A112.19.2-1982	None	WW-P-541/1B, 2B, 4B, 6B, -1981	None
Plumbing Fixtures, Enameled Steel	A112.19.4-1977	None	WW-P-541/3B, 4B, 6B-1981	None
Shower Baths & Heads & Water Control Valves	A112.181M-1979	None	WW-P-541/7B-1981	None
Plastic Shower Receptors & Shower Stalls	Z124.2-1980	None	None	None
Sinks, Kitchen & Service, & Laundry Tub	A112.19.2M-1982 A112.19.3-1976	None	WW-P-541/5B-1981	None
Supports for Off-the-Floor Plumbing Fixtures for Public Use	A112.6.1-1979	None	None	None
Thermostatic Mixing Valves, Self Actuated for Primary Domestic Use	None	None	None	*ASSE 1017-1979
Urinals	A112.19.2M-1982	None	WW-P-541/2B-1981	None
Water Closets	A112.19.2M-1982	None	WW-P-541/1B-1981	None
Backflow Preventers				
Air Gap Standards	A112.1.2-1942 (R1979)	None	None	None
Air Gap Drains for Domestic Dishwashers	None	None	None	ASSE 1021-1976
Vavuum Breakers, Anti-Siphon	A112.1.1-1971	None	None	BSR/ASSE 1001-1980
Vavuum Breakers, Hose Connection	A112.1.3-1976	None	None	*ASSE 1011-1981
Double Check with Atmospheric Vent	None	None	None	ASSE 1012-1978
Reduced Pressure Principle Back Pressure Backflow Preventer	None	None	None	ASSE 1013-1980
Double Check Valve, Back Pressure, Backflow Assembly	None	None	None	ASSE 1015-1980
Wall Hydrants, Freezeless, Automatic Draining, Anti-Backflow Type	None	None	None	*ASSE 1019-1978

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Description	ANSI	ASTM	FS	Other
<b>Backflow Preventers</b>				
Vacuum Breakers, Pressure Type	A112.1.7-1976	None	None	BSR/ASSE 1020-1981
Diverters for Plumbing Faucets with Hose				
Spray, Anti-Siphon Type, Residential Application	None	None	None	*ASSE 1025-1978
<b>Miscellaneous and Installation Standards</b>				
Asbestos Cement Pressure Pipe, Installation Arrestors, Water Hammer	None A112.26.2-1969 (R-1975)	None None	None None	*AWWA C603-78 ASSE 1010-1967
Ballcocks, Water Closet, Flush Tank Enamel, Coal -Tar(Protective Coating)	None None	None None	None None	*ASSE 1002-1979 *AWWA C203-78 *AWWA C210-78
Chlorinated Polyethylene (CPE) Sheeting for Concealed Water Containment Membrane Clamps, Hose	None None	D4068-81 None	None WW-C-440B(a)- 1969	None None
Coating, Pipe, Epoxy, Fusion Bond	None	None	None	*AWWA C213-79
Coating, Pipe, Thermoplastic Resin or Thermosetting, Epoxy	None	None	L-C530B-1970	None
Connector, Water, Flexible Copper	None	None	None	IAPMO PS-14-81
Copper, Sheet & Strip for Building Construction	None	B370-77	None	None
Clay Pipe, Installation	A106.2-1977	*C12-77	None	None
Clay Pipe, Testing	A106.5-1978	*C301-78a	None	None
Drain, Floor	A112.21.1-1968 (R1974)	None	None	None
Drain for Prefabricated & Precast Showers	None	None	None	IAPMO PS-4-77
Drain, Roof	A112.21.2-1971	None	None	None
Interceptors, Grease	None	None	None	POI G 101

Lead, Sheet, Grade A	None	None	QQ-L-201f(2) 1970	None
Installation of Thermoplastic Pipe & Corrugated Tubing in Septic Tank Leach Fields	None	F481-76(1981)	None	None
Plugs, Metallic Cleanout	A112.36.2-1975	None	None	None
Relief Valves, Automatic	Z21.22-1979	None	None	None
Recommended Practice for Making Solvent Cemented Joints with Polyvinyl Chloride (PVC) Plastic Pipe & Fittings	None	*D2855-78	None	None
Reducing Valves, Water Pressure for Domestic Water Supply System	A112.26.2-1975	None	None	BSR/ASSE 1003-1981 IAPMO PS-15-77
Safe Handling of Solvent Cements Used for Joining Thermoplastic Pipe & Fittings	None	F402-80	None	None
Solder, Soft	None	None	QQ-S-571d-1963	None
Septic Tank, metal, bituminous-coated	A162.1-1970	None	None	UL70-1974
Septic Tank, Steel	None	None	None	CS177-62
Tape, Pipe Coating, Pressure Sensitive Polyethylene	None	None	L-T-0075(1)1966	None
Tee, Diversion & Twin Waste Elbow	None	None	None	IAPMO PS-9-77
Thermoplastic Accessible & Replaceable Plastic Tube & Tubular Fittings	None	*F409-81	None	NSF 14
Underground Installation of Flexible Thermoplastic Sewer Pipe	None	*D2321-74e (1980)	None	None
Underground Installation of Thermoplastic Pressure Piping	None	*D2774-72(78)	None	None
Trap Seal Primer Valves	None	None	None	*ASSE 1018-1978
Valve, Backwater	A112.14.1-1975	None	None	IAPMO PS-8-77
Valve, Drain, Water Heater	None	None	None	ASSE 1005-1967

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Note: ±All provisions in this standard concerning potable water applications shall be mandatory to assure compliance with this Code.

62-03-04-01. Tightness General requirements.

1. Tightness. Joints and connections in the plumbing system shall must be gastight and watertight for the pressure required by test, with the exceptions of those portions of perforated or open joint piping which are installed for the purpose of collecting and conveying ground or seepage water to the underground storm drains.
2. Joint standards.
  - a. All pipe and tube must be cut ninety degrees or perpendicular to the pipe centerlines.
  - b. The inside diameter of all pipe and tube ends must be reamed, filed, or smoothed to size of bore and all chips removed. All burrs on the outside of the pipe and butt ends must be removed before the installation.
  - c. All pipe and tube must engage into fittings the full manufacturer's design depth of the fitting socket.
  - d. Male pipe threads must be made of sufficient length to ensure the proper engagement.
  - e. No pipe may extend into a fitting or other pipe to such depth that it will impede or restrict the design flow.
  - f. All joints made by bonding, welding, brazing, solvent cementing, soldering, burning, or fusion must be free from grease or other substances not specifically required to achieve a satisfactory joint.
  - g. Any pipe sealing or lubricating compound required for threaded pipe joints must be applied to the male pipe end only and must be insoluble and nontoxic.
3. Expansion joints. Mechanical type expansion joints requiring or permitting adjustment must be accessible for adjustment or replacement, or both.
4. Increasesers and reducers. Where different sizes of pipes or pipes and fittings are to be connected, increaser and reducer fittings or bushings must be used (see subsection 3 of section 62-03-02-04).

History: Amended effective July 1, 1985.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-04-02. Types of joints for piping materials.

1. **Caulked.**

- a. **Cast iron soil pipe.** Every lead caulked joint for cast iron hub and spigot soil pipe shall be firmly packed with oakum or hemp and filled with molten lead not less than one inch [2.54 centimeters] deep and not to extend more than one-eighth inch [3.18 millimeters] below the rim of the hub. No paint, varnish, or other coatings shall be permitted on the jointing material until after the joint has been tested and approved. Lead shall be run in one pouring and shall be caulked tight.
- b. **Cast iron water pipe.** Every lead caulked joint for cast iron bell and spigot water pipe shall be firmly packed with clean, sound asbestos rope or treated paper rope. The remaining space in the hub shall be filled with molten lead according to the following schedule:

<u>Pipe Size</u>	<u>Depth of Lead</u>
Up to twenty inches	Two and one-fourth inches
Twenty-four, thirty, thirty-six inches	Two and one-half inches
Larger than thirty-six inches	Three inches

Lead shall be run in one pouring and shall be caulked tight.

- 2. **Threaded.** Every threaded joint shall conform to the American National Taper Pipe Thread, ANSI B2.1-1960. All burrs shall be removed. Pipe ends shall be reamed or filed out to size of bore, and all chips shall be removed. Pipe joint compound shall be used only on male threads.
- 3. **Wiped.** Every joint in lead pipe or fittings, or between lead pipe or fittings and brass or copper pipe, ferrules, solder nipples, or traps, shall be full-wiped joints. Wiped joints shall have an exposed surface on each side of a joint not less than three-fourths inch [19.05 millimeters] and at least as thick as the material being jointed. Wall or floor flange lead-wiped joints shall be made by using a lead ring or flange placed behind the joints at wall or floor. Joints between lead pipe and cast iron, steel, or wrought iron shall be made by means of a caulking ferrule, soldering nipple, or bushing.
- 4. **Soldered.** Joints in copper tubing shall be made by the appropriate use of approved brass or copper fittings. The surface to be joined by soldering shall be cleaned bright by manual or mechanical means. The joints shall be properly fluxed with an approved noncorrosive paste type flux and made up with approved solder. All solder and fluxes shall be manufactured to approved standards. Soldered joints shall not be used for tube installed underground.

5. **Flared.** Every flared joint for annealed-temper copper water tube shall be made with fittings meeting approved standards. The tube shall be reamed and then expanded with a proper flaring tool.
6. **Hot poured.** Hot poured compound for clay or concrete sewer pipe or other materials shall not be water absorbent and when poured against a dry surface shall have a bond of not less than one hundred pounds [45.36 kilograms] per square inch [6.45 square centimeters] in shear. All surfaces of the joint shall be cleaned and dried before pouring. If wet surfaces are unavoidable, a suitable primer shall be applied. The compound shall not soften sufficiently to destroy the effectiveness of the joint when subjected to a temperature of one hundred sixty degrees Fahrenheit [71.11 degrees Celsius] nor be soluble in any of the waste carried by the drainage system. Approximately twenty-five percent of the joint space at the base of the socket shall be filled with jute or hemp. A pouring collar, rope, or other device shall be used to hold the hot compound during pouring. Each joint shall be poured in one operation until the joint is filled. Joints shall not be tested until one hour after pouring.
7. **Precast.** Every precast collar shall be formed in both the spigot and bell of the pipe in advance of use. Collar surfaces shall be conical with side slopes of three degrees with the axis of the pipe and the length shall be equal to the depth of the socket. Prior to making joint contact, surfaces shall be cleaned and coated with solvents and adhesives as recommended in the standard. When the spigot end is inserted in the collar, it shall bind before contacting the base of the socket. Material shall be inert and resistant to both acids and alkalies.
8. **Brazed joints and extracted mechanical joints.**
  - a. Brazed joints must be made by first cleaning the surface to be joined down to the base metal, applying flux approved for such joints and for the filler metal to be used, and making the joint by heating to a temperature sufficient to melt the approved brazing filler metal on contact.
  - b. An extracted mechanical joint may be made in copper tube. It must be produced with an appropriate tool and joined by brazing. To prevent the branch tube from being inserted beyond the depth of the extracted joint, depth stops must be provided. The brazed joint must be made according to subdivision a.
9. **Cement.** Except for repairs and connections to existing lines constructed with such joints, cement mortar joints are prohibited. Where permitted, cement mortar joints shall be

made in the following manner: A layer of jute or hemp shall be inserted into the base of the annular joint space and packed tightly to prevent mortar from entering the interior of the pipe or fitting. Not more than twenty-five percent of the annular space shall be used for jute or hemp. The remaining space shall be filled in one continuous operation with a thoroughly mixed mortar composed of one part cement and two parts sand, with only sufficient water to make the mixture workable by hand. Additional mortar of the same composition shall then be applied to form a one to one slope with the barrel of the pipe. The bell or hub of the pipe shall be left exposed and when necessary the interior of the pipe shall be swabbed to remove any mortar or other material which may have found its way into such pipe.

10. **Burned lead (welded).** Every burned (welded) joint shall be made in such manner that the two or more sections to be joined shall be uniformly fused together into one continuous piece. The thickness of the weld shall be at least as thick as the lead being joined.
11. **Mechanical (flexible or slip joint).**
  - a. **Asbestos cement pipe.** Every joint in asbestos cement pipe shall be made with a sleeve coupling of the same composition as the pipe or an approved material meeting these standards, sealed with rubber rings except that asbestos cement perforated pipe shall be made with a sleeve coupling which fits on the spigot end of the pipe.
  - b. **Cast iron pipe.**
    - (1) **Mechanical joint.** Every mechanical joint in cast iron pipe shall be made with a flanged collar, rubber ring gasket, and appropriate number of securing bolts.
    - (2) **Hubless pipe.** Joints for hubless cast iron soil pipe and fittings shall be made with an approved elastomeric sealing sleeve and stainless steel clamp, clamping screw, and housing.
    - (3) **Bell and spigot pipe.** Joints for bell and spigot cast iron soil pipe and fittings may be made by caulking with lead and oakum or by use of a compression gasket that is compressed when the spigot is inserted into the hub of the pipe.
  - c. **Clay pipe.** Flexible joints between lengths of clay pipe may be made using approved resilient materials both on the spigot end and in the bell end of the pipe.

- d. **Concrete pipe.** Flexible joints between lengths of concrete pipe may be made using approved elastomeric materials both on the spigot end and in the bell end of the pipe. For plain end pipe see American society for testing and materials C-594; for bell and spigot see American society for testing and materials C-425.
12. **Tapered couplings.** Every joint in bituminized fiber pipe shall be made with tapered type couplings of the same material as the pipe. Joints between bituminized fiber pipe and metal pipe shall be made by means of an adapter coupling caulked as required in subsection 1.
13. **Welded joints.** Joints to be welded shall be prepared by approved procedure, cleaned free from paint, oil, rust, scale, or other objectionable material and welded by welders who qualify according to section 6 of the code for pressure piping, American national standards institute B31.1-1955, with addenda B31.1a-1965.
14. **Plastic.**
- a. Every joint in plastic piping shall be made with approved fittings by either solvent welded or fusion welded connections, approved insert fittings and elastomeric gaskets, metal clamps and screws of corrosion resistant material corrosion-resistant materials, approved insert fittings or threaded joints according to accepted approved standards. Plastic pipe shall be cut square with a power circular or band saw, hand saw with miter box, or with a pipe cutter, or tubing cutter with cutting wheel specifically designed for plastic. All burrs, chips, and filings shall be removed from both the inside diameter and outside diameter of the pipe, and comingling The comingling of ABS acrylonitrile-butadiene-styrene and PVC polyvinyl chloride material is prohibited.
- b. Solvent weld plastic joints may not be installed when the temperature in the installation area is less than forty degrees or more than ninety degrees Fahrenheit.
15. **Slip.** Every slip joint shall be made using approved packing or gasket material, or approved ground joint brass compression rings. Ground joint brass connections which allow adjustment of tubing but provide a rigid joint when made up shall not be considered as slip joints.
16. **Expansion.** Every expansion joint shall be of approved type and its material shall conform with the type of piping in which it is installed.

17. **Split couplings.** Couplings made in two or more parts and designed for use with plain end or grooved pipe or approved fittings and with compression gaskets may be used for hot and cold water piping and conductors and leaders. Each manufacturer must have the manufacturer's complete joining assembly approved for the intended use by one of the organizations listed in chapter 62-03-03 or by the administrative authority.

**History:** Amended effective April 1, 1984; July 1, 1985.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

#### 62-03-05-04. General requirements for traps.

1. **Design of traps.** Fixture traps shall be self-scouring and shall have no interior partitions except where such traps are integral with the fixture. Slip joints or couplings may be used on the trap inlet or within the trap seal of the trap if a metal-to-metal ground joint is used.

Each trap, except that for an interceptor or similar device, shall be self-cleaning. Traps for bathtubs, showers, lavatories, sinks, laundry tubs, floor drains, hoppers, urinals, drinking fountains, dental units, and similar fixtures shall be of standard design and weight and shall be of lead, cast iron, cast brass, or other approved materials. An exposed and readily accessible drawn brass tubing trap, not less than Brown and Sharpe seventeen-gauge [.045 inches - 1.14 millimeters] may be used on fixtures discharging domestic sewage but shall exclude urinals. Each tubing trap shall have the gauge of the tubing in addition to the manufacturer's name stamped legible in the metal of the trap. Every trap shall have a smooth and uniform interior waterway.

2. **Trap seals.** Each fixture trap shall have a liquid seal of not less than two inches [5.08 centimeters] and not more than four inches [10.16 centimeters], except where for special conditions, a deeper seal may be required by the administrative authority. This requirement does not apply to interceptors.
3. **Trap setting and protection.** Traps shall be set level with respect to their water seals and, where necessary, shall be protected from freezing.
4. **Building traps.** Building (house) traps shall not be installed except where required by the administrative authority. Each building trap when installed shall be provided with a cleanout and with a relieving vent or fresh air intake on the inlet side of the trap which need not be larger than one-half the

diameter of the drain to which it connects. Such relieving vent or fresh air intake shall be carried above grade and terminate in a screened outlet located outside the building.

5. **Prohibited traps.** The following type traps are prohibited:
  - a. Traps which depend upon moving parts to maintain their seal.
  - b. Bell traps.
  - c. Crown vented traps.
  - d. Separate fixture traps which depend on interior partitions for their seal.
  - e. "S" traps.
  - f. Drum traps. Hair interceptors, precious metal interceptors, and similar appurtenances shall be permitted as per other sections of this article.

**History:** Amended effective July 1, 1985.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

**62-03-06-06. Drainage below curb level.**

- 1- **Fixtures subject to backflow:** The installation of backwater devices shall be in accordance with lawful requirements of the administrative authority having jurisdiction over the public sewer system.
- 2- **Fixture branches subject to backflow:** Backwater valves shall be installed only in that branch or section of the drainage system which receives the discharge from fixtures located as stated in subsection 1-. Manually operated shutoff valves may also be installed in the building drain near the junction of the building drain and the building sewer.
- 3- **Materials for backwater valves:** Backwater valves shall have all bearing parts of corrosion-resistant material.
- 4- **Construction of backwater valves:** Backwater valves shall be constructed so a mechanical seal against backflow will be provided.

5. Diameter of backwater valves. Backwater valves, when fully opened, shall have a capacity not less than that of the pipes in which they are installed.

6. Location of backwater valves. Backwater valves shall be installed so their working parts will be accessible for service and repairs.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

Repealed effective July 1, 1985.

62-03-07-01. Fixture materials. Plumbing fixtures shall be constructed from approved materials, have smooth, impervious surfaces and be free from defects, and, except as permitted elsewhere in this article, shall conform to the standards cited in Table 62-03-03. See subsection 2 of section 62-03-03.1-03.

History: Amended effective July 1, 1985.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-07-02. Materials for special use fixtures. Materials for special use fixtures not otherwise covered in this article may be stainless steel, soapstone, or chemical stoneware, plastic, or may be lined with lead, copper-base alloy, nickel-copper alloy, corrosion-resisting steel, or other materials especially suited to the use for which the fixture is intended. See subsection 2 of section 62-03-03.1-03.

History: Amended effective July 1, 1985.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

#### 62-03-07-04. Installation of fixtures.

1. Access for cleaning. Plumbing fixtures shall be so installed as to afford easy access for cleaning both the fixture and the area about it. Where practical, all pipes from fixtures shall be run to the nearest wall.
2. Watertight joints. Joints formed where fixtures come in contact with walls or floors shall be sealed.

3. **Securing floor-mounted fixtures.** Floor-mounted fixtures shall be rigidly secured to the structure and to their mounting flanges by screws or bolts.
4. **Securing wall-hung water closet bowls.** Wall-hung water closet bowls shall be rigidly supported by a concealed metal hanger which is attached to the building structural members so that no strain is transmitted to the closet connector or any other part of the plumbing system.
5. **Convenient and accessible.** Fixtures shall be set level and in proper alignment with reference to adjacent walls. See Diagram 62-03-07.
6. **Access to concealed connections.** Fixtures having concealed slip joint connections shall be provided with an access panel or utility space or other convenient access so arranged as to make the slip connections accessible for inspection and repair. However, where all joints are soldered, screwed, or solvent welded to form a solid connection, access panels or doors may be eliminated.

**History:** Amended effective July , 1985.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

#### 62-03-07-12. Bathtubs.

1. Bathtubs shall must have waste outlets and overflows at least one and one-half inches [38.1 millimeters] in diameter and the waste outlet shall must be equipped with a suitable stopper located at the tub outlet.
2. Bathtubs with overhead showers in buildings other than single dwelling units must have nonslip bottom surfaces.

**History:** Amended effective July 1, 1985.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

#### 62-03-07-13. Showers.

1. **Shower waste outlet.** Waste outlets serving showers, except shower over bathtub, shall be at least two inches [5.08 centimeters] in diameter and shall have removable strainers not less than three inches [7.62 centimeters] in diameter having strainer openings not less than one-quarter inch [6.35 millimeters] in minimum dimension. Where each shower space is not provided with an individual waste outlet, the waste outlet

must be so located and the floor so pitched that wastewater from one shower does not flow over the floor area serving another shower. Waste outlets shall be securely fastened to the waste pipe making a watertight connection thereto.

**2. Shower compartments. Shower**

a. All shower compartments shall, except as permitted by this subsection, must have at least one thousand twenty-four square inches [6,604.43 square centimeters] of interior cross-sectional floor area and be not less than thirty inches [76.2 centimeters] in minimum dimension measured from its finished interior dimension as the side of a rectangle, altitude of a triangle, or diameter of a circle or other angular shape. The wall area above built-in tubs having installed shower heads and in shower compartments shall be constructed of smooth, noncorrosive, and nonabsorbent, waterproof materials to a height not less than six feet [1.83 meters] above the floor level. Such walls shall form a watertight joint with each other and with either the tub, receptor, or shower floor. The minimum required area and dimension must be measured from its finished interior dimension at a height equal to the top of the threshold and at a point tangent to its centerline.

b. The wall area above built-in tubs having installed shower heads and in shower compartments must be constructed of smooth, noncorrosive, and nonabsorbent, waterproof materials to a height not less than six feet [1.83 meters] above the room floor level and no less than seventy inches [177.8 centimeters], when measured from the compartment floor, at the drain. Such walls must form a watertight joint with each other and with either the tub, receptor, or shower floor.

c. Square shower units designed to accommodate a rough-in thirty-two inches [81.28 centimeters] by thirty-two inches [81.28 centimeters] nominal opening shall be acceptable, provided such units have at least nine hundred fifty square inches [2413 square centimeters] in minimum interior area.

**3. Shower floors or receptors.** Floors or receptors under shower compartments shall be laid on or be supported by a smooth and structurally sound base. Floors under shower compartments, other than those laid directly on the ground surface or where prefabricated receptors have been provided, shall be lined and made watertight by the provision of suitable shower pans of durable material. Such pans shall turn up on all sides at least two inches [5.08 centimeters] above the finished threshold level. Pans shall be securely fastened to the waste

outlet at the seepage entrance making a watertight joint between the pan and the outlet. Floor surfaces shall be constructed of smooth, noncorrosive, nonabsorbent, and waterproof materials.

4. **Water supply riser.** Every water supply riser from the shower valve to a permanently positioned shower head outlet, whether exposed or not, shall be securely attached to the structure. In hotels and motels the shower head outlet shall be located at a minimum height of seventy-two inches [182.88 centimeters] above the receptor's floor.

**History:** Amended effective August 1, 1981; July 1, 1985.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

#### 62-03-07-24. Minimum plumbing facilities.

1. **Minimum number of fixtures.** Plumbing fixtures shall be provided for the type of building occupancy and in the minimum number shown in Table ~~62-03-07~~ 62-03-07.1. Types of building occupancy not shown in Table ~~62-03-07~~ 62-03-07.1 will be considered individually by the administrative authority.
2. **Separate facilities.** In other than residential installations where toilet and bathing facilities are provided to serve members of both sexes and are designed for use by more than one person at a time, separate facilities shall be installed for each sex.
3. **Separate facilities in places of employment.** Every place of employment shall be provided with toilet facilities which are separate for each sex. Toilet facilities shall be readily accessible to all employees. Toilet facilities so located that employees must use more than one floor-to-floor flight of stairs are not considered as readily accessible. Toilet facilities shall be located within two hundred feet [60.96 meters] of all locations at which workers are regularly employed.

**History:** Amended effective April 1, 1984; July 1, 1985.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

TABLE 62-03-07.1 [Supersedes Table 62-03-07]

#### MINIMUM NUMBER OF PLUMBING FIXTURES

Use Group or Type of Bldg.	Water Closets (Urinals--See Note 4)		
	No. of Persons	No. of Fixtures	Lavatories
<b>I. Assembly</b>			
A. Assembly-- "Quiet or "Brief" includes churches, auditoriums, museums, theatres, waiting rooms, day rooms, libraries, and other similar uses.	1-50 51-300 each	1 2 add 1	1/2 no. of water closets
B. Assembly-- where food and drinks are served. Includes arenas, stadiums, ball parks, passenger terminals, convention halls and other similar uses	1-100 101-200 201-400 each add'n 300	2 3 4 add 1	1/2 no. of water closets
C. Assembly-- Restaurants, bars, and nightclubs where seating is provided.	1-50 51-100 101-200 each	2 3 4 add 1	1/2 no. of water closets
D. Assembly-- Recreational facilities includes health spas, country clubs, public swimming pools and other similar uses.	1-40 each add'n 40	1 add 1	1/2 no. of water closets
E. Assembly-- Schools,			

1. Preschool	1-15 each add'n 15	1 add 1	1/2 no. of water
2. Elementary	1-25 each add'n 25	1 add 1	1/2 no. of water closets
3. Secondary	1-30 each add'n 30	1 add 1	1/2 no. of water closets

## II. Workplaces

A. Industrial/ Service when a locker room is provided and used mainly at shift change.	1-10 11-25 26-50 51-75 76-100  each add'n 50	1 2 3 4 5  add 1	1/2 no. of water closets
B. Employees--all occupancies except industrial/service such as in stores, shopping centers, banks, office buildings and light industrial/service uses without locker rooms	1-8 9-40 41-75  each add'n 60	1 2 3  add 1	1/2 no. of water closets

## III. Mercantile/Business

Customers in stores, shopping centers, banks, office buildings and carry-out food establishments where seating is not provided.	1-50 51-300  each add'n 300	1 2  add 1	1/2 no. of water closets
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IV. Dwelling Units

A. Single	---	1	1
B. Multiple	---	1/unit	1/unit
C. Dormitories, Boarding Houses	1-20 each add'n 20	2 add 1	1/2 no. of water closets
D. Hotel/Motel	---	1/unit	1/unit

V. Institutional

A. Hospital	1-8 patients each add'n 8	1 add 1	1/2 no. of water closets
B. Hospital - Private or semi-private rooms	---	1	1
C. Penal short term detention	1/cell or 1/4 inmates	--- ---	1/cell or 1/4 inmates
Long term correctional	1/cell or 1/8 inmates	--- ---	1/15 inmates 1/8 inmates

TABLE 62-03-07.1 (continued)

MINIMUM NUMBER OF PLUMBING FACILITIES

Use Group or Type of Bldg.	Drinking Fountains	Bathtubs or Showers	Other	Note Reference
I. Assembly				
A. Assembly--	1/1000	---	---	3, 5, 8

"Quiet or "Brief" people  
 includes churches,  
 auditoriums,  
 museums, theatres,  
 waiting rooms,  
 day rooms,  
 libraries,  
 and other  
 similar uses.

.....  
 B. Assembly-- 1/1000 --- --- 2, 3, 5,  
 where food and people 8  
 drinks are served.  
 Includes arenas,  
 stadiums, ball  
 parks, passenger  
 terminals,  
 convention halls  
 and other similar  
 uses

.....  
 C. Assembly-- --- 1 service 2, 3, 5,  
 Restaurants, sink/floor 8  
 bars, and  
 nightclubs  
 where seating is  
 provided.

.....  
 D. Assembly-- 1/100 1 shower/ 1 service 3, 5, 8,  
 Recreational people 15 people sink/floor 10  
 facilities includes Over 150 (where  
 health spas, country people applicable)  
 clubs, public add 1 for  
 swimming pools each 30  
 and other similar people  
 uses.

.....  
 E. Assembly--  
 Schools,  
 .....  
 1. Preschool 1/100 --- 1 service 3, 5, 8,  
 people sink/floor  
 .....  
 2. Elementary 1/100 --- 1 service 3, 5, 8,  
 people sink/floor 10  
 .....  
 3. Secondary 1/100 --- 1 service 3, 5, 8,  
 people sink/floor 10

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II. Workplaces

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A. Industrial/ Service when a locker room is provided and used mainly at shift change.	1/100 people	1 shower/ sink/floor exposed to extreme heat or skin contamination	1 service 3, 5, 8, sink/floor 10
.....			
B. Employees--all occupancies except industrial/service such as in stores, shopping centers, banks, office buildings and light industrial/service uses without locker rooms	1/100 people	---	1 service 3, 5, 8, sink/floor 10

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III. Mercantile/Business

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Customers in stores, shopping centers, banks, office buildings and carry-out food establishments where seating is not provided.	1/1000 people		Require- ments for fixtures for custo- may be met by fixture require- ments for employees. No additional fixtures are required if the employee facilities are available for customer uses. 2, 3, 5, 6, 8
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IV. Dwelling Units

A. Single	---	1	1	1 kitchen sink 1 laundry tray or 1 auto/washer standpipe
.....				
B. Multiple	---	---		1 kitchen sink/unit 1 laundry tray/10 units, or auto/washer standpipe
.....				
C. Dormitories, Boarding Houses	1/100 people or 1/floor	1-20 people 2 fixtures,  each add'n 20-- add 1	1 service sink/floor 1 laundry/ tray/10 people, or auto/washer standpipe	3, 9
.....				
D. Hotel/Motel	---	1/unit	1 service sink/floor	
.....				
V. Institutional				
.....				
A. Hospital	---	1/20 patients	1 service sink/floor	
.....				
B. Hospital - Private or semi-private rooms	---	1	---	
.....				
C. Penal short term detention	---	1/6 inmates	1 service sink/floor	Water closet and lavatory may be a combination fixture.
.....				
Long term correctional	---	1/15 inmates	1 service sink/floor	All showers and lav. in penal institutions

to have  
thermo-  
static  
control  
and timing  
devices

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NOTES:

1. This table shall be used in the absence of local building code requirements. Fire codes may also be consulted for assembly values. For handicap requirements see local, state and national ordinances. Additional fixtures may be required where environmental conditions or special activities may be encountered.
2. In food preparation areas, fixture requirements may be dictated by local health codes.
3. Whenever both sexes are present in approximately equal numbers, multiply the total census by 60 percent to determine the number of persons for each sex to be provided for. This regulation only applies when specific information, which would otherwise affect the fixture count, is not provided.
4. Not more than 50 percent of the required number of water closets may be urinals.
5. In buildings constructed with multiple floors, accessibility to the fixtures shall not exceed one vertical story.
6. Fixtures for public uses as required by this section may be met by providing a centrally located facility accessible to several stores. The maximum distance from entry to any store to this facility shall not exceed 500 feet.
7. In stores with floor area of 150 square feet or less, the requirements of this section to provide facilities for use by employees may be met by providing a centrally located facility accessible to several stores. The maximum distance from entry to any store to this facility shall not exceed 300 feet.
8. Fixtures accessible only to private offices shall not be counted to determine compliance with this section.
9. Multiple dwelling units or boarding houses without public laundry rooms shall not require laundry trays.
10. Where only one water closet is required, one toilet facility with a lockable door is permitted.

History: Effective July 1, 1985.

**62-03-08-04. Material.** Hangers, anchors, and supports shall be of metal or other material of sufficient strength to support the piping and its contents. Piers may be of concrete, brick or other approved material. See subsection 5 of section 62-03-03.1-03.

History: Amended effective July 1, 1985.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

**62-03-09-01. Indirect wastes.**

1. **Airgap or air break required.** All indirect waste piping shall discharge into the building drainage system through an airgap or air break, as set forth in this article.
2. **Food handling establishments.**
  - a. In the case of food handling establishments engaged in the storage, preparation, selling, serving, processing, or otherwise handling foods, indirect waste piping shall be provided for refrigerator coils, walk-in freezers, walk-in coolers, ice boxes, ice making machines, steam kettles, steam tables, potato peelers, egg boilers, coffee urns, and similar types of enclosed equipment, and sinks that are used for soaking or washing ready-to-serve food.
  - b. Subdivision a does not apply to any dishwashing or culinary sink in any food preparation room, unless such receptacle is used for soaking or washing ready-to-serve food.
  - c. The indirect waste shall discharge through an airgap or air break into a trapped and vented receptor except that an airgap is required where the indirect waste pipe may be under vacuum (less than atmospheric pressure).
  - d. The waste from a dishwashing machine shall be indirectly connected through an airgap or air break, or be directly connected to the sewer side of a floor drain trap located adjacent to the dishwashing machine.
  - e. This subsection does not apply to private living quarters or dwelling units.
3. **Bar and fountain sink traps.** When sinks in bars, soda fountains, and counters are so located that the traps serving such sinks cannot be vented, a combination waste and vent system (section 62-03-12-17) three inches [7.62 centimeters]

in diameter shall connect to the sewer side of a floor drain located adjacent to the sink. Sink compartments used for storing ice shall be connected with an airgap or air break to the drainage system.

4. **Connections from water distribution system.** Indirect waste connections shall be provided for drains, overflows, or relief pipes from the water distribution system by means of an airgap.
5. **Sterilizers.** Appliances, devices, or apparatus such as stills, sterilizers, and similar equipment requiring waste connections and used for sterile materials shall be indirectly connected by means of airgap.
6. **Drips or drainage outlets.** Appliances, devices, or apparatus not regularly classed as plumbing fixtures but which have drips or drainage outlets may be drained by indirect waste pipes discharging into an open receptacle through either an airgap or air break as shall be determined by the administrative authority.
7. **Pressure tanks, boilers, and relief valves.** The drains from pressure tanks, boilers, relief valves, and similar equipment may discharge indirectly to the drainage system by means of an airgap and without any traps or vents on the indirect piping.
8. **Air-conditioning equipment.** No evaporative cooler, air washer, air handling, or similar air-conditioning equipment shall have any drain pipe in connection therewith directly connected to any soil, waste, or vent pipe. Such equipment shall be drained by means of indirect waste pipe. The indirect waste shall discharge through an airgap or air break into an open floor sink, floor drain, or other approved type receptor which is properly connected to the drainage system, except that an airgap is required where the indirect waste pipe may be under vacuum.

**History:** Amended effective July 1, 1985.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

**62-03-09-02. Installation of indirect waste piping.**

1. **Materials.** Indirect waste piping shall meet the material, pipe sizing, and construction requirements of this article. See section 62-03-03.1-06.
2. **Waste pipe.** Any indirect waste pipe exceeding five feet [1.52 meters] in length shall be trapped. This requirement

does not apply to indirect waste pipes carrying clean water waste only.

~~3-~~ **Maximum length.** Indirect waste piping shall not exceed fifteen feet {4.57 meters}.

~~4-~~ **3. Cleaning.** Indirect waste piping shall be so installed as to permit ready access for flushing and cleansing.

**History:** Amended effective July 1, 1985.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

**62-03-09-04. Receptors or sumps.**

1. **Installation.** Waste receptors or sumps serving indirect waste pipes shall not be installed in any toilet room, nor in any inaccessible or unventilated space such as a closet or storeroom.
2. **Location.** The receptor must be located so that the required airgap between the indirect waste line and receptor can be maintained under all conditions of backflow. If this is not possible then the receptor at such a location must be a sewer ejector installed as required under section 62-03-11-07 and the discharge must be indirectly connected to the building drainage system as required by subsection 1 of section 62-03-09-01.
3. **Strainers and baskets.** Every indirect waste receptor shall be equipped with a readily removable metal basket over which all indirect waste pipes shall discharge, or the indirect waste receptor outlet shall be equipped with a beehive strainer not less than four inches [10.16 centimeters] in height. This does not apply to indirect waste pipe carrying clear water waste only.
4. **Splashing to be prevented.** All plumbing receptors receiving the discharge of the indirect waste pipes shall be of such shape and capacity as to prevent splashing or flooding.
5. **Domestic or culinary fixtures prohibited as receptors.** No plumbing fixture which is used for domestic or culinary purposes shall be used to receive the discharge of an indirect waste except that in a residence a kitchen sink trap is acceptable for use as a receptor for a dishwasher and similarly a laundry tray as a receptor for a clothes washing machine, or water softener, or both.
6. **Standpipe receptors.**

- a. The standpipe receptor for an automatic clothes washer may be no less than two inches [5.08 centimeters] in diameter and must extend no more than forty-eight inches [121.92 centimeters] or less than eighteen inches [45.72 centimeters] above its trap.
- b. Connection of laundry tray waste line in a single dwelling unit may be made into the standpipe for the automatic clothes washer drain.

**History:** Amended effective April 1, 1984; July 1, 1985.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

**62-03-09-06. Wastewater temperature.** No steam pipe shall connect to any part of a drainage or plumbing system, nor shall any water above one hundred eighty degrees Fahrenheit [82.22 degrees Celsius] be discharged into any part of a drainage system of metal pipe or above one hundred forty degrees Fahrenheit [60 degrees Celsius] of a plastic pipe drainage system. Such pipes shall be connected by discharging into an indirect waste receptor connected to the drainage system.

**History:** Amended effective July 1, 1985.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

**62-03-09-07. Special wastes.**

1. **Chemical wastes.** Separate drainage systems for chemical wastes shall be of corrosion resistant material approved by the administrative authority. Materials acceptable for chemical waste drainage systems include chemically resistant glass pipe, high silicon content cast iron pipe, vitrified clay pipe, plastic pipe, plastic lined pipe, and lead pipe. Materials. See section 62-03-03.1-05.
2. **Neutralizing device required for corrosive wastes.** In no case shall corrosive liquids, spent acids, or other harmful chemicals which might destroy or injure a drain, sewer, soil, or waste pipe, or create noxious or toxic fumes, or interfere with sewage treatment processes be discharged into the plumbing system without being thoroughly diluted, neutralized, or treated by passing through a properly constructed and acceptable dilution or neutralizing device. Such devices shall be provided automatically with a sufficient supply of diluting water or neutralizing medium so as to make its contents noninjurious before discharge into the drainage system. The nature of the corrosive or harmful waste and

method of its treatment or dilution shall be submitted to, and accepted by, the administrative authority prior to installation.

**History:** Amended effective July 1, 1985.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

**62-03-09-10. Air-conditioning wastes.**

1. **Size.** Air-condition waste pipes shall be independent of any drainage and waste systems and shall not be smaller than shown in the following:

- a. Three-fourths inch [19.05 centimeter] - serving one air-conditioning unit.
- b. One inch [2.54 centimeter] - serving two air-conditioning units.
- c. One and one-fourth inch [31.75 millimeter] - serving three or more air-conditioning units.

When discharge is greater than seven and one-half gallons [28.39 liters] per minute the waste pipe shall be sized as drainage piping in accordance with fixture unit capacities in the table contained in section 62-03-11-04.

Acrylonitrile-butadiene-styrene and polyvinyl chloride plastic drain, waste, and vent pipe and fittings conforming to Table 62-03-03.1 may be used for air-conditioning condensate waste above ground. In one or two family homes it may also be used underground for this use.

2. **Point of discharge.** Air-condition condensate waste pipes shall discharge at Unless expressly prohibited, air-conditioning condensate waste pipes must discharge through an airgap or air break to one of the following:

- a. Indirectly to a properly trapped A properly trapped receptor or fixture as required in section 62-03-09-03 as approved by the administrative authority.
- b. Sump A sump pump (one family dwellings only).
- c. Surface (proper permission must be given from the administrative authority for this point of discharge)- The building storm drain.
- d. Indirectly to the building storm drain- An approved leaching well or comparable arrangement.

e. Tub waste and overflow or lavatory tailpiece in the same area that contains the thermostat controlling the air conditioner.

3- ~~Vents.~~ ~~Vents are not required on air-conditioning condensate waste pipes.~~

History: Amended effective July 1, 1985.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-10-02. Identification of potable and nonpotable water. In all buildings where dual water distribution systems, one potable water and the other nonpotable water, are installed each system shall be identified either by color marking or metal tags as required in American national standards institute A 13.1-1959 or other appropriate method as may be approved by the administrative authority. Each outlet on the nonpotable waterline which may be used for drinking or domestic purposes must be posted: DANGER - UNSAFE WATER.

History: Amended effective July 1, 1985.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-10-06. Water service.

1. Separation of water service and building sewer. Except as permitted below, the underground water service pipe and the building drain or building sewer shall be not less than ten feet [3.05 meters] apart horizontally and shall be separated by undisturbed or compacted earth.

~~The~~ When conditions prevent reasonable separation, the water service pipe may be placed in the same trench with the building drain and building sewer provided approval is given on a case-by-case basis by the administrative authority and the following conditions are met:

- a. The bottom of the water service pipe at all points shall be level with or above the top of the sewerline ~~at its~~ highest point, and must have not less than one foot [0.305 meters] horizontal distance between the piping.
- b. The number of joints in the water service pipe shall be kept to a minimum.
- c. The water service pipe material shall comply with subsection 1 of section 62-03-10-10 subsection 1 of section 62-03-03.1-08 and conditions in subsection 1 of

~~section 62-03-11-02~~ section 62-03-03.1-06, and section 62-03-02-16 shall also be met.

- d. The building sewer shall be rootproof and watertight and tested with a ten-foot head of water or equivalent.
2. **Water service near sources of pollution.** Potable water service pipes shall not be located in, under or above cesspools, septic tanks, septic tank drainage, fields, or seepage pits. A separation of ten feet [3.05 meters] shall be maintained. Where the water service must cross the sewerline, the bottom of the water service within ten feet [3.05 meters] of the point of crossing, shall be at least twelve inches [30.48 centimeters] above the top of the sewerline. The sewerline shall be of cast iron, Schedule 40 acrylonitrile-butadiene-styrene or polyvinyl chloride plastic pipe, at least ten feet [3.05 meters] on both sides of the crossing.
3. **Stop and waste valves.** Combination stop and waste valves or cocks may be installed in an underground water service pipe only when not less than ten feet [3.05 meters] apart horizontally from the building sewer, and shall be separated by undisturbed or compacted earth.
4. **Water service pipe through wall or floor.** Clearance shall be provided around a water service pipe passing through wall or floor to protect it against (a) chemical action from direct contact with concrete, (b) distortion or rupture of water service pipe from shearing action due to settlement, (c) distortion or rupture of the water service pipe caused by expansion or contraction. Clearance shall be not less than one-half inch [12.7 millimeters] between the outside of the pipe and the wall or floor. Sleeves or arches may be used to provide the wall opening. The space between the pipe and wall structure or floor shall be carefully packed or caulked with lead or waterproof and vermin-, rodent-, and fire-resistant material.

**History:** Amended effective November 1, 1982; April 1, 1984; July 1, 1985.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

#### 62-03-10-08. Water pressure booster systems.

1. **Water pressure booster systems required.** When the water pressure in the public water main or individual water supply system is insufficient to supply the probable peak demand flow to all plumbing fixtures and other water needs freely and continuously with the minimum pressures and quantities specified in subsection 3 of section 62-03-10-14 or elsewhere

in this article and in accordance with good practice, the rate of supply shall be supplemented by:

- a. An elevated water tank.
  - b. A hydropneumatic pressure booster system.
  - c. A water pressure booster pump installed in accordance with subsection 7.
2. **Support.** All water supply tanks shall be supported in accordance with the building code or other regulations which apply.
  3. **Overflows for water supply tanks.** Each gravity or suction water supply tank shall be provided with an overflow having a diameter not less than shown in the table contained in this subsection. The overflow outlet shall discharge above and within not less than six inches [15.24 centimeters] of a roof or roof drain, floor or floor drain, or over an open water supplied fixture. The overflow outlet shall be covered by a corrosion resistant screen of not less than sixteen by twenty mesh to the inch [2.54 centimeters] and by one-fourth inch [6.35 millimeters] hardware cloth or shall terminate in a horizontal angle seat check valve. Drainage from overflow pipes shall be directed so as not to freeze on roof walkways.

SIZES \* FOR OVERFLOW PIPES FOR WATER SUPPLY TANKS

Maximum Capacity of Water Supply Line to Tank	Diameter of Overflow Pipe (Inches ID)	Maximum Capacity of Water Supply Line to Tank	Diameter of Overflow Pipe (Inches ID)
0- 13 gpm	1 1/2	356- 640 gpm	5
14- 55 gpm	2	641-1040 gpm	6
56-100 gpm	2 1/2	over-1040 gpm	8
101-165 gpm	3		
166-355 gpm	4		

\* Computed by the method of NBS Mono. 31, for vertical pipes flowing not greater than 1/2 full at terminal velocity. (1/3 full for 1-1/2 inch pipe).

4. **Covers.** All water supply tanks shall be covered to keep out unauthorized persons, dirt, and vermin. The covers of gravity tanks shall be vented with a return bend vent pipe having an area not less than the area of the down feed riser pipe and the vent shall be screened with corrosion resistant screen

having not less than fourteen and not more than twenty openings per linear inch [2.54 centimeters].

5. **Potable water inlet control and location.** Potable water inlets to gravity tanks shall be controlled by a ball cock or other automatic supply valve so installed as to prevent the tank from overflowing. The inlet shall be terminated so as to provide an accepted airgap but in no case less than four inches [10.16 centimeters] above the overflow.
6. **Tank drainpipes.** Each tank shall be provided at its lowest point with a valved pipe to permit emptying the tank which shall discharge as required for overflow pipes and not smaller in size than shown in the following table:

SIZE OF DRAINPIPES FOR WATER TANKS

Tank Capacity (gallons)	Drainpipe (inches)	Tank Capacity (gallons)	Drainpipe (inches)
Up to 750	1	3001 to 5000	2 1/2
751 to 1500	1 1/2	5001 to 7500	3
1501 to 3000	2	over 7500	4

7. **Low pressure cutoff required on booster pumps.** When a booster pump is used on a water pressure booster system, there shall be installed a low pressure cutoff on the booster pump to prevent the creation of a vacuum or negative pressure on the suction side of the pump, thus cutting off water to other outlets.
8. **Pressure tanks - vacuum relief.** All water pressure tanks shall be provided with a vacuum relief valve at the top of the tank which will operate up to a maximum water pressure of two hundred pounds per square inch [90.72 kilograms per 6.45 square centimeters] and to maximum water temperatures of two hundred degrees Fahrenheit [93.33 degrees Celsius]. The minimum size of such vacuum relief valves shall be one-half inch [12.7 millimeters].
9. Pressure tanks - pressure relief. All water pressure tanks must be provided with approved pressure relief valves set at a pressure not in excess of the tank working pressure.

**History:** Amended effective July 1, 1985.  
**General Authority:** NDCC 43-18-09  
**Law Implemented:** NDCC 43-18-09

62-03-10-10. Water supply system materials.

1. **Water service pipe.** Water service piping to point of entrance to the building shall be made of asbestos cement pipe, brass pipe, copper tube, or copper pipe, cast iron water pipe, galvanized wrought iron pipe, galvanized open-hearth iron pipe, or galvanized steel pipe, or plastic pipe which shall have a minimum continuous working pressure of one hundred sixty pounds {72-57 kilograms} at seventy-three and four-tenths degrees Fahrenheit {23 degrees Celsius} and shall conform to the appropriate commercial standard, American society for testing and materials, or national standard foundation standard. Copper tube when used underground shall not be less than type L. All threaded ferrous pipe and fittings shall be galvanized or cement lined. When used underground in corrosive soil or fill, all ferrous pipe and fittings shall be coal-tar enamel coated and threaded joints shall be coated and wrapped when installed. Material. See subsection 1 of section 62-03-03.1-08.
2. **Water distribution system pipe.** Water distribution system pipe shall be of brass pipe, copper tube, or copper pipe, galvanized wrought iron pipe, galvanized open-hearth iron pipe, galvanized steel pipe, or approved plastic pipe. All materials used in the water distribution system, except valves and similar devices, shall be of a like material, except where otherwise approved by the administrative authority. Copper tube when used underground shall not be less than type L and when used aboveground not less than type M. See subsection 2 of section 62-03-03.1-08.
3. **Fittings.** The materials of which water supply system pipe fittings are made shall conform to the type of piping materials used in the water supply system. The fittings shall have no ledges, shoulders, or reductions which can retard or obstruct flow in the piping.
4. **Material strength.** All materials used for water piping must be suitable for use with the maximum temperature and pressure and velocities that may be encountered in the installation, including temporary increases and surges.

History: Amended effective July 1, 1985.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

**62-03-10-12. Water supply control valves.**

1. **Curb valve.** On each water service from a street main to a building an approved gate valve or ground key stopcock or ball valve shall be installed near the curblin between the property line and the curb. This valve or stopcock shall be provided with an approved curb valve box and may not be under a driveway.
2. **Building valve.** Each building water service shall be provided with a gate valve or ball valve located inside the building near the point where the water service enters. Where there are two or more water services serving one building a check valve shall be installed on each service in addition to the above valves.
3. **Tank controls.** Supply lines from pressure or gravity tanks shall be valved at or near the tanks.
4. **Valves in dwelling units.** All water closets and kitchen sinks shall have individual fixture valves installed. Valves must also be installed for each bath, shower, powder room or fixture group. A group of fixtures means two or more fixtures adjacent to each other in the same family unit, but not necessarily in the same room. In a one family unit, one or two bathrooms back to back or one over the other may be considered a group. However, in each dwelling unit with two or more bathroom groups not adjacent to each other, one or more control valves or individual fixture valves shall be provided so that each group may be isolated from the other.

In more than single family dwelling units, one or more control valves shall be provided so that the water to any plumbing fixture or group of fixtures in any one dwelling unit may be shut off without stopping flow of water to fixtures in other dwelling units. These valves shall be accessible inside the building unit controlled.

5. **Riser valves.** Except in single family dwellings a valve shall be installed at the foot of each water supply riser. In multistory buildings a valve shall be installed at the top of each water supply downfeed pipe and also at the base where required to isolate this riser for servicing.
6. **Individual fixture valves.** In occupied buildings other than dwellings, the water distribution line to each fixture or other piece of equipment shall be provided with a valve or fixture stop to shut off the water to the fixture or the room in which it is located. Except in single family dwellings, sill cocks and wall hydrants shall be separately controlled within eight feet [2.438 meters] by an accessible valve inside the building.

7. **Water heating equipment valve.** The cold water branch to each hot water storage tank or water heater shall be provided with a valve located near the equipment and only serving this equipment. The hot water line from each hot water storage tank or water heater shall be provided with a valve when the line is one inch [2.54 centimeters] or larger. Each tank or heater shall be equipped with an approved automatic relief valve as specified in subsection 1 of section 62-03-10-16.
8. **Meter valve.** A gate valve or ball valve shall be installed in the line on the discharge side of each water meter.
9. **Valves to be accessible.** All water supply control valves shall be placed so as to be accessible for service and maintenance.
10. **Control valve design.** Except to single fixtures, control valves on all waterlines shall when fully opened have a cross-sectional area not less than eighty-five percent of the cross-sectional area of the line in which they are installed.

**History:** Amended effective November 1, 1979; July 1, 1985.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

#### **62-03-10-13. Water supply distribution.**

1. **Size of water service.** The water service pipe from the street main to the water distribution system for the building shall be of brass, copper (type K or L), cast iron, cement asbestos, or plastic national sanitation foundation approved, minimum continuous working pressure of at least one hundred sixty pounds at seventy-three and four-tenths degrees Fahrenheit [72.57 kilograms at 23 degrees Celsius], with appropriate approved fittings. The water service pipe shall be of sufficient size to furnish an adequate flow of water to meet the requirements of the building at peak demand, and in no case shall be less than the size shown in the following table. Exceptions to this section must be approved in writing by the administrative authority.

**MINIMUM SIZE OF WATER SERVICE**  
 Based on Maximum Flow Eight Foot Second  
 and Predominately for Flush Tanks

Maximum Number of Fixture Units **	Minimum Size of Pipe *** (Inches)
14	3/4 *
34	1
77	1 1/4
135	1 1/2
290	2
900	3
2000	4
6500	6

\* Does not include residential type buildings unless water main pressure exceeds 60 PSI.

\*\* When provision is made for the future installation of fixtures, those provided for shall be considered in determining the size of the water service.

\*\*\* Larger pipe sizes must be considered if building to be served is more than three stories in height, if developed length of pipe exceeds 100 feet, or if available main pressure is less than 40 PSI.

2. **Supply demand.** The supply demand in gallons per minute in the building water distributing system shall be determined on the basis of the load in terms of supply fixture units and of the relationship between load and supply demand as shown in the following two tables:

SIZING THE WATER SUPPLY SYSTEM \*

Fixture	Occupancy	Type of Supply Control	Load Fixture Units
Bathroom group	Private	Flush valve for closet	8
Bathroom group	Private	Flush tank for closet	6
Bathtub	Private	Faucet	2
Bathtub	Public	Faucet	4
Clothes washer	Private	Faucet	2
Clothes washer	Public	Faucet	4
Combination fixture	Private	Faucet	3
Kitchen sink	Private	Faucet	2
Kitchen sink	Hotel, restaurant	Faucet	4
Laundry trays (1 to 3)	Private	Faucet	3
Lavatory	Private	Faucet	1
Lavatory	Public	Faucet	2
Separate shower	Private	Mixing valve	2
Service sink	Office, etc.	Faucet	3
Shower head	Private	Mixing valve	2
Shower head	Public	Mixing valve	4
Urinal-pedestal	Public	Flush valve	10
Urinal-stall or wall	Public	Flush valve	5
Urinal-stall or wall	Public	Flush tank	3
Water closet	Private	Flush valve	6
Water closet	Private	Flush tank	3
Water closet	Public	Flush valve	10
Water closet	Public	Flush tank	5

Water supply outlets for items not listed above shall be computed at their maximum demand, but in no case less than:

Fixture	Number of Fixture Units	
	Private Use	Public Use
3/8 inch	1	2
1/2 inch	2	4
3/4 inch	3	6
1 inch	6	10

\* For supply outlets likely to impose continuous demands,

estimate continuous supply separately and add to total demand for fixtures.

- \* The given weights are for total demand. For fixtures with both hot and cold water supplies, the weights for maximum separate demands may be taken as 3/4 the listed demand for the supply.
- \* A bathroom group for the purposes of this table consists of not more than one water closet, one lavatory, one bathtub, one shower stall or not more than one water closet, two lavatories, one bathtub, or one separate shower stall.

### ESTIMATING DEMAND

Supply Systems Predominately For Flush Tanks		Supply Systems Predominately For Flush Valves	
Load (Water Supply Fixture Units)	Demand GPM	Load (Water Supply Fixture Units)	Demand GPM
6	5		
8	6.5		
10	8	10	27
12	9.2	12	28.6
14	10.4	14	30.2
16	11.6	16	31.8
18	12.8	18	33.4
20	14	20	35
25	17	25	38
30	20	30	41
35	22.5	35	43.8
40	24.8	40	46.5
45	27	45	49
50	29	50	51.5
60	32	60	55
70	35	70	58.5
80	38	80	62
90	41	90	64.8
100	43.5	100	67.5
120	48	120	72.5
140	52.5	140	77.5
160	57	160	82.5
180	61	180	87
200	65	200	91.5
225	70	225	97
250	75	250	101
275	80	275	105.5

300	85	300	110
400	105	400	126
500	125	500	142
750	170	750	178
1,000	208	1,000	208
1,250	240	1,250	240
1,500	267	1,500	267
1,750	294	1,750	294
2,000	321	2,000	321
2,250	348	2,250	348
2,500	375	2,500	375
2,750	402	2,750	402
3,000	432	3,000	432
4,000	525	4,000	525
5,000	593	5,000	593
6,000	643	6,000	643
7,000	685	7,000	685
8,000	718	8,000	718
9,000	745	9,000	745
10,000	769	10,000	769

**History:** Amended effective July 1, 1985.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

**62-03-10-14. Procedure in sizing the water distribution system.**

- 1. Design of building water distribution system.** Water piping systems shall be designed and installed so that the maximum velocity at any time shall not exceed eight feet [2.44 meters] per second. If a manufacturer's recommendations, or an industry's standards, limits the recommended velocities in any particular piping material to a value lower than eight feet [2.44 meters] per second, then the reduced velocity limit shall be the maximum design.
- 2. Size of fixture supply.** The minimum sizes of a fixture supply pipe shall be as shown in the table contained in this subsection. The fixture supply pipe shall be extended to within at least thirty inches [76.2 centimeters] of the point of connection to the fixture, and be within the same area and physical space as the point of connection to the fixture. Not more than two fixtures shall be supplied by a one-half-inch [12.7-millimeter] pipe. All future fixture connections must be considered in sizing pipe at the time of initial installation.

**MINIMUM SIZES OF FIXTURE WATER SUPPLY PIPES**

Type of Fixture or Device	Nominal Pipe Size (Inches)	Type of Fixture or Device	Nominal Pipe Size (Inches)
Bathtubs	1/2	Shower (single head)	1/2
Combination sink and tray	1/2	Sinks (service)	1/2
Drinking fountain	3/8	Sinks (flushing rim)	3/4
Dishwasher (domestic)	1/2	Urinal (flush tank)	1/2
Electric drinking water cooler	3/8	Urinal (direct flush valve)	3/4
Kitchen sink, residential	1/2	Water closet (tank type)	3/8
Kitchen sink, commercial	3/4	Water closet (flush valve type)	1
Lavatory	3/8	Hose bibb	1/2
Laundry tray 1, 2, or 3 compartments	1/2	Wall hydrant	1/2

### 3. Flow rates.

- a. **Minimum flow rates and pressures required in water distribution system.** Based on the minimum static pressure available, pipe sizes shall be selected so that under conditions of peak demand a minimum flow pressure at the point of discharge shall be not less than required to maintain minimum flow rates listed in the table contained in this subsection. Pipe sizes for flush valve water closets and urinals shall be adequate to maintain flow pressures of twenty-five pounds per square inch [11.34 kilograms per 6.45 square centimeters] for blowout action and fifteen pounds per square inch [6.80 kilograms per 6.45 square centimeters] for jet action fixtures or as required by the manufacturer.
- b. **Maximum flow rates.** Flow rates for fixtures in commercial and public buildings shall be regulated at the fixture to prevent flow rates from exceeding maximum rates listed in the table contained in this subsection for either hot or cold water.
- c. **Mixed water temperature control.** The temperature of mixed water to multiple or gang showers shall be controlled by a master thermostatic blender or such showers may be individually regulated by balanced pressure mixing valves. Individual showers in commercial and public buildings subject to rapid rise of

mixed water temperature due to system pressure fluctuation shall have balanced pressure mixing valves in addition to flow regulation as required by subdivision b.

MINIMUM AND MAXIMUM FLOW RATES PER OUTLET

Fixture	Flow Rate Minimum	GPM Maximum
Lavatory .....	2	4
Sink .....	4	8
Bathtub .....	6	-
Laundry tray .....	5	-
Shower .....	4	8
Water closets		
Tank type .....	3	6
Blowout action) ..	Depends on Flow Pressure	
Jet action ) ..		
Drinking fountain ..	0.75	2.0
Wall hydrant .....	5	-

4. **Inadequate water pressure.** Whenever water pressure from the street main or other sources of supply is insufficient to provide flow pressures at fixture outlets as required under subsection 3, a booster pump and pressure tank or other approved means shall be installed on the building water supply system.
5. **Variable street pressures.** Where street water main pressures fluctuate, the building water distribution system shall be designed for the minimum pressure available.
6. **Excessive pressures.** When street main pressure exceeds eighty pounds per square inch [36.29 kilograms per 6.45 square centimeters], an approved pressure reducing valve shall be installed in the water service pipe near its entrance to the building to reduce the water pressure to eighty pounds per square inch [36.29 kilograms per 6.45 square centimeters] or lower except where the water service pipe supplies water directly to a water pressure booster system, an elevated water gravity tank, or to pumps provided in connection with a hydropneumatic or elevated gravity water supply tank system. Pressure at any fixture shall be limited to no more than eighty pounds per square inch [36.29 kilograms per 6.45 square centimeters] under no-flow conditions.
7. **Water hammer.** All building water supply systems in which quick acting valves are installed shall be provided with

devices to absorb high pressures resulting from the quick closing of these valves. These pressure absorbing devices shall be either air chambers or approved mechanical devices. Water pressure absorbers shall be placed as close as possible to the quick acting valves or installed also at the ends of long pipe runs or near batteries of fixtures.

- a. **Air chambers.** Where air chambers are installed, they shall be in an accessible place and each air chamber shall be provided with an accessible means for restoring the air in event the chamber becomes waterlogged.
- b. **Mechanical devices.** Where mechanical devices are used the manufacturer's specifications shall be followed as to location and method of installation.

**History:** Amended effective July 1, 1985.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

#### **62-03-10-15. Hot water distribution.**

1. **Hot water supply system.** In residences and buildings intended for human occupancy, hot water shall be supplied to all plumbing fixtures and equipment used for bathing, washing, culinary purpose, cleansing, laundry, or building maintenance. **A pressure balancing valve shall be installed on all showers in hotels, motels, and dormitories.** (See subdivision c of subsection 3 of section ~~62-03-10-14.~~)
2. **Return circulation - where required.** Hot water supply systems in buildings four or more stories high or in buildings where developed length of hot water piping from the source of hot water supply to the farthest fixture supplied exceeds one hundred feet [30.48 meters] shall be of the return circulation type.
3. **Minimum requirements for hot water storage tanks.** Hot water storage tanks shall be adequate in size, when combined with the Btu input of the water heating equipment to provide the rise in temperature necessary.

The water heater and storage tank shall be sized to provide sufficient hot water to provide both daily requirements and hourly peak loads of the occupants of the building.

Hot water storage tanks shall meet construction requirements of the American society of mechanical engineers, American gas association, or underwriters' laboratories as appropriate.

Storage tanks less in volume than those requirements specified by the American society of mechanical engineers shall be of durable materials and constructed to withstand one hundred twenty-five pounds per square inch [56.70 kilograms per 6.45 square centimeters] with a safety factor of two.

The water inlets and outlets of a hot water storage tank shall be not less than the hot water distribution pipe served.

All storage tanks shall be protected against excessive temperatures and pressure conditions as specified in this article.

4. **Drain cocks or valves for hot water storage tanks.** Drain cocks or valves for emptying shall be installed at the lowest point of each hot water storage tank.

5. Mixed water temperature control.

a. The temperature of mixed water to multiple or gang showers must be controlled by a master thermostatic blender or such showers may be individually regulated by balanced pressure mixing valves.

b. Showers in buildings other than single dwelling units must be protected with individual shower control valves of the balanced pressure mixing type or the thermostatic mixing valve type.

**History:** Amended effective April 1, 1984; July 1, 1985.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

#### 62-03-10-16. Safety devices.

1. **Pressure relief valves and temperature relief valves required.** Equipment used for heating water or storing hot water shall be protected by approved safety devices in accordance with one of the following methods:

a. A separate pressure relief valve and a separate temperature relief valve.

b. A combination pressure and temperature relief valve.

c. A combination of either subdivision a or b and an energy cutoff device.

Safety devices shall meet the requirements of the American national standards institute, American society of mechanical engineers, or the underwriters' laboratories. Listing by

underwriters' laboratories, American gas association or national board of boiler and pressure vessel inspectors shall constitute evidence of conformance with these standards.

Where a device is not listed by any of these, it must have certification by an approved laboratory as having met these requirements.

2. **Pressure relief valves.** Pressure relief valves shall meet the American national standards institute standards and the American society of mechanical engineers standards when required by the administrative authority. The valves shall have a relief rating adequate to meet the pressure conditions in the equipment served. They shall be installed either directly in a top tank tapping or in the hot or cold outlet line close to the tank. There shall be no shutoff valve between the pressure relief valve and tank. The pressure relief valve must be set to open at not less than twenty-five pounds per square inch [11.34 kilograms per 6.45 square centimeters] above the street main pressure or not less than twenty-five pounds per square inch [11.34 kilograms per 6.45 square centimeters] above the setting of any house water pressure regulating valve. The setting shall not exceed the tank rated working pressure.
3. **Temperature relief valves.** Temperature relief valves shall be of adequate relief rating, expressed in Btu per hour, for the equipment served. They shall be installed so that the temperature sensing element is immersed in the hottest water within the top six inches [15.24 centimeters] of the tank. The valve shall be set to open when the stored water temperature is two hundred ten degrees Fahrenheit [98.89 degrees Celsius] (or less).

These valves must be approved by an appropriate standard or by the administrative authority for the intended use, and shall be sized so that when the valve opens, the water temperature cannot exceed two hundred and ten degrees Fahrenheit [98.89 degrees Celsius] with the water heating equipment operating at maximum input.

4. **Combination pressure-temperature relief valves.** Combination pressure-temperature relief valves shall comply with all the requirements of the separate pressure and temperature relief valves.
5. **Energy cutoff devices.** Energy cutoff devices shall be of adequate performance rating for the equipment served. Immersion type energy cutoff devices shall be located so that the temperature sensing element is immersed in the water within the tank and controls the temperature of the water within the top six inches [15.24 centimeters] of the tank. When approved by the administrative authority, contact types

shall be installed so that the sensing element is responsive to the highest water temperature within the equipment served and is securely fastened in place. Such devices shall meet the requirements of applicable American national standards institute standards. When an energy cutoff device is used, it shall be factory applied by the heater manufacturer, and comply fully with the appropriate standards of the American national standards institute and underwriters' laboratories. They shall be installed in a manner that will isolate them from ambient, flue gas temperatures and other conditions not indicative of the temperature of the water within the heater.

6. **Installation of relief valves.** No check valve or shutoff valve shall be installed between any safety device and the hot water equipment used, nor shall there be any shutoff valve or traps or dips in the discharge pipe from the relief valve. The discharge pipe shall not be smaller than the relief valve outlet and it shall be an indirect connection into a plumbing fixture, floor drain, sump pit, or other approved point of discharge. Relief outlets when connected to the building drainage system shall be indirectly connected.

The terminal end of a discharge pipe must not be threaded.

In addition to all other requirements, if the relief outlet discharge piping is installed so that it leaves the room or enclosure in which the water heater and relief valve are located, there must be an airgap installed before or at this point of leaving the room or enclosure.

This airgap may be the same one used to comply with other provisions of this section. All piping after the airgap, or indirect connection must be sized as a gravity drain using subsection 2 of section 62-03-11-04 to determine equivalent fixture unit load and the tables contained in section 62-03-11-05 to determine drain sizes, and such other tables and regulations as may be applicable. These provisions as to airgap and drain sizing apply to single and multiple relief valve piping installations.

- ~~7.~~ **Vacuum relief valves.** Where a hot water storage tank or an indirect water heater is located at an elevation above the fixture outlets in the hot water system, a vacuum relief valve shall be installed on the storage tank or heater.
8. **7. Pressure marking of hot water storage tank.** Hot water storage tanks shall be permanently marked in an accessible place with the maximum allowable working pressure, in accordance with the applicable standard.
9. **8. Water heaters on wood.** Water heaters which are located in areas that have floors of wood construction shall be provided

with a watertight pan. Such pans shall turn upon all sides at least two inches [5.08 centimeters]. The pan drain shall be indirectly connected with an air break to the buildings drainage system and shall be a minimum of one inch [2.54 centimeters] in diameter.

**History:** Amended effective August 1, 1981; July 1, 1985.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

**62-03-11-01. Materials.**

- 1- Aboveground piping within buildings. Soil and waste piping above ground in buildings shall be of brass pipe, copper pipe, copper tube drainage, waste, and venting weight or heavier, service weight or heavier cast iron soil pipe, bell and spigot or hubless system, galvanized wrought iron pipe, galvanized open-hearth iron pipe, galvanized steel pipe, lead pipe, or acrylonitrile-butadiene-styrene, polyvinyl chloride, drainage, waste, and venting, Schedule 30, 40 or heavier plastic pipe. When plastic pipe is installed each soil or waste stack (does not include stack vent) shall not exceed thirty-five feet [10.67 meters] in height. Horizontal offsets in stacks, horizontal branches connected to stacks and building drains aboveground are limited to a maximum developed length of thirty-five feet [10.67 meters].
- 2- Underground building drains. All drainage piping within buildings when under ground shall be of service weight or heavier cast iron soil pipe, bell and spigot or hubless system, hard temper copper tube type K or L, or Schedule 40, or heavier plastic pipe.
- 3- Fittings. The materials of which drainage system pipe fittings are made shall conform to the type of piping materials used in the drainage system. The fittings shall have no ledges, shoulders, or reductions which can retard or obstruct flow in the piping. Threaded drainage pipe fittings shall be of the recessed drainage type, black or galvanized.  
See section 62-03-03.1-06.

**History:** Amended effective April 1, 1984; July 1, 1985.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

62-03-11-02. Building sewers and drains material.

1. Building sewer-

a- in trench separate from water service. If the building sewer is installed in a trench separate from the water service, the sewer pipe material shall be of either asbestos cement, bituminized fiber, cast iron, concrete, vitrified clay, or plastic pipe. Joints shall be watertight and rootproof.

b- in trench with water service. If the building sewer is installed in the same trench as the water service, the sewer pipe material shall be cast iron or Schedule 40 acrylonitrile-butadiene-styrene or polyvinyl chloride and so installed as to remain watertight and rootproof. The sewer shall be tested with a ten foot head of water or equivalent and found to be tight. The conditions in subsection 1 of section 62-03-10-06 shall also be met.

2- Sewer or drain in filled ground. When a building sewer or building drain is installed in filled or unstable ground it shall must be of cast iron except that nonmetallic drains may be used if laid on an approved continuous supporting system installed in accordance with subsection 1 of section 62-03-02-06.

3- 2. Existing building sewers and drains. Existing buildings sewers and drains may be used in connection with new building sewer and drainage systems only when found by examination and test to conform to the new system in quality of material prescribed by this code, and the administrative authority shall notify the owner to make the changes necessary to conform to this article.

3. Building sewer and building drain size. The size of the building sewer and the size of the building drain shall be determined by fixture unit loads connected in accordance with the building drains and sewers table in subsection 1 of section 62-03-11-05.

4- Building sewer (minimum size)- When the material installed for a building sewer is either cast iron or Schedule 40 polyvinyl chloride or acrylonitrile-butadiene-styrene plastic pipe, and the sewer receives the discharge of not more than two water closets, the minimum size of the building sewer shall be three inches {7.62 centimeters}.

When other approved materials are installed the minimum size shall be four inches {10-16 centimeters}.

5- Building drain (minimum size)- Building drains receiving the discharge of not more than two water closets shall be a minimum of three inches {7-62 centimeters}.

History: Amended effective July 1, 1985.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-11-04. Fixture units.

1. Load on drainage piping. The load on drainage system piping shall be computed in terms of drainage fixture unit values in accordance with the table in this subsection and with subsection 2.

DRAINAGE FIXTURE UNIT VALUES FOR VARIOUS PLUMBING FIXTURES

Type of Fixture or Group of Fixtures	Drainage Fixture Unit Value (d.f.u.)
Automatic clothes washer (two-inch standpipe)	3
Bathroom group consisting of a water closet, lavatory and bathtub or shower stall:	
Flushometer valve closet	8
Tank type closet	6
Bathtub * (with or without overhead shower)	2
Bidet	4
Clinic sink	6
Combination sink-and-tray with food-waste grinder	4
Combination sink-and-tray with one 1-1/2 inch trap	2
Combination sink-and-tray with separate one and one-half inch traps	3
Dental unit or cuspidor	1
Dental lavatory	1
Drinking fountain	1/2
Dishwasher, domestic	2
Floor drains with two-inch waste	3
Kitchen sink, domestic, with one 1-1/2 inch trap	2
Kitchen sink, domestic, with food-waste grinder	2
Kitchen sink, domestic, with food-waste grinder and dishwasher two-inch trap	3
Kitchen sink, domestic, with dishwasher	

one and one-half inch trap	3	
Lavatory with one and one-fourth inch waste	1	
Laundry tray (one or two compartments)	2	
Shower stall, domestic	2	
Showers (group) per head **	2	
Sinks:		
Surgeon's	3	
Flushing rim (with valve)	6	
Service (trap standard)	3	
Service (P trap)	2	
Pot, scullery etc. **	4	
Urinal, pedestal, syphon jet wall hung blowout	6	
Urinal, wall <del>is</del> hung syphon jet	4	
<del>Urinal, stall, washout</del>		4
Urinal trough (each six-foot section)	2	
Wash sink (circular or multiple) each set of faucets	2	
Water closet, tank-operated	4	
Water closet, valve-operated	6	
Fixtures not listed above:		
Trap size one and one-fourth inch or less	1	
Trap size one and one-half inch	2	
Trap size two inches	3	
Trap size two and one-half inches	4	
Trap size three inches	5	
Trap size four inches	6	

\* A shower head over a bathtub does not increase the fixture unit value.

\*\* See subsection 2 of section 62-03-11-04 for method of computing equivalent fixture unit values for devices or equipment which discharge continuous or semicontinuous flows into sanitary drainage systems.

2. **Values for continuous flow.** For a continuous or semicontinuous flow into a drainage system, such as from a pump, ejector, air-conditioning equipment, or similar device, two fixture units shall be allowed for each gallon-per-minute of flow.

3. **Diversity factors.** In certain structures such as hospitals, laboratory buildings, and other special use or occupancy buildings where the ratio of plumbing fixtures to occupants is proportionally more than required by building occupancy and in excess of one thousand fixture units, the administrative authority may permit the use of a diversity factor for sizing branches, stacks, and building sewers.

**History:** Amended effective July 1, 1985.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

**62-03-11-05. Determining size of drainage system.**

- Selecting size of drainage piping.** Pipe sizes shall be determined from the tables contained in this subsection on the basis of drainage load computed from the table contained in subsection 1 of section 62-03-11-04 and from subsection 2 of section 62-03-11-04.

**BUILDING DRAINS AND SEWERS**

Maximum number of fixture units that may be connected to any portion of the building drain or the building sewer including branches of the building drain.

Diameter of Pipe Inches	Fall per Foot			
	One-sixteenth Inch	One-eighth Inch	One-fourth Inch	One-half Inch
2			21	26
2 1/2			24	31
3			42 *	50 *
4		180	216	250
5		390	480	575
6		700	840	1,000
8	1,400	1,600	1,920	2,300
10	2,500	2,900	3,500	4,200
12	3,900	4,600	5,600	6,700
15	7,000	8,300	10,000	12,000

\* Not over two water closets or two bathroom groups, except that in single family dwellings, not over three water closets or three bathroom groups may be installed.

**HORIZONTAL FIXTURE BRANCHES AND STACKS**

Maximum number of fixture units that may be connected to:

Diameter of	Any Horizontal Fixture	Stack Sizing for Three Stories in Height or Three	Stack Sizing For More Than Three Stories In Height	
			Total for	Total at One Story or Branch

Pipe Inches	Branch *	Intervals	Stack	Interval
1 1/2	3 ***	4 ***	8 ***	2 ***
2	6	12	24	6
2 1/2	12	20	42	9
3	20 **	48 **	72 **	20 **
4	160	240	500	90
5	360	540	1,100	200
6	620	960	1,900	350
8	1,400	2,200	3,600	600
10	2,500	3,800	5,600	1,000
12	3,900	6,000	8,400	1,500
15	7,000			

\* Does not include branches of the building drain.

\*\* Not more than two water closets or bathroom groups within each branch interval nor more than six water closets or bathroom groups on the stack. Stacks must be sized according to the total accumulated connected load at each story or branch interval and may be reduced in size as this load decreases to a minimum diameter of one-half of the largest size required.

\*\*\* Does not include kitchen sink.

2. **Minimum size of soil and waste stacks.** No soil or waste stack shall be smaller than the largest horizontal branch connected thereto, except that:

- a. A four-inch by three-inch [10.16-centimeter by 7.62-centimeter] water closet connection shall not be considered as reduction in pipe size.
- b. A four-inch [10.16-centimeter] horizontal drain to a three-inch [7.62-centimeter] soil stack by means of a three-inch by four-inch [7.62-centimeter by 10.16-centimeter] tee-wye, or to above the centerline of a three-inch [7.62-centimeter] horizontal drain by means of a three-inch by four-inch [7.62-centimeter by 10.16-centimeter] wye shall be acceptable; provided that the four-inch [10.16-centimeter] drain does not receive the discharge of any stack and that it receives only the discharge of fixtures located on the floor or wall immediately above the four-inch [10.16-centimeter] drain. All such four-inch [10.16-centimeter] horizontal drain lines shall be sized, graded, and vented as if the four-inch [10.16-centimeter] drain were a three-inch [7.62-centimeter] horizontal drain.

3. **Minimum size of stack vent or vent stack.** Any structure in which a building drain is installed shall have at least one stack vent or vent stack not less than three inches [7.62 centimeters] in diameter, or the size of the building drain if the building drain is less than three inches [7.62 centimeters] in diameter, carried full size through the roof sized in accordance with subsection 6 of section 62-03-12-16.
  
4. **Provision for future fixtures.** When provision is made for the future installation of fixtures, those provided for shall be considered in determining the required size of drain and vent pipes. Construction to provide for such future installations shall be terminated with a plugged fitting or fittings.
  
5. **Minimum size of underground drainage piping.** No portion of the drainage system installed underground or below a basement or cellar shall be less than two inches [5.08 centimeters] in diameter.  
  
This does not apply when used for condensate wastes or a relief valve discharge line which shall not be less than one and one-fourth inches [31.75 millimeters] in diameter.  
  
Underground waste lines serving kitchen sinks shall not be less than three inches [7.62 centimeters] in diameter if the developed length exceeds ten feet [3.05 meters].
  
6. **Minimum size for aboveground drainage piping.** No portion of the drainage system installed aboveground shall be less than one and one-half inches [38.1 millimeters].

**History:** Amended effective April 1, 1984; July 1, 1985.  
**General Authority:** NDCC 43-18-09  
**Law Implemented:** NDCC 43-18-09

**62-03-11-06. Sizing of offsets on drainage piping.**

1. **Vertical offsets or change of direction.** An offset in a vertical stack, with a change of direction of forty-five degrees or less from the vertical, may be sized as a straight vertical stack. In case a horizontal branch connects to the stack within two feet [60.96 centimeters] above or below the offset, a relief vent shall be installed in accordance with subsection 3 of section 62-03-12-03.
  
2. **Waste stacks serving kitchen sinks.** When a waste stack receives the discharge of a kitchen type sink or three-fixture units, it may also serve as a wet vent for two 3-fixture units independently connected to the stack at the floor below, provided

the horizontal branch serving the waste stack and the waste stack up to the branch connections is three inches {7.62 centimeters}. The minimum size of the waste stack (wet vent) and trap arm to the connections at the floor above shall be two inches {5.08 centimeters} in diameter.

3- Offsets above the highest branch. An offset above the highest horizontal branch is an offset in the stack vent and shall be considered only as it affects the developed length of the vent.

4- 3. Offsets below the lowest branch. In the case of an offset in a soil or waste stack below the lowest horizontal branch, there shall be no change in diameter required if the offset is made at an angle of not greater than forty-five degrees. If such an offset is made at an angle greater than forty-five degrees to the vertical, the required diameter of the offset and the stack below it shall be determined as for a building drain. See the table entitled "Building Drains and Sewers" in subsection 1 of section 62-03-11-05.

5- 4. Horizontal offsets. A stack with an offset of more than forty-five degrees from the vertical shall be sized as follows:

The portion of the stack above the offset shall be sized as for a regular stack based on the total number of fixture units above the offset.

The offset shall be sized as for a building drain. See the table entitled "Building Drains and Sewers" in subsection 1 of section 62-03-11-05.

The portion of the stack below the offset shall be sized as for the offset or based on the total number of fixture units on the entire stack, whichever is the larger.

A relief vent for the offset shall be installed as provided elsewhere and in no case shall a horizontal branch connect to the stack within two feet [60.96 centimeters] above or below the offset.

**History:** Amended effective July 1, 1985.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

62-03-11-08. Drainage below curb level.

1. Fixtures subject to backflow. The installation of backwater devices must be in accordance with lawful requirements of the

administrative authority having jurisdiction over the public sewer system.

2. Fixture branches subject to backflow. Backwater valves may be installed only in that branch or section of the drainage system which receives the discharge from fixtures located as stated in subsection 1. Manually operated shutoff valves may also be installed in the building drain near the junction of the building drain and the building sewer.
3. Materials for backwater valves. Backwater valves must have all bearing parts of corrosion-resistant material.
4. Construction of backwater valves. Backwater valves must be constructed so a mechanical seal against backflow will be provided.
5. Diameter of backwater valves. Backwater valves, when fully opened, must have a capacity of not less than that of the pipes in which they are installed.
6. Location of backwater valves. Backwater valves must be installed so their working parts will be accessible for service and repairs.

History: Effective July 1, 1985.

General Authority: 43-18-09

Law Implemented: 43-18-09

#### 62-03-12-01. Materials.

- 1- Above ground. Vent piping above ground in buildings shall be of brass pipe, copper pipe, copper tube drainage, waste, and venting weight or heavier, service weight or heavier cast iron soil pipe, bell and spigot or hubless system, galvanized wrought iron pipe, galvanized open-hearth iron pipe, galvanized steel pipe, lead pipe, acrylonitrile-butadiene-styrene or polyvinyl chloride - drainage, waste, and venting Schedule 30 or heavier plastic pipe.
- 2- Underground. All underground vent piping in buildings shall be of service weight or heavier cast iron soil pipe, bell and spigot or hubless system, copper pipe, copper tube hard temper type B or heavier, acrylonitrile-butadiene-styrene or polyvinyl chloride Schedule 40 or heavier plastic pipe.

- 3- Chemical waste systems- Vent piping on chemical waste systems shall conform to that required for chemical waste pipe except as may be otherwise authorized by the administrative authority, and shall be installed independently through the roof. (See subsection 1 of section 62-03-09-07.)
- 4- Fittings- Fittings shall conform to the type of pipe used in the vent system as required by subsections 1 and 2 or when used with galvanized pipe they may be black drainage fittings, black steam pattern fittings, or galvanized malleable fittings. See section 62-03-03.1-10.

History: Amended effective July 1, 1985.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

#### 62-03-12-03. Vent stacks and stack vents.

1. Vent stack required. Every building in which plumbing is installed shall have at least one main stack, which shall run undiminished in size and as directly as possible, from the building drain through to the open air above the roof. A vent stack or a main vent shall must be installed with a soil or waste stack whenever ~~back~~ individual vents, relief vents, or other branch vents are required in a building of five or more branch intervals.
2. Connection at base. All main vents or vent Vent stacks shall must connect full size at their base to the drainage system or to the main soil or waste pipe, ~~at or~~ below the lowest fixture branch.
3. Horizontal offsets in building stacks having ten or more branch intervals. Horizontal offsets of stacks in buildings having ten or more branch intervals of less than forty-five degrees from the horizontal in a soil or waste stack may be vented as two separate soil or waste stacks and may be vented by installing a relief vent as a vertical continuation of the lower section of the stack or as a side vent connected to the lower section between the offset and the next lower fixture or horizontal branch must be vented by one of the following methods:
  - a. By considering the stack as two separate stacks above and below the offset.

b. By installing a relief vent as a vertical continuation of the lower section of the stack.

c. By connecting a side vent to the lower section between the offset and the next lower branch.

The upper section of the offset ~~shall~~ must be provided with a yoke vent. The diameter of the vents ~~shall~~ may not be less than the diameter of the main vent, or of the soil and waste stack, whichever is the smaller.

4. **Vent headers.** Stack vents and vent stacks may be connected into a common vent header at the top of the stacks and then extended to the open air at one point. This header shall be sized in accordance with the requirements of the table in subsection 6 of section 62-03-12-16, the number of units on a section of the header being the sum of all units on all stacks served by the section and the developed length being the longest vent length from the intersection at the base of the most distant stack to the vent terminal in the open air as a direct extension of one stack.
5. **Other use prohibited.** The plumbing vent system shall not be used for purposes other than the venting of the plumbing system.

History: Amended effective April 1, 1984; July 1, 1985.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-12-05. Frost closure. Vent extensions through a roof shall be at least two inches {5.08 centimeters} in diameter. Every building shall have at least one vent terminal complying with subsection 1 of section 62-03-12-03. Each vent extension through a roof must be at least two inches [5.08 centimeters] in diameter. When it is found necessary to increase the size of the vent extension to meet this requirement, the change in diameter shall be made inside the building at least one foot [28.8 centimeters] below the roof with a fitting acceptable to the administrative authority.

History: Amended effective July 1, 1985.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

**62-03-12-10. Wet venting.**

1. **Single bathroom groups - top floor.** A single bathroom group of fixtures may be installed with the drain from a back-vented

lavatory serving as a wet vent for a bathtub or shower stall and for the water closet, provided that:

- a. Not more than one fixture unit is drained into a one and one-half-inch [38.1-millimeter] diameter wet vent or not more than four fixture units drain into a two-inch [5.08-millimeters] diameter wet vent.
  - b. The horizontal branch shall be a minimum of two inches [5.08 centimeters] and connect to the stack at the same level as the water closet drain or below the water closet drain when installed on the top floor. It may also connect to the water closet bend.
2. **Double bath.** Bathroom groups back-to-back on the top floor consisting of two lavatories and two bathtubs or showers may be installed on the same horizontal branch with a common vent for the lavatories and with no back vent for the bathtubs or showers, provided the fixture drains for the bathtubs or showers connect downstream from the fixture drain for the lavatories, the bathtub traps and supply fittings are accessible, the wet vent is two inches [5.08 centimeters] in diameter, and the length of the fixture drains conform to the table in subsection 1 of section 62-03-12-08.
3. **Multistory bathroom groups.** On the lower floors of a multistory building, the waste pipe from one or two lavatories may be used as a wet vent for one or two bathtubs or showers provided that:
- a. The wet vent and its extension to the vent stack is two inches [5.08 centimeters] in diameter.
  - b. Each water closet below the top floor is individually back vented.
4. **Exception.**
- a. In multistory bathroom groups, wet vented in accordance with subsection 3, the water closets below the top floor need not be individually vented if the two-inch [5.08-centimeter] waste pipe connects directly into the water closet bend at a forty-five degree angle to the horizontal portion of the bend in the direction of flow.
  - b. If a stack fitting is used which consists of one or two 3-inch [7.62-centimeter] or four-inch [10.16-centimeter] water closet openings and two side-inlets each two inches [5.08 centimeters] in diameter that have their invert above the center of, but below the top of the water closet opening, and one of the two-inch [5.08-centimeter] inlets is used to connect one (if revented) or two bathtubs or

showers, and the other two-inch [5.08-centimeter] inlet is used to connect one or two lavatories.

- c. In lieu of the special stack fitting in subdivision b, a four-inch [10.16-centimeter] closet bend with two 2-inch [5.08-centimeter] wye taps may be used.

5. Waste stacks serving kitchen sinks. When a waste stack receives the discharge of a kitchen type sink or three-fixture units, it may also serve as a wet vent for two 3-fixture units independently connected to the stack at the floor below; provided the horizontal branch serving the waste stack and the waste stack up to the branch connections is three inches [7.62 centimeters]. The minimum size of the waste stack (wet vent) and trap arm to the connections at the floor above must be two inches [5.08 centimeters] in diameter.

**History:** Amended effective April 1, 1984; July 1, 1985.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

#### 62-03-12-16. Size and length of vents.

1. **Length of vent stacks.** The length of the vent stack or main vent shall be its developed length from the lowest connection of the vent system with the soil stack, waste stack, or building drain to the vent stack terminal, if it terminates separately in the open air, or to the connection of the vent stack with the stack vent, plus the developed length of the stack vent from the connection to the terminal in the open air, if the two vents are connected together with a single extension to the open air.
2. **Size of individual vents.** The diameter of an individual vent shall ~~may~~ be not less than one and one-fourth inches [31.75 millimeters]- The minimum diameter and maximum length of vents shall be governed by the tables in subsections 5 and 6, nor less than one-half the diameter of the drain to which it is connected.
3. **Size of relief vent.** The diameter of a relief vent shall ~~may~~ be not less than ~~the diameter of the circuit, loop, or branch vent serving the horizontal soil or waste branch.~~ Relief vents for horizontal offsets on drainage piping shall be not less than one-half the diameter of the piping soil or waste branch to which it is connected.
4. **Stacks of more than ten branch intervals.** Soil and waste stacks in buildings having more than ten branch intervals shall be provided with a relief vent at each tenth interval

installed, beginning with the top floor. The size of the relief vent shall be equal to the size of the vent stack to which it connects. The lower end of each relief vent shall connect to the soil or waste stack through a wye below the horizontal branch serving the floor and the upper end shall connect to the vent stack through a wye not less than three feet [91.44 centimeters] above the floor level.

5. Size and length of circuit, loop, branch, or individual vents. The diameter of a circuit, loop, branch, or individual vent shall be determined from the following table:

MINIMUM DIAMETERS AND MAXIMUM LENGTHS  
OF VENTS FOR HORIZONTAL SOIL AND  
WASTE BRANCHES

Diameter of Horizontal Branch	Number of Fixture Units Connected	Diameter of Vent										
		1-1/4	1-1/2	2	2-1/2	3	4	5	6	8	10	12
(Maximum developed length of vent in feet)												
1-1/2	2	NB	NB									
2	4	290	NB	NB								
2	12	150	380	NB								
2-1/2	8	96	240	NB	NB							
2-1/2	24	70	130	NB	NB							
3	28	60	97	420	NB	NB						
3	42	30	50	220	NB	NB						
4	120		38	190	NB	NB	NB					
4	180			98	310	NB	NB					
5	185				190	490	NB	NB				
5	390				97	250	NB	NB				
6	315					190	NB	NB	NB			
6	700					96	440	NB	NB			
8	710						190	NB	NB	NB		
8	1600						91	310	NB	NB		
10	1220							190	500	NB	NB	
10	2900							85	240	NB	NB	
12	1920								180	NB	NB	NB
12	4600								79	420	NB	NB

\* NB - No Limit

5. Size of circuit or loop vent. The diameter of a circuit loop vent may be not less than the size of the diameter of the vent

stack or one-half the size of the diameter of the horizontal soil or waste branch, whichever is smaller.

6. Size of vent stacks and stack vents- The diameter of a vent stack and stack vent shall be determined from its length and the total of fixture units connected thereto, as provided in the following table piping. The size of vent piping must be determined from its length and the total number of fixture units connected thereto, as set forth in the following table. In addition, the drainage piping of each building and each connection to a public sewer or a private sewage disposal system shall be vented by means of one or more vent pipes, the aggregate cross-sectional area of which shall not be less than that of the largest required building drain as determined from the Building Drains and Sewers Table in subsection 1 of section 62-03-11-05.

SIZE AND LENGTH OF VENTS

Size of Soil or Waste Stack	Fixture Units Con- nected	Diameter of Vent Required (Inches)								
		1-1/4	1-1/2	2	2-1/2	3	4	5	6	8
		Maximum Length of Vent (Feet)								
Inches										
1-1/2	8	50	150							
1-1/2	10	30	100							
2	12	30	75	200						
2	24	26	50	150						
2-1/2	42		30	100	300					
3	10		30	100	200	600				
3	30			60	200	500				
3	60			50	80	400				
4	100			35	100	260	1000			
4	200			30	90	250	900			
4	500			20	70	180	700			
5	200				35	80	350	1000		
5	500				30	70	300	900		
5	1100				20	50	200	700		
6	350				25	50	200	400	1300	
6	620				15	30	125	300	1100	
6	960					24	100	250	1000	
6	1900					20	70	200	700	
8	600						50	150	500	1300
8	1400						40	100	400	1200
8	2200						30	80	350	1100
8	3600						25	60	250	800

10	1000	75	125	1000
10	2500	50	100	500
10	3800	30	80	350
10	5600	25	60	250

History: Amended effective August 1, 1981; July 1, 1985.  
 General Authority: NDCC 43-18-09  
 Law Implemented: NDCC 43-18-09

62-03-13-02. Materials.

- 1- Interior conductors. Interior conductors installed above ground level shall be of brass or copper pipe, copper tube drainage, waste, and venting or heavier cast iron soil pipe, bell and spigot or hubless system, lead pipe, galvanized open-hearth iron pipe, galvanized steel pipe, galvanized wrought iron pipe, fiberglass pipe or plastic pipe.
- 2- Exterior leaders. Exterior leaders shall be of approved sheet metal or other acceptable material.
- 3- Underground building storm drains. All underground building storm drains shall be service weight or heavier bell and spigot cast iron soil pipe or hard temper copper tube type B or heavier or other approved materials. Where thread joints are used underground they shall be coal-tar coated or equivalent approved protection when installed.
- 4- Building storm sewer. Building storm sewer shall be of asbestos cement, bituminized fiber, cast iron bell and spigot service weight or heavier soil pipe, concrete, or vitrified clay or other approved material. Joints shall be watertight and root proof. See section 62-03-03.1-09.

History: Amended effective July 1, 1985.  
 General Authority: NDCC 43-18-09  
 Law Implemented: NDCC 43-18-09

62-03-14-14. Central vacuum or disposal systems.

1. Wastes. The waste from a central vacuum (fluid suction) system of the disposal type, whether the disposal be by barometric leg, collecting tanks, or bottles, shall be

directly connected to the sanitary drainage system through a trapped waste.

2. **Piping.** The piping of a central vacuum (fluid suction) system shall be of corrosion resistant material having a smooth interior surface. No branch shall be less than one-half inch [12.7 millimeters] for one outlet and sized according to the number of vacuum outlets, and no main shall be less than one inch [2.54 centimeters]. The pipe sizing shall be increased according to the manufacturer's recommendation as stations are increased. All piping shall be provided with adequate and accessible clean-out facilities on mains and branches, and shall be accessible for inspection, maintenance, and replacements.
3. **Materials.** See section 62-03-03.1-04.

**History:** Amended effective July 1, 1985.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

#### **62-03-16-06. Capacity of septic tanks.**

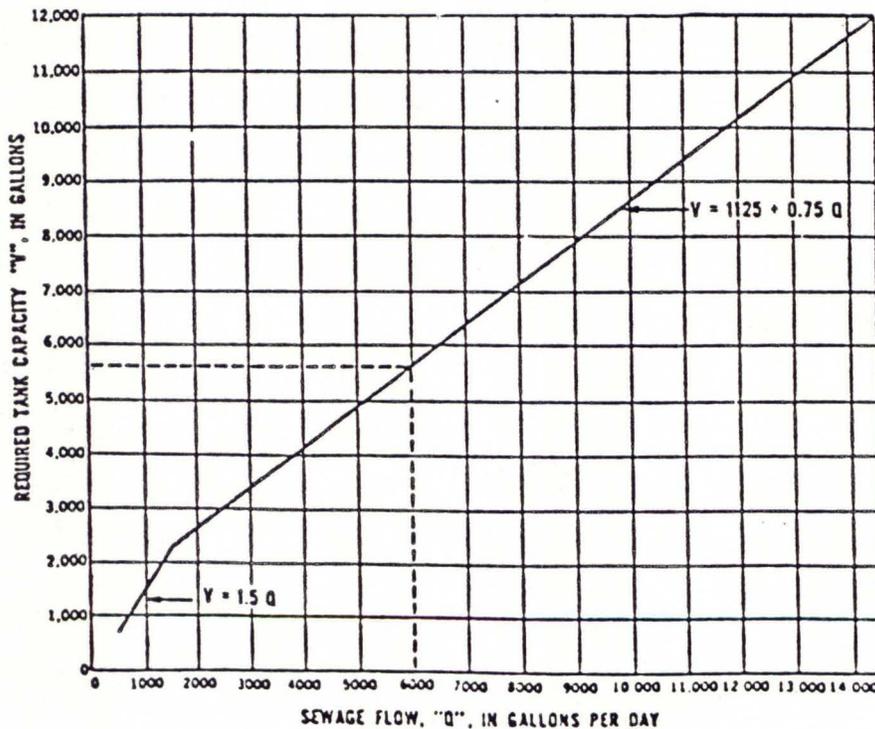
1. **Liquid capacity.** The liquid capacity of all septic tanks shall conform to the tables contained in subsection 7 of section 62-03-16-03 and this subsection as determined by the number of bedrooms or apartment units in dwelling occupancies and the occupant load or the number of plumbing fixture units as determined from the table in subsection 1 of section 62-03-11-04, whichever is greater in other building occupancies.

CAPACITY OF SEPTIC TANKS \*

Single family dwellings-number of bedrooms	Multiple dwelling units or apartments-one bedroom each	Other uses; maximum fixture units served	Minimum septic tank capacity in gallons
1-3		20	1000
4	2 units	25	1200
5 or 6	3	33	1500
7 or 8	4	45	2000
	5	55	2250
	6	60	2500
	7	70	2750
	8	80	3000
	9	90	3250
	10	100	3500

Extra bedroom, 150 gallons each.  
 Extra dwelling units over 10, 250 gallons each.  
 Extra fixture units over 100, 25 gallons per fixture unit.

\* NOTE: Septic tank sizes in this table include sludge storage capacity and the connection of domestic food waste disposal units without further volume increase.



2. **Multiple compartments.** In a tank of more than one compartment the inlet compartment shall have a capacity of not less than two-thirds of the total tank capacity.
3. **Septic tank construction.** Plans for all septic tanks shall be submitted to the approving authority for approval. Such plans shall show all dimensions, reinforcing, structural calculations, and such other pertinent data as may be required.

Septic tanks shall be constructed of sound durable materials, not subject to excessive corrosion or decay and shall be watertight. Each such tank shall be structurally designed to withstand all anticipated earth or other loads and shall be installed level and on a solid bed.

4. **Steel tanks.** All steel tanks shall have continuous welding. (No spot welding is permitted.)
  - a. The minimum wall thickness of any steel septic tank shall be No. 12 U.S. gauge -109-
  - b. Metal tanks shall be coated inside and out with "Liquid Flexigum", or any other approved coating.
  - c. The inlet and outlet baffles shall be at least twelve inches {30.48 centimeters} in diameter at the point opposite the opening in the tank.
  - d. The pump out opening in the top shall be large enough to permit a six-inch {15.24-centimeter} cast iron pump out pipe to be inserted with a shoulder to support this pipe.
  - e. The opening in tank shall be not smaller than six-inches {15.24-centimeters} with a three-inch {7.62-centimeter} collar.
  - f. The outside diameter of this collar shall be eight inches {20.32 centimeters}.
  - g. The pump out pipe shall terminate at the surface and a six-inch {15.24-centimeter} iron body brass cleanout shall be caulked into the hub of this pipe with oakum and molten lead, the nut of cleanout shall be solid brass no smaller than one-inch {2.54-centimeters}.
  - h. There shall be a twenty-four by twenty-four inch {60.96 by 60.96 centimeter} manhole held in place by four and three-eighths inch {11.11 centimeter} bolts securely welded in place.

- i- There shall be a supporting partition welded in the center of these tanks as per drawings.
- j- This partition shall have two-inch [5.08-centimeter] openings at intervals at the top for air circulation.
- k- The capacity gauge metal and weight must be stamped on a brass plate and welded to the top of metal septic tanks. Septic tank materials. See subsection 10 of section 62-03-03.1-03.

5. Concrete tanks.

- a. Concrete tanks shall have the same size baffles and pump out openings as for steel tanks.
- b. The tops shall have a twenty-four-inch [60.96-centimeter] manhole with handle to remove same or be cast in three or four sections cemented in place.
- c. The minimum thickness of the walls shall be two and three-fourths inches [6.99 centimeters].
- d. The tops and bottoms shall be four inches [10.16 centimeters] thick unless placed under a driveway, then they shall be a minimum of six inches [15.24 centimeters].
- e. All tank walls and bottoms shall be reinforced with "Road Mesh".
- f. The tops shall have three-eighths inch [9.53 millimeter] steel reinforcing on six-inch [15.24-centimeter] centers.
- g. These tanks must be waterproof.

6. **Depth of septic tank.** The top of the septic tank may be brought to within forty-eight inches [121.92 centimeters] of the finished grade. Where a greater depth is required the access manhole shall be extended to the finished grade or the manhole shall have a concrete marker at grade.

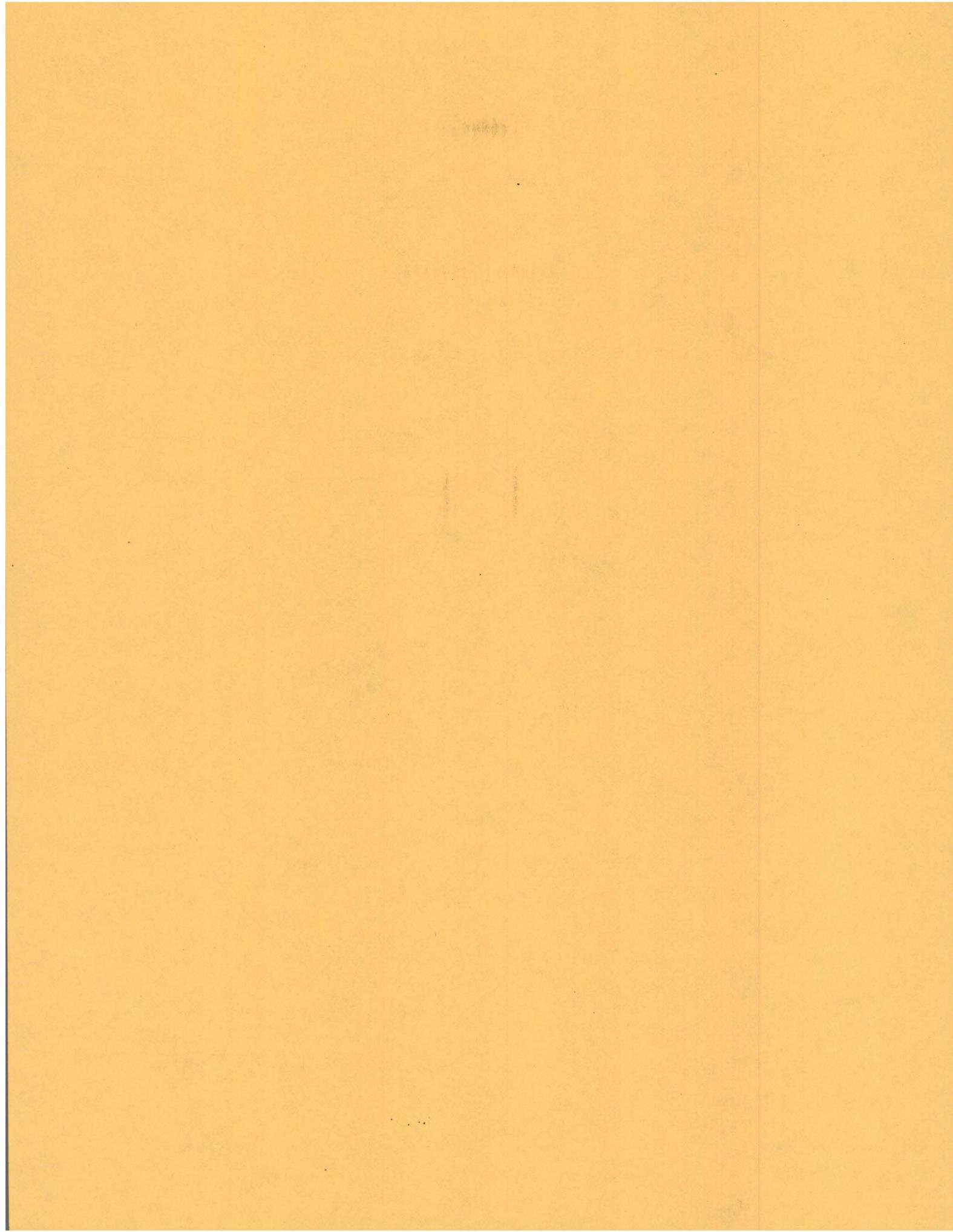
7. **Service limited.** No septic tank shall serve more than one property unless authorized by the approving authority.

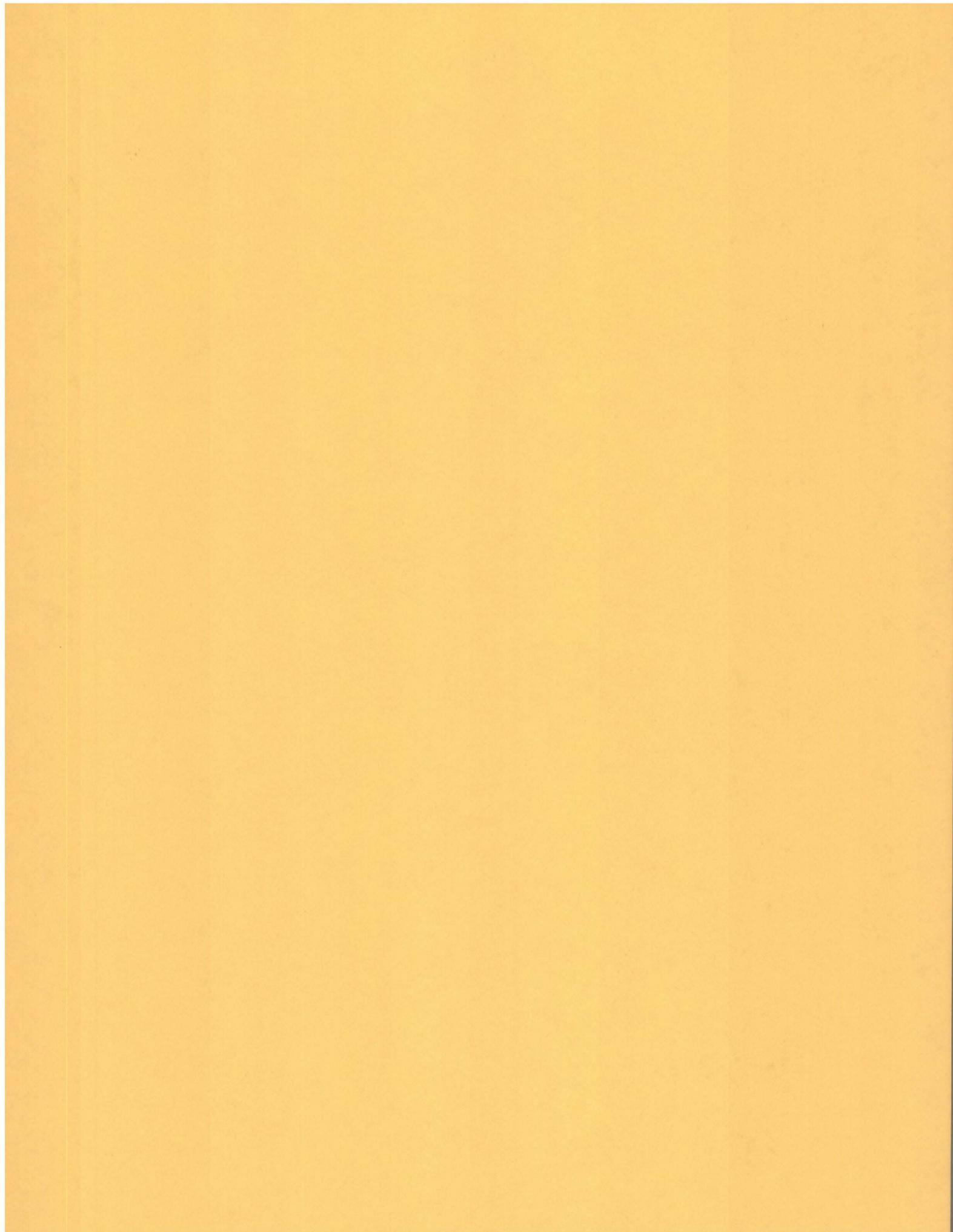
8. **Disposal of effluent.** The effluent from all septic tanks shall be disposed of under ground by subsurface irrigation or seepage pits or both.

**History:** Amended effective July 1, 1985.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09





**TITLE 66**  
**Psychologist Examiners, Board of**



MARCH 1985

STAFF COMMENT: Format of this document slightly changed. New material is underscored.

**NORTH DAKOTA STATE BOARD OF PSYCHOLOGIST EXAMINERS**

**Application for License**

I hereby make application to the North Dakota State Board of Psychologist Examiners for the issuance of a license and submit the following information in support of my application:

1. Name \_\_\_\_\_  
Last First Middle (Maiden, if married)
- 2a. Office Address \_\_\_\_\_
- 2b. Office Phone \_\_\_\_\_  
City State Zip Code
3. Place of Birth \_\_\_\_\_
4. Date of Birth \_\_\_\_\_ 4a. Sex: Male Female
5. Social Security Number \_\_\_\_\_
6. Are you a citizen of the United States? \_\_\_\_\_  
If not, state intentions:

Date intention filed:

7. Are you now a resident of this state? \_\_\_\_\_  
 If yes, give length of residence:
- If not, do you intend to reside here?
8. Do you now work as a psychologist in this state? \_\_\_\_\_  
 If yes, indicate for how long:
9. Have you ever been convicted of a felony or misdemeanor, other than a traffic violation with a fine of less than \$25.00? \_\_\_\_\_  
 If yes, give details:
10. Have you ever been charged with unethical behavior or unprofessional conduct? \_\_\_\_\_  
 If yes, give specific details:
11. Have you been licensed (certified) in another state? \_\_\_\_\_  
 Name of the state(s): \_\_\_\_\_  
 License (certificate) number: \_\_\_\_\_  
 Date issued: \_\_\_\_\_  
 Speciality: \_\_\_\_\_  
 Is the license (certificate) current? \_\_\_\_\_
12. Have you ever had a license (certificate) denied or revoked? \_\_\_\_\_  
 If yes, give details:
13. Do you hold the Diploma of the American Board of Examiners in Professional Psychology? \_\_\_\_\_  
 Diploma number: \_\_\_\_\_ Speciality: \_\_\_\_\_
- If you are a diplomate answer only questions 14, 15, and 28 beyond this point:
14. Other professional license or certification? \_\_\_\_\_  
 Give details:
15. Do you request licensing by reciprocity? \_\_\_\_\_

EDUCATION

16. Institution	Years attended	Degrees	Dates of award
_____	_____	_____	_____
_____	_____	_____	_____

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17. Undergraduate major: \_\_\_\_\_

18. Master's degree:

a. Major \_\_\_\_\_

b. Title of thesis (if any) \_\_\_\_\_  
\_\_\_\_\_

c. Number of semester credit hours in psychology: \_\_\_\_\_

19. Doctoral degree:

a. Major specialization in psychology \_\_\_\_\_

b. Major supervisor \_\_\_\_\_

c. Title of dissertation and reference, if published \_\_\_\_\_  
\_\_\_\_\_

d. Department chairman \_\_\_\_\_

e. Number of semester credit hours in psychology: \_\_\_\_\_

20. Do you desire to do clinical work or provide counseling or therapy? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes,

Internship:

a. Places and dates: \_\_\_\_\_  
\_\_\_\_\_

b. Hours per week \_\_\_\_\_

c. Name and title of supervisor \_\_\_\_\_  
\_\_\_\_\_

d. Was the supervisor a licensed psychologist who was practicing in the clinical area or specialty area being supervised? \_\_\_\_\_

e. Please describe the extent of your training in applying



22. Transcripts: Please arrange to have both graduate and undergraduate transcripts sent directly from your school(s) to the Secretary, North Dakota State Board of Psychologist Examiners.

PROFESSIONAL EXPERIENCE

(Start with present position and go backwards in order)

23. Institution \_\_\_\_\_

Inclusive dates \_\_\_\_\_ to \_\_\_\_\_  
Mo. Year Mo. Year

Address \_\_\_\_\_

Position or title \_\_\_\_\_

Professional supervisor \_\_\_\_\_  
(Psychologist or other professional person best able to  
evaluate your professional work)

Description of activities and responsibilities:  
(essentially psychological)

Average hours per week devoted to above activities \_\_\_\_\_

Description of all other concurrent professional, academic, or other  
activities:

Average hours per week devoted to above activities \_\_\_\_\_

23a., 23b., 23c., etc.

On supplementary sheets use same format as above for each  
professional experience.

24. Three references are required. Two of these must be different from the supervisors listed in question 23.

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Name	Address
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Name	Address
------	---------

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Name	Address
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25. List all professional organizations of which you are a member and give membership level:

26. Have you ever been rejected for membership in a professional organization? \_\_\_\_\_

Has your membership in a professional organization ever been revoked? \_\_\_\_\_

Have you ever been censured by a professional organization of which you were a member? \_\_\_\_\_

If yes to any of the above, give details:

27. Professional contributions and honors. Attach a list of any contributions such as publications, papers read, special research assignments, special committee assignments and of any honors received which you wish to supplement your application.

28. Do you agree to abide by the Code of Ethics of the American Psychological Association? \_\_\_\_\_

I hereby make application to the North Dakota State Board of Psychologist Examiners for the issuance of a license as a psychologist and for examination relative thereto, all subject to and in accordance with the rules and regulations of the Board and the licensing law of the State of North Dakota.

Signature \_\_\_\_\_

Date of Application \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

Notary Public: \_\_\_\_\_

City (County): \_\_\_\_\_ State: \_\_\_\_\_

Commission Expires: \_\_\_\_\_

Notary Stamp \_\_\_\_\_

History: Amended effective March 1, 1985.

66-02-01-02. Licensure without examination. Licensing of psychologists without examination will follow the procedures of North Dakota Century Code section 43-32-18. The board may issue a license without examination, upon payment of the required fee, to any diplomate of the American board of examiners in professional psychology.

History: Amended effective March 1, 1985.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-18

**66-02-01-08. Fees.** The license fee is one hundred fifty dollars for all persons receiving licensure under sections 66-02-01-02, 66-02-01-03, 66-02-01-04, and 66-02-01-06 and ~~twenty-five~~ fifty dollars for all persons receiving licensure under section 66-02-01-05. An annual renewal fee of ~~fifteen~~ thirty dollars will be charged all licensed psychologists regardless of the procedure by which they obtained licensing.

**History:** Amended effective March 1, 1985.

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC 43-32-12, 43-32-13

66-02-01-10. Guidelines for oral examinations. The oral examination will be administered by at least three board members in addition to any other licensed psychologist whom the board sees fit to add to the examining committee. However, only the board members present may vote. Oral examinations will be conducted twice a year at approximately the same time of the written examination. The examination committee will use a structured oral examination, will record the applicants' answers, will discuss the results, and the board members will vote with the majority opinion being necessary for the candidate to pass. The examination will cover generic content, ethics, state regulations, areas of stated competence as listed on the application form. Specific questions to be used will be selected at the time of the examination from a pool of questions available for that purpose.

**History:** Effective March 1, 1985.

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC 43-32-20

66-02-01-11. Additional documentation for clinical work or counseling for therapy. For an applicant desiring to do clinical work or provide counseling or therapy, there must be additional evidence of training in applying academic course content in a service setting. This must include therapy, diagnosis, intelligence/personality testing, or other specialized examination procedures, and a relevant supervised internship of not less than twelve months full time (forty-hour week). The internship should be supervised by a licensed psychologist practicing in the designated specialty. The documentation of the additional evidence of training must be a detailed description of the internship as to the setting, nature of clients, precisely what the applicant's routine was, how the applicant was supervised as well as the amount of supervision, what skills were exposed to the applicant, and the specific skills in which the applicant is proficient.

**History:** Effective March 1, 1985.

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC 43-32-20

66-02-01-12. Identifying doctoral program as psychology program. The following criteria will be used to identify doctoral programs as psychology programs:

1. Programs that are accredited by the American psychological association are recognized as meeting the definition of a professional psychology program, with the criteria for accreditation serving as a model for professional psychology training; or
2. All of the following:
  - a. Training in professional psychology is doctoral training offered in a regionally accredited institution of higher education.
  - b. The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists.
  - c. The psychology program must stand as a recognizable, coherent organizational entity within the institution.
  - d. There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines.
  - e. The program must be an integrated, organized sequence of study.
  - f. There must be an identifiable psychology faculty and a psychologist responsible for the program.
  - g. The program must have an identifiable body of students who are matriculated in that program for a degree.
  - h. The program must include supervised practicum, internship, field, or laboratory training appropriate to the practice of psychology.
  - i. The curriculum must encompass a minimum of three academic years of full-time graduate study. In addition to instruction in scientific and professional ethics and standards, research design and methodology, statistics, and psychometrics, the core program must require each student to demonstrate competence in each of the following substantive content areas. This typically will be met by including a minimum of three or more graduate hours (five or more graduate quarter hours) in each of these four substantive content areas:

- (1) Biological basis of behavior: physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology.
- (2) Cognitive-affective basis of behavior: learning, thinking, motivation, emotion.
- (3) Social basis of behavior: social psychology, group processes, organizational and systems theory.
- (4) Individual differences: personality theory, human development, abnormal psychology.

In addition, all professional education programs in psychology must include course requirements in specialty areas.

History: Effective March 1, 1985.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-20

**66-02-02-02. Letter from department chairperson.** If the school or college of which the degree is obtained also has a department of psychology at a graduate level offering a doctorate in psychology, the applicant ~~should~~ shall present a letter from that department and the applicant's own department chairperson attesting to the fact that the coursework in the candidate's program is substantially psychological in nature. The letter will be given great evidentiary weight by the board of psychologist examiners in judging the candidate's program.

History: Amended effective March 1, 1985.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-20

**66-02-02-03. Documentation of training and coursework.** There must be training in the specific skills related to the specialty which the applicant desires to practice or teach. There must be documented evidence of the coursework considered equivalent, substantially graduate level, in four or more of the following areas: learning, personality, statistics, research design, psychological test theory, abnormal and developmental psychology, physiological psychology, educational psychology, industrial psychology, and social and therapeutic theory or technique as follows:

1. The curriculum must encompass a minimum of three academic years of full-time graduate study.
2. In addition to instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, the core program must require each student to demonstrate competence in each of the following substantive content areas. This typically will be

met by including a minimum of three or more graduate semester hours (five or more graduate quarter hours) in each of these four substantive content areas.

a. Biological basis of behavior: physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology.

b. Cognitive-affective basis of behavior: learning, thinking, motivation, emotion.

c. Social basis of behavior: social psychology, group processes, organizational and systems theory.

d. Individual differences: personality theory, human development, abnormal psychology.

The documentation should be in the form illustrated in the appendix to this chapter.

**History:** Amended effective March 1, 1985.

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC 43-32-20

STAFF COMMENT: Format of this document slightly changed.

## STATE BOARD OF PSYCHOLOGIST EXAMINERS

### Application for Exemption

(Fill out one form for each employee)

1. Name of agency: \_\_\_\_\_
2. Address: \_\_\_\_\_
3. Type of agency: State \_\_\_\_\_ Political subdivision \_\_\_\_\_  
Federal \_\_\_\_\_ Nonprofit corporation \_\_\_\_\_  
County \_\_\_\_\_ Educational institution \_\_\_\_\_  
Municipal \_\_\_\_\_ Other - specify \_\_\_\_\_
4. Name of employee: \_\_\_\_\_
5. Description of applicant's duties:

6. State the good cause or the hardship which occasions your need for exemption:

7. Training of employee (Please have copies of all undergraduate and graduate transcripts sent directly from the schools to the board):

EDUCATION

(List all institutions attended beyond the secondary level)

Institution	Major	Degree (Year of Award)
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8. Years of relevant experience: \_\_\_\_\_

Name of supervising licensed psychologist: \_\_\_\_\_

Please describe the supervision process which will be followed:

Number of hours of supervision each week: \_\_\_\_\_

Signature of supervisor: \_\_\_\_\_

Date: \_\_\_\_\_ Address: \_\_\_\_\_

\_\_\_\_\_  
Signature of agency head: \_\_\_\_\_

Date: \_\_\_\_\_ Address: \_\_\_\_\_  
\_\_\_\_\_

Signature of employee: \_\_\_\_\_

Date: \_\_\_\_\_ Address: \_\_\_\_\_  
\_\_\_\_\_

If any of the above questions require additional space, please use this page or attach pages as needed.

History: Amended effective March 1, 1985.

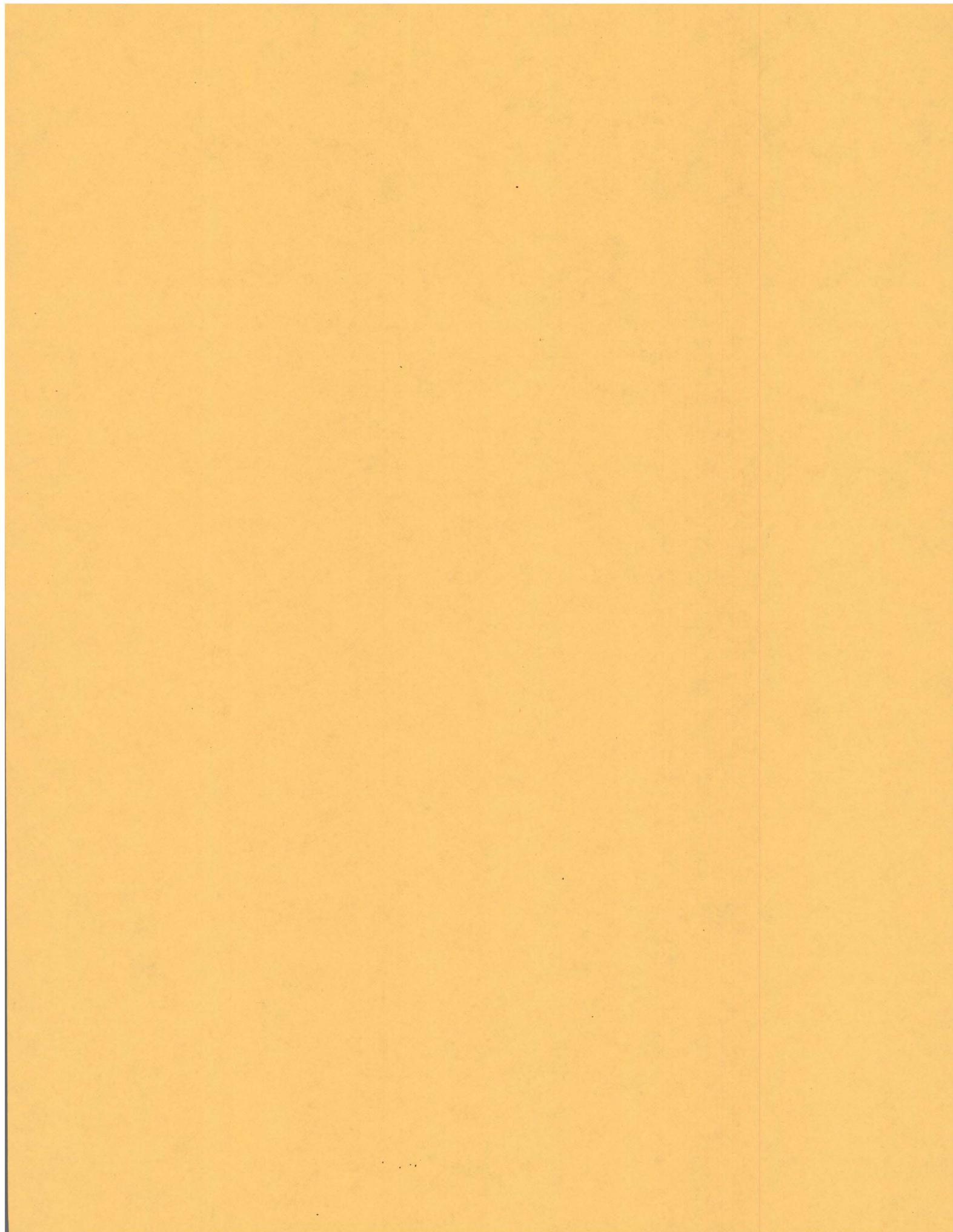
**66-02-03-02. Application for exemption.** Except for those individuals described in subsections 2, 3, and 4 of North Dakota Century Code section 43-32-30, any individual who is not licensed by the board of psychologist examiners and who plans to use the title psychologist or the word psychological in the job or professional title the individual applies to oneself must comply with North Dakota Century Code chapter 43-32 and this chapter. The application for exemption, a copy of which is an appendix to this chapter, must be completed. The agency employing the psychologist must complete the form for anyone using the title of psychologist or the term psychologist and psychological and not licensable by the board. The institution or agency completing the application will be billed ~~twenty-five~~ fifty dollars for each exempted employee. An annual renewal fee of ~~fifteen~~ thirty dollars for each exempted employee will be charged thereafter. The application for exemption should be sent to:

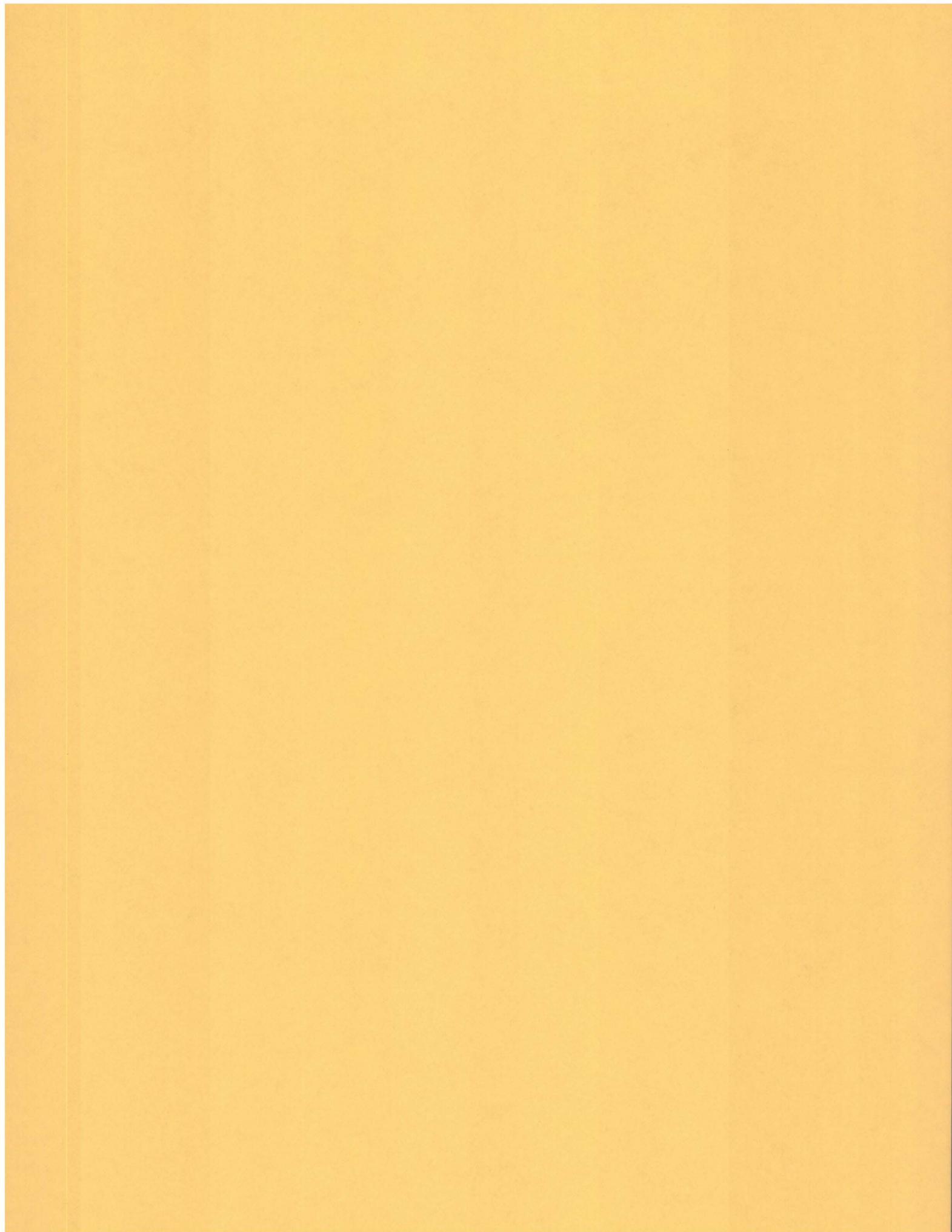
Dr. Alice Clark, Secretary-Treasurer  
North Dakota State Board of Psychologist  
Examiners  
Box 57  
University of North Dakota  
Grand Forks, North Dakota 58201

Ruth Smith, Secretary  
University of North Dakota  
Psychology Department  
University Station - Box 7187  
Grand Forks, North Dakota 58202

History: Amended effective March 1, 1985.  
General Authority: NDCC 43-32-08  
Law Implemented: NDCC 43-32-30







**TITLE 69**  
**Public Service Commission**



APRIL 1985

STAFF COMMENT: A new subsection 7 to section 69-05.2-01-02 was created and subsequent subsections were incremented.

7. "Blaster" means a person directly responsible for the use of explosives in surface coal mining operations who is certified under chapter 69-05.2-31.

**69-05.2-17-01. Performance standards - Use of explosives - General requirements.**

1. Each operator shall comply with all applicable local and state laws in the use of explosives.
2. Blasts that use more than five pounds [2.27 kilograms] of explosive or blasting agent shall be conducted according to the schedule required by section 69-05.2-17-03.
3. All ~~All~~ No later than twelve months after the effective date of chapter 69-05.2-31, all blasting operations must be conducted under the direction of a certified blaster. Before that time, all blasting operations shall be conducted by experienced, trained, and competent persons who understand the hazards involved and are currently authorized by the commission to conduct those operations. Each person responsible for blasting operations shall possess a valid certification as required by North Dakota Century Code section 38-14.1-24.
4. Certificates of blaster certification must be carried by blasters or must be on file at the mine office during blasting operations.

5. A blaster and at least one other person shall be present at the firing of a blast.

6. Persons responsible for blasting operations at a blasting site shall be familiar with the blasting plan and site-specific performance standards.

**History:** Effective August 1, 1980; amended effective April 1, 1985.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-24

STAFF COMMENT: Chapter 69-05.2-31 contains all new material but is not underscored so as to improve readability.

### CHAPTER 69-05.2-31 TRAINING, EXAMINATION, AND CERTIFICATION OF BLASTERS

#### Section

69-05.2-31-01	Training of Blasters
69-05.2-31-02	Examination of Blasters
69-05.2-31-03	Certification of Blasters
69-05.2-31-04	Training, examination, and certification of Blasters - Enforcement

#### 69-05.2-31-01. Training.

1. Persons seeking to become certified as blasters shall receive training including, but not limited to, the technical aspects of blasting operations and state and federal laws governing the storage, transportation, and use of explosives. Course work must provide training in and discuss practical applications of:

a. Explosives, including:

- (1) Selection of the type of explosives to be used.
- (2) Determination of the properties of explosives which will produce desired results at an acceptable level of risk.
- (3) Handling, transportation, and storage.

b. Blast designs, including:

- (1) Geological and topographic considerations.
- (2) Design of a blast hole, with critical dimensions.

- (3) Pattern design, field layout, and timing of blast holes.
    - (4) Field applications.
  - c. Loading blastholes, including priming and boosting.
  - d. Initiation systems and blasting machines.
  - e. Blasting vibrations, airblast, and flyrock, including:
    - (1) Monitoring techniques.
    - (2) Methods to control adverse effects.
  - f. Secondary blasting applications.
  - g. Current state and federal laws and rules applicable to the use of explosives.
  - h. Blast records.
  - i. Schedules.
  - j. Preblasting surveys, including:
    - (1) Availability.
    - (2) Coverage.
    - (3) Use of in-blast design.
  - k. Blast-plan requirements.
  - l. Certification and training.
  - m. Signs, warning signals, and site control.
  - n. Unpredictable hazards, including:
    - (1) Lightning.
    - (2) Stray currents.
    - (3) Radio waves.
    - (4) Misfires.
- 2. Persons who are not certified and who are assigned to a blasting crew or assist in the use of explosives shall receive direction and on-the-job training from a blaster.

3. Training courses must be given by competent, experienced persons at a frequency not to exceed one every three months. Courses developed and taught by coal mining industry personnel may be approved by the commission for the training of persons seeking to become certified blasters.

**History:** Effective April 1, 1985.  
**General Authority:** NDCC 38-14.1-03  
**Law Implemented:** NDCC 38-14.1-24

**69-05.2-31-02. Examination of blasters.** The commission shall ensure that candidates for blaster certification are examined by reviewing and verifying:

1. The competence of persons directly responsible for the use of explosives in surface coal mining operations through a written examination in technical aspects of blasting and state and federal laws and rules governing the storage, use, and transportation of explosives including, at a minimum, the topics set forth in subsection 1 of section 69-05.2-31-01; and
2. The practical field experience of the candidates as necessary to qualify a person to accept the responsibility for blasting operations in surface coal mining operations. Such experience must demonstrate that the candidate possesses practical knowledge of blasting techniques, understands the hazards involved in the use of explosives, and otherwise has exhibited a pattern of conduct consistent with the acceptance of responsibility for blasting operations.

**History:** Effective April 1, 1985.  
**General Authority:** NDCC 38-14.1-03  
**Law Implemented:** NDCC 38-14.1-24

**69-05.2-31-03. Certification of blasters.**

1. Candidates for blaster certification examined and found satisfactory must be certified for a period of three years.
2. Recertification is authorized following either reexamination or a demonstration of satisfactory participation in a blaster-related refresher course during the term of the certification, except that a candidate whose certificate has been suspended or revoked may only be recertified following reexamination.
3. No blaster may be recertified two consecutive times unless, upon the second application, the applicant successfully passes the examination required in section 69-05.2-31-02.

4. Certified blasters shall take every reasonable precaution to protect their certificates from loss, theft, or unauthorized duplication. Any such occurrence must be reported immediately to the commission.
5. The conditions for maintaining certification include:
  - a. Presentation of the blaster's certificate to the commission or its authorized representative upon request.
  - b. Blaster's certificates may not be assigned or transferred.
  - c. Blasters may not delegate their responsibility to any individual who is not a certified blaster.

**History:** Effective April 1, 1985.  
**General Authority:** NDCC 38-14.1-03  
**Law Implemented:** NDCC 38-14.1-24

**69-05.2-31-04. Training, examination, and certification of blasters - Enforcement.**

1. The commission may, and upon a finding of willful misconduct, shall, suspend or revoke the certification of a blaster during the term of the certification or take any other necessary action for any of the following reasons:
  - a. Noncompliance with any order of the commission.
  - b. Unlawful use in the work place of, or current addiction to, alcohol, narcotics, or other dangerous drugs.
  - c. Violation of any provision of the state or federal explosives laws or rules.
  - d. Providing false information or a misrepresentation to obtain certification.
2. Notice and opportunity for hearing must be given prior to the suspension or revocation unless it is not practicable, in which case notice and hearing must be provided as soon as practicable after the suspension, revocation, or other adverse action.
3. Upon notice of a revocation, the blaster shall immediately surrender the revoked certificate to the commission.

**History:** Effective April 1, 1985.  
**General Authority:** NDCC 38-14.1-03  
**Law Implemented:** NDCC 38-14.1-24

69-09-01-17. Deposits and guarantees.

1. Each gas utility may require each applicant for service to make a deposit not to exceed one and one-half times the estimated amount of one month's average bill. A receipt showing the amount of the deposit, the date the deposit was made, and the depositor's name shall be issued to each depositor. Each utility shall keep a deposit record showing the same information as shown on the depositor's receipt and shall provide a method of repayment in case the depositor's receipt has become lost or destroyed.
2. The utility shall ~~each year~~ pay interest on such deposit at ~~the rate of six percent per annum~~ the rate paid by the Bank of North Dakota on a six-month certificate of deposit. Such rate will be determined as of the first business day of each year, on a six-month certificate of deposit with the smallest deposit required. The interest may be paid to the ~~user of the gas depositor,~~ or may be deducted from the ~~user's depositor's indebtedness to the utility for gas furnished, the deduction or service.~~ The payment to or deduction for interest must be made during the month of December of each calendar year or whenever a deposit is refunded or service discontinued.
3. The utility may accept in lieu of a cash deposit a contract signed by a guarantor, satisfactory to the utility, whereby the payment of a specified sum not to exceed the required cash deposit is guaranteed. The term of such contract shall be ~~indeterminative~~ indeterminate, but it shall automatically terminate when the customer gives notice of service discontinuance to the utility or a change in location covered by the guarantee agreement or thirty days after written request for termination is made to the utility by the guarantor. However, no agreement shall be terminated without the customer having made satisfactory settlement for any balance which the customer owes the utility. Upon termination of a guarantee contract a new contract or a cash deposit may be required by the utility.
4. ~~A utility may render at its option service to any customer without requiring a deposit or a guarantee contract and it may at any time refund a deposit plus accumulated interest or terminate a guarantee agreement.~~

History: Amended effective April 1, 1985.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-02-04. Deposits.

1. A An electric utility may require an applicant for service to make a deposit sufficient to cover the estimated charge for furnishing service to the customer for a sixty-day period. A receipt showing the amount of the deposit, the date the deposit was made, and the depositor's name shall be issued to the depositor. Each utility shall keep a deposit record showing the same information as shown on the depositor's receipt, and shall provide a method of repayment in case the depositor's receipt has become lost or destroyed.
  
2. The utility shall each year pay interest on such deposit at the rate of six percent per annum paid by the Bank of North Dakota on a six-month certificate of deposit as of the first business day of each year. Such rate will be determined as of the first business day of each year, on a six-month certificate of deposit with the smallest deposit required. The interest may be paid to the depositor, or may be deducted from the depositor's indebtedness to the utility for electric service. The payment or deduction for interest shall must be made during the month of December of each calendar year, or whenever a deposit is refunded or service discontinued.
  
- ~~2-~~ A utility may, at its option, render service to a customer without requiring a deposit, and it may at any time refund a deposit plus accrued interest.
  
3. The utility may accept in lieu of a cash deposit a contract signed by a guarantor, satisfactory to the utility, whereby the payment of a specified sum not to exceed the required cash deposit is guaranteed. The term of such contract must be indeterminate, but it must automatically terminate when the customer gives notice of service discontinuance to the utility or a change in location covered by the guarantee agreement or thirty days after written request for termination is made to the utility by the guarantor. However, no agreement may be terminated without the customer having made satisfactory settlement for any balance which the customer owes the utility. Upon termination of a guarantee contract a new contract or a cash deposit may be required by the utility.

History: Amended effective April 1, 1985.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-05-02. Discontinuance of telephone service.

1. A utility may disconnect service if the customer is delinquent in payment for services rendered. A local exchange telephone company may disconnect local exchange telephone service if the customer is delinquent in toll service provided by the local exchange company. A local exchange telephone company may also disconnect local exchange service if the toll service is

delinquent and cannot be disconnected by the toll provider independently of local exchange service or the local exchange company is the billing agent for the toll service provider. However, no utility may discontinue service to a customer for failure to pay for such service until the utility shall first have given the customer notice of its intention to discontinue such service on account of delinquency. The notice must:

- a. Be sent by first-class mail addressed to the billing name and address of the affected amount.
- b. Show the amount of the delinquency.
- c. Advise the customer of the customer's rights and remedies, including but not limited to the customer's right to work out a satisfactory deferred installment agreement for delinquent accounts.
- d. Inform the customer that service will be discontinued if the delinquent account is not paid within ten calendar days from the date of mailing or personal delivery of the notice, or if a satisfactory installment agreement is not made with the utility for payment of the delinquent bill.

If the customer elects to enter into a deferred installment agreement for delinquent accounts, service may not be terminated; however, the utility may discontinue service without further notice if the customer fails to pay the delinquent account on or before the date specified in the notice, or in accordance with the deferred installment agreement. The customer shall have the privilege of paying the delinquent account at any time prior to the actual disconnection of service.

2. Whenever service has been disconnected for nonpayment of a bill, before reconnection is made the customer shall pay the reconnection fee established in the utility's rate schedules; make a deposit pursuant to section 69-09-05-03 if all or a part of the previous deposit was used in settlement of the delinquent bill; and make a satisfactory settlement for the delinquent bill and for service rendered to the date service was disconnected.
3. If the customer disputes the amount of a bill for service, the customer may, to prevent disconnection for nonpayment, pay the disputed bill under protest to the utility. Alternatively, the customer may request a formal hearing pursuant to section 69-02-02-02 in which case the utility may not disconnect service for nonpayment of the disputed bill until a final decision has been issued by the commission. The utility shall immediately give the commission notice of the dispute and the commission may investigate the dispute. The utility shall

refund to the customer any part of such payment made under protest found by the commission to be excessive.

4. A utility may not disconnect service to a customer for failure of the customer: to pay for merchandise purchased from the utility; to pay for a different class of service furnished by the utility; to pay for service rendered to a previous occupant of the premises; or to pay the bill of another customer as guarantor thereof.
5. A utility may discontinue service to a customer for failure to comply with regulations of the utility on file with the commission pertaining to installation and use of equipment, or for use of equipment which interferes with or adversely affects the service to other customers, provided the customer has first been notified and afforded reasonable opportunity to change or disconnect such equipment.

**History:** Effective April 1, 1985.

**General Authority:** NDCC 49-02-11

**Law Implemented:** NDCC 49-02-11

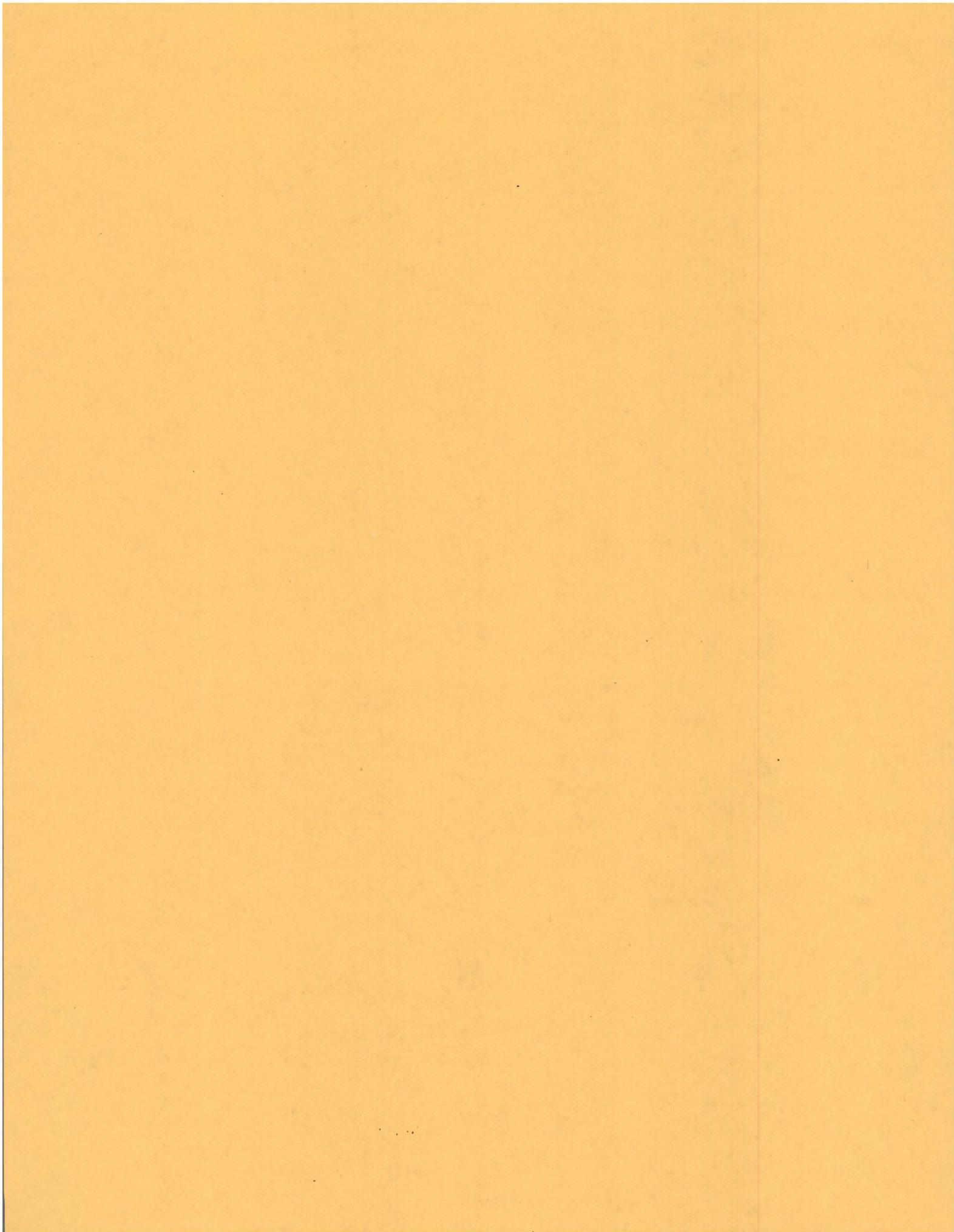
69-09-05-03. Deposits and guarantees. Each telephone utility subject to the public service commission's ratemaking jurisdiction may require each applicant for service to make a deposit not to exceed two times the estimated amount of one month's average bill. The utility shall each year pay interest on such deposit at the rate paid by the Bank of North Dakota on a six-month certificate of deposit. Such rate will be determined as of the first business day of each year on a six-month certificate of deposit with the smallest deposit required. The interest may be paid to the depositor or may be deducted from the depositor's indebtedness to the utility for telephone service. The payment or deduction for interest must be made during each calendar year, or whenever a deposit is refunded or service discontinued. The utility may accept in lieu of a cash deposit a contract signed by a guarantor, satisfactory to the utility, whereby the payment of a specified sum not to exceed the required cash deposit is guaranteed. The term of such contract must be indeterminate, but it must automatically terminate when the customer gives notice of service discontinuance to the utility or a change in location covered by the guarantee agreement or thirty days after written request for termination is made to the utility by the guarantor. However, no agreement may be terminated without the customer having made satisfactory settlement for any balance which the customer owes the utility. Upon termination of a guarantee contract, a new contract or a cash deposit may be required by the utility.

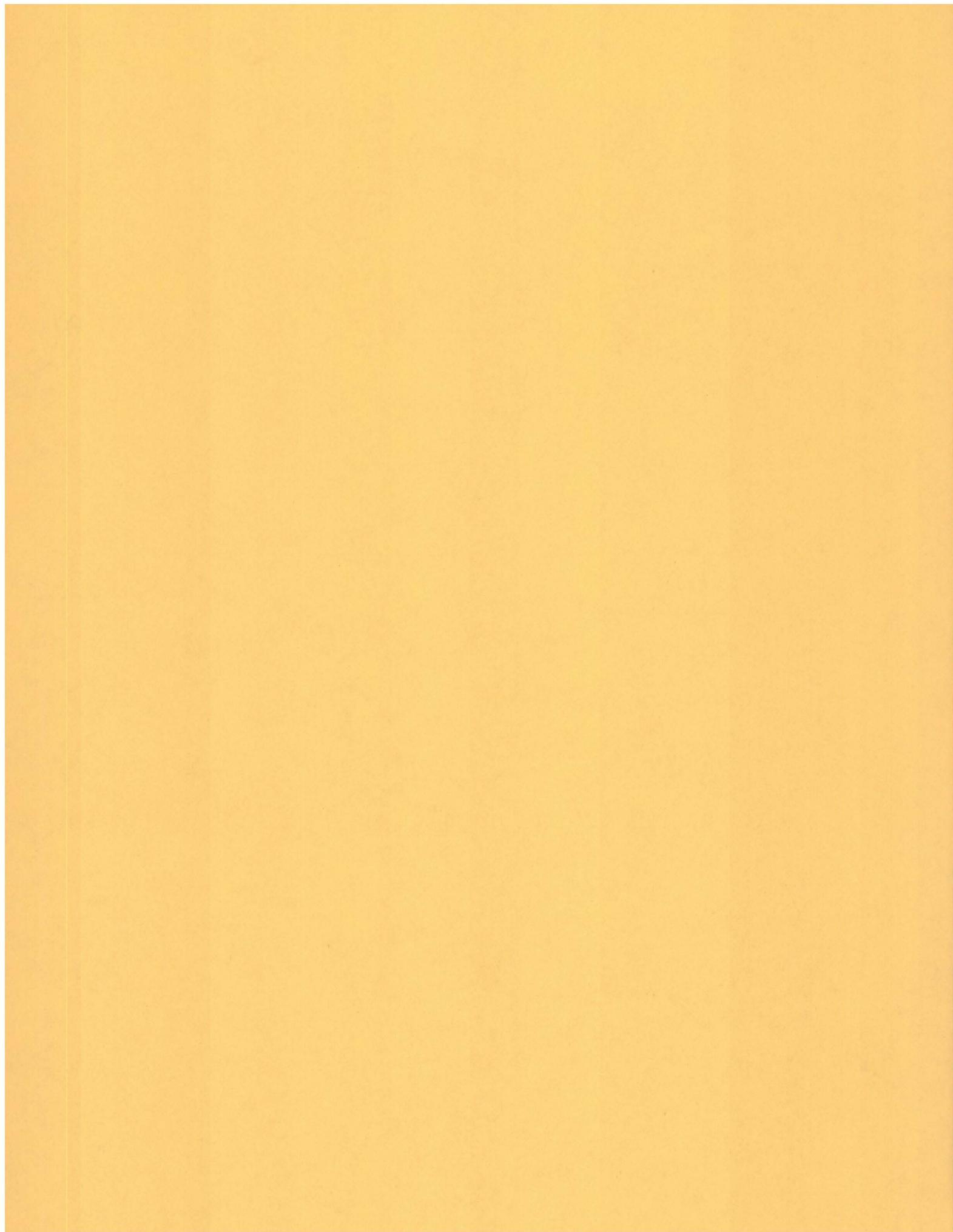
**History:** Effective April 1, 1985.

**General Authority:** NDCC 49-02-11

**Law Implemented:** NDCC 49-02-11, 49-21







**TITLE 74**  
**Seed Commission**



JUNE 1985

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. United States department of agriculture standards 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. Potatoes of one variety meeting the requirements of this chapter which are fairly well shaped (~~for long varieties, the term "dry land type" or "except for shape" may be permitted when so marked~~),\* not more than seriously shriveled, or flabby,\*\* free from freezing, blackheart, soft rot or wet breakdown, late blight, or bacterial ring rot, free from damage caused by dirt or other foreign matter, sprouting, mechanical or other means, and free from serious damage caused by hollow heart or internal discoloration.

Unless otherwise specified, size requirements shall be as follows: for round or intermediate shaped varieties, one and seven-eighths inches [~~48~~ 47.6 millimeters] in diameter, but not to exceed more than twelve ounces [~~366~~ 340.20 grams] in weight. For long varieties, one and three-quarters inches [~~45~~ 44.5 millimeters] in diameter, but not to exceed more than fourteen ounces [~~392~~ 396.90 grams] in weight. For all varieties, size b shall be from one and one-half inches [~~38~~ 38.1 millimeters] to not more than two and one-quarter inches [~~57~~ 57.1 millimeters] in diameter.

Tolerances are as follows:

a. For defects:

- (1) Ten percent for potatoes seriously damaged by hollow heart.
- (2) Ten percent for potatoes damaged by dirt.\*\*\*
- (3) Five percent for potatoes seriously damaged by internal discoloration other than hollow heart.
- (4) Ten percent for potatoes with sprouts over one inch [2.54 centimeters] in length.
- (5) Five percent for potatoes damaged by ingrown sprouts.
- (6) Six percent for potatoes which fail to meet the remaining requirements of the grade; provided, that included in this amount 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
<del>Damage</del> <u>Damage</u> by pitted or surface scab, or both	2.00
Damage by dry rot	2.00
Frozen, soft rot, or wet breakdown	0.50
Varietal mixture	0.50

b. For off-size:

- (1) Undersize. Five percent for potatoes in any lot which fail to meet the required or specified minimum size.
- (2) Oversize. Ten percent for potatoes in any lot which fail to meet the required or specified maximum size.

2. **Second grade yellow tag (or such other color as determined by the state seed department).** Potatoes that meet the requirements for blue tag grade except for defects caused by hollow heart and, internal discoloration, firmness, sprouts, and sunken, flattened or depressed areas with or without underlying flesh discolored, and are not seriously damaged by dirt and for increase in maximum size, and for increased tolerance for defects listed below:

- a. Twenty percent for potatoes seriously damaged by hollow heart.

- b. Not more than ten percent of the potatoes seriously damaged by wireworm.
  - c. ~~Twenty percent for potatoes with sprouts over one inch [2.54 centimeters] in length.~~
  - d. ~~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.~~
  - d. Firmness and sprouts are not factors.
  - e. Sunken, flattened or depressed areas with or without underlying flesh discolored is not a factor.
  - f. Internal discoloration is not a factor.
  - e- g. Size. For round varieties the maximum size shall be fourteen ounces [~~392~~ 396.90 grams]. For long varieties, the maximum size shall be sixteen ounces [~~448~~ 453.60 grams].
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, and wireworm, and sunken, flattened or depressed areas with or without underlying flesh discolored. Not more than two percent shall be damaged by dry rot. Unless otherwise specified, the maximum size shall be fourteen ounces [~~392~~ 396.60 grams] and one and one-half inches [~~38~~ 38.1 millimeters] minimum (~~United States number two requirements~~). State seed department grade inspection on white tag lots is not compulsory, but may be obtained upon request.
4. **Virus tested seed stocks.** Seed stock tested serologically for potato virus x, potato virus s, or potato virus m, may be so indicated on any of the tags if within the specified tolerances during the current growing season.

Blue and yellow tag shipments must be inspected and meet respective grade requirements.

Foundation seed classification may be used in connection with any of the certified seed grades providing the lot meets foundation standards. For tolerances of ten percent or more, individual samples shall have not more than one and one-half times the tolerance permitted

in any sample, and for tolerances of less than ten percent, not more than double the tolerance shall be permitted in any sample provided the average for the lot is within the tolerance specified. Soft rot or wet breakdown or other deterioration developing in transit on potatoes otherwise up to grade shall be considered as affecting condition and not grade.

**History:** Effective December 1, 1981; amended effective June 1, 1985.

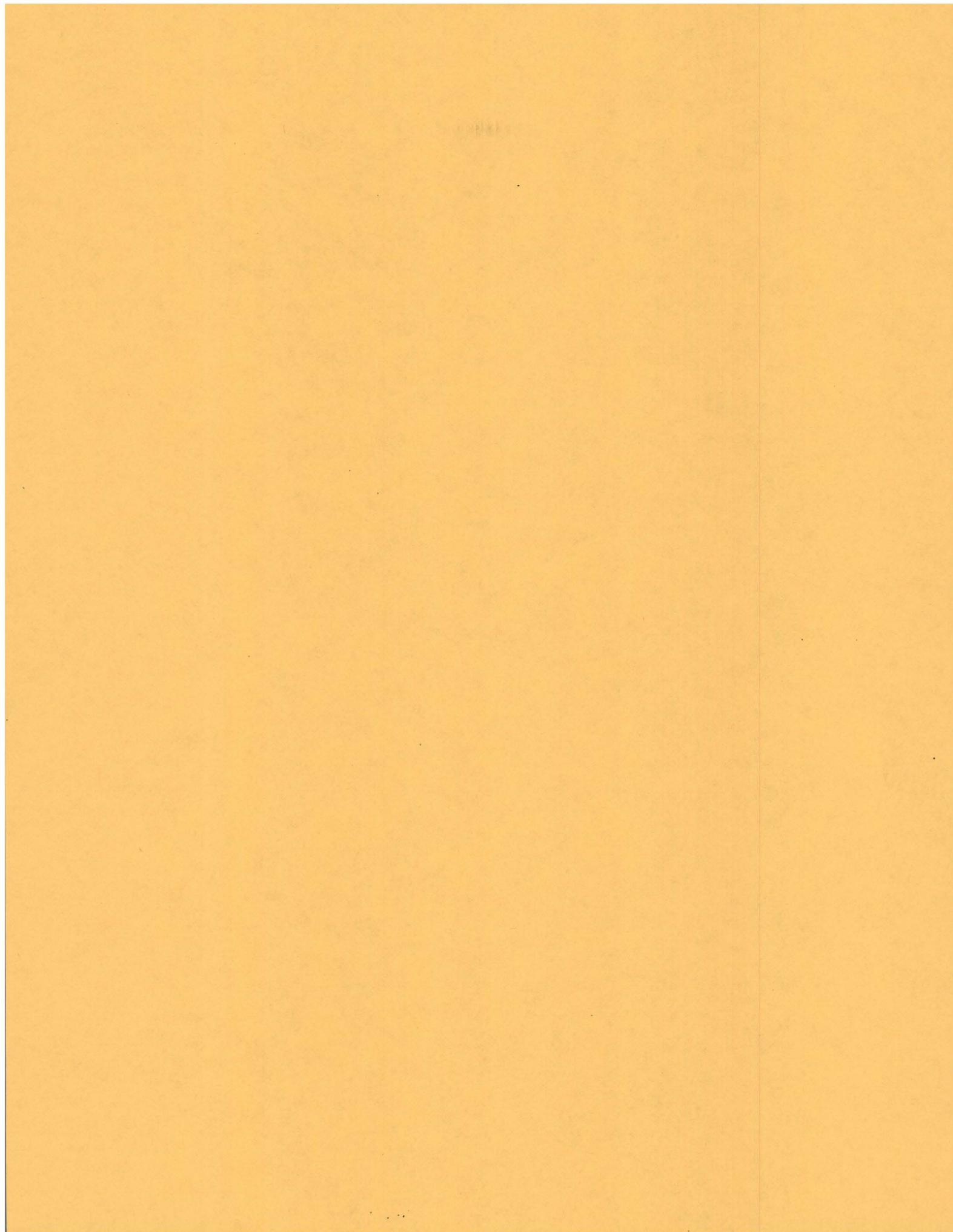
**General Authority:** NDCC 4-10-03

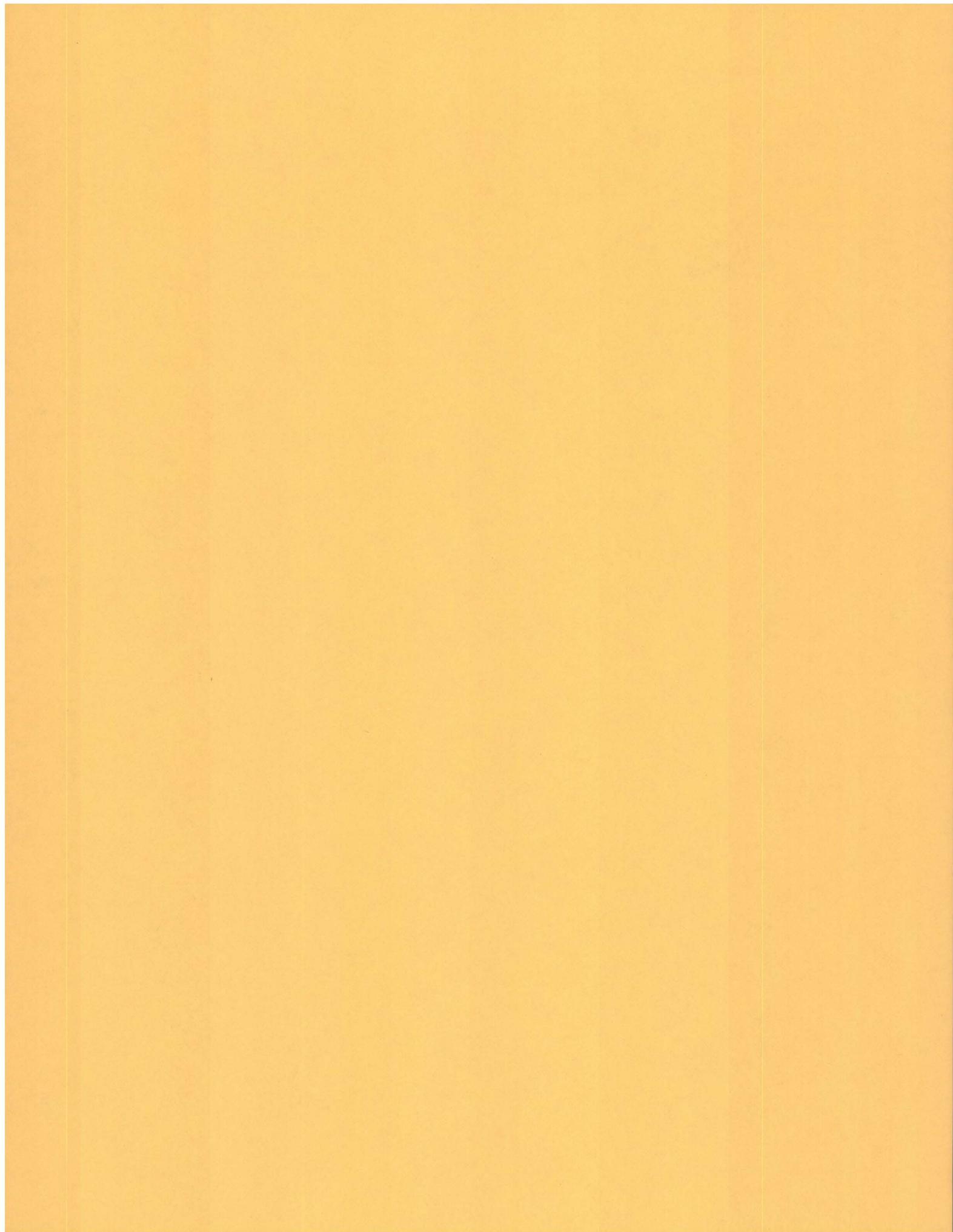
**Law Implemented:** NDCC 4-10-04

\* For long varieties, the term "dry land type" or "except for shape" may be permitted when so marked.

\*\* Refer to USDA visual aid, POT-L 1 Jan 81.

\*\*\*Refer to definition of damage by dirt in section 74-04-01-01.





**TITLE 75**  
**Department of Human Services**



DECEMBER 1984

AGENCY SYNOPSIS: Section 75-02-01-06.1 is intended to allow persons administering the AFDC program to advise the district courts of the "reasonable value of physical and custodial care or support which has been furnished to the child by . . . [the] county social service board" when the court is considering cases calling for the application of Section 14-08.1-01 of the North Dakota Century Code.

75-02-01-06.1. Responsible relatives.

1. The legally responsible relatives of a dependent child under the aid to families with dependent children program are the child's natural or adoptive parents.
2. The reasonable value of the physical and custodial care or support which has been furnished to the child or children of a legally responsible relative (obligor) by the aid to families with dependent children program is, for each month such child or children are eligible, the amount of the aid to families with dependent children grant received multiplied by the number of children of the obligor receiving benefits and divided by the total number of children in the household receiving benefits.
3. Stepparents cannot be legally required to support their stepchildren but when they are able and willing to do so should be encouraged to support to the extent of their ability.
4. In cases where a stepparent is eligible to receive aid to families with dependent children benefits, the reasonable value of the physical and custodial care or support which has been furnished to the child or children of a legally responsible relative (obligor) by the aid to families with

dependent children program is, for each month such child or children are eligible, the amount of the aid to families with dependent children grant received multiplied by the number of children of the obligor receiving benefits and divided by one plus the total number of children in the household receiving benefits.

**History:** Effective December 1, 1984.

**General Authority:** NDCC 50-09-02

**Law Implemented:** NDCC 50-09-02, 50-09-10; 45 CFR 233.90

AGENCY SYNOPSIS: Subsection 1 of section 75-02-06-03 is amended to describe the reason depreciation is recognized as a cost.

Subsection 5 of section 75-02-06-03 establishes, as an alternative limit to the basis for depreciation, for general purposes, the allowable acquisition cost of assets to the first owner on or after July 18, 1984. In the case of facilities purchased as an ongoing operation, subsection 5 allows as an alternative maximum basis, with respect to sales made on or after July 18, 1984, the seller's cost, less accumulated depreciation, plus recapture depreciation. Subsection 5 also limits the application of appraisal guidelines, in certain circumstances, to facilities purchased prior to July 18, 1984.

Subsection 6 of section 75-02-06-03 is a new subsection which authorizes the recapture of depreciation claimed, and describes how that recapture is to be accomplished.

#### **75-02-06-03. Depreciation.**

1. The principles of reimbursement for provider costs require that payment for services should include depreciation on all depreciable type assets that are used to provide necessary services to medical assistance recipients. This includes assets that may have been fully (or partially) depreciated on the books of the provider, but are in use at the time the provider enters the program. The useful lives of such assets are considered not to have ended and depreciation calculated on the revised extended useful life is allowable. Likewise, a depreciation allowance is permitted on assets that are used in a normal standby or emergency capacity. Depreciation is recognized as an allocation of the cost of an asset over its estimated useful life. If any depreciated asset is sold or disposed of for an amount in excess of its undepreciated value, the excess represents an overstatement of the cost of the asset to the facility.
2. Depreciation methods.

- a. The straight-line method of depreciation must be used. All accelerated methods of depreciation are unacceptable. The method and procedure for computing depreciation must be applied on a basis consistent from year to year and detailed schedules of individual assets shall be maintained. If the books of account reflect depreciation different than that submitted on the cost report, a reconciliation must be prepared by the facility.
- b. The depreciable life of an asset is its expected useful life to the provider; not necessarily the inherent useful or physical life. If a difference is considered, a salvage value should be established prior to the application of the depreciation rate. The useful life is determined in the light of the provider's experience and the general nature of the asset and other pertinent data. In projecting a useful life, providers are to follow the useful life guidelines published by the American hospital association. A different useful life may be used; however, when the useful life selected differs significantly from that established by the guidelines, the deviation must be based on convincing reasons supported by adequate documentation, generally describing the realization of some unexpected event. The depreciation options made available for income tax purposes, such as those offered under the asset depreciation range system, may not be used for purposes of reimbursement. A composite useful life may be used for a class or group of assets.

### 3. Acquisitions.

- a. If a depreciable asset has, at the time of its acquisition, an estimated useful life of at least two years and historical cost of at least five hundred dollars, its cost must be capitalized and depreciated over the estimated useful life of the asset. Cost during the construction of an asset, such as architectural, consulting and legal fees, interest, etc., should be capitalized as a part of the cost of the asset.
- b. Depreciable assets acquired by donation may be depreciated provided the asset is valued at the fair market value and the basis for determining such value is reported and determined to be reasonable.
- c. Major repair costs in excess of one thousand dollars on equipment or buildings must be capitalized.

4. Proper records will provide accountability for the fixed assets and also provide adequate means by which depreciation can be computed and established as an allowable patient-related cost. Tagging of major equipment items is not

mandatory, but alternate records must exist to satisfy audit verification of the existence and location of the assets.

5. Basis for depreciation.

a. Depreciable costs may not exceed the lower of:

- (1) Current reproduction costs less straight-line depreciation over the life of the asset to the time of purchase;
- (2) Fair market value at time of purchase; ~~or~~
- (3) In the case of a trade-in, the sum of the book value of the trade-in plus the cash paid; or
- (4) In the case of assets which have been previously owned by a hospital, or facility, and for which such hospital or facility has received payment, for services provided to recipients of benefits under title XVIII (Medicare) or XIX (Medicaid) of the Social Security Act, at a rate which reflects depreciation expense concerning those assets, the allowable acquisition cost of such assets to the first owner on or after July 18, 1984.

b. For depreciation purposes, donated assets may be recorded and depreciated based on their fair market value. In the case where the provider's records do not contain the fair market value of the donated asset, as of the date of the donation, an appraisal must be made. The appraisal will be made by a recognized appraisal expert and will be accepted for depreciation and return on investment purposes. The facility may elect to forego depreciation on donated assets thereby negating the need for a fair market value determination.

c. Purchase of a facility and its depreciable assets as an ongoing operation.

- (1) Determination of the cost basis of a facility and its depreciable assets of an ongoing operation depends on whether or not the transaction is a bona fide sale. Should the issue arise, the purchaser has the burden of proving that the transaction was a bona fide sale. Purchases where the buyer and seller are related organizations are not bona fide. The cost basis of a facility and its depreciable assets acquired as an ongoing operation is limited to the lowest of the following:

- (a) Current reproduction cost of the assets, depreciated on a straight-line basis over its useful life to the time of the sale;
  - (b) Price paid by the purchaser (actual cost);
  - (c) Fair market value of the facility or asset at the time of the sale; ~~or~~
  - (d) In a sale not bona fide, the seller's cost basis, less accumulated depreciation; or
  - (e) With respect to sales made on or after July 18, 1984, the seller's cost basis less accumulated depreciation, plus recaptured depreciation.
- (2) The seller shall always use the sale price in computing the gain or loss on the disposition of assets.
- (3) Appraisal guidelines. To properly provide for costs or valuations of fixed assets, an appraisal will be required if the provider:
- (a) Has no historical cost records or has incomplete records of depreciable fixed assets; or
  - (b) ~~Purchases~~ Prior to July 18, 1984, purchases a facility without designation of purchase price for the classification of assets acquired. Prior to having an appraisal made, the provider must inform the state that it intends to have the appraisal made. At this time the provider shall also set forth the reasons for the appraisal and will make available to the department the agreement between the provider and the appraiser. The appraisal agreement should contain the appraisal date, the estimated date of completion, the scope of the appraisal, and the statement that the appraisal will conform to the current medicare regulation on principles of reimbursement for provider cost.
  - (c) Limitation. ~~The~~ With respect to purchases occurring before July 18, 1984, the department will recognize appraised value not to exceed cost basis for tax purposes. In all cases of major change, proper authority for expenditure shall be obtained.

6. Recapture of depreciation.

- a. At any time that the operators of a facility sell an asset, or otherwise remove that asset from service in or to the facility, any depreciation costs asserted after June 1, 1984, with respect to that asset, are subject to recapture to the extent that the sale or disposal price exceeds the undepreciated value. If the department determines that a sale or disposal was made to a related party, or if a facility terminates participation as a provider of services in the medicaid program, any depreciation costs asserted after June 1, 1984, with respect to that asset or facility, are subject to recapture to the extent that the fair market value of the asset or facility exceeds the depreciated value.
- b. The seller and the purchaser may, by agreement, determine which shall pay the recaptured depreciation. If the parties to the sale do not inform the department of their agreement, the department will offset the amount of depreciation to be recaptured against any amounts owed, or to be owed, by the department to the seller and buyer. The department will first exercise the offset against the seller, and shall only exercise the offset against the buyer to the extent that the seller has failed to repay the amount of the recaptured depreciation.

**History:** Effective September 1, 1980; amended effective December 1, 1983; December 1, 1984.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(32); 42 CFR Part 447, Subpart C

**AGENCY SYNOPSIS:** Subsection 1 of section 75-02-06-04 establishes an additional requirement which limits the amount of recognized interest cost when representative of borrowing for the purpose of making capital expenditures, in certain circumstances, on or after July 18, 1984.

**75-02-06-04. Interest expense.**

1. General.

- a. To be allowable under the program, interest must be:
- (1) Supported by evidence of an agreement that funds were borrowed and that payment of interest and repayment of the funds are required;
  - (2) Identifiable in the provider's accounting records;

- (3) Related to the reporting period in which the costs are incurred;
  - (4) Necessary and proper for the operation, maintenance, or acquisition of the provider's facilities as set forth in HIM-15 paragraphs 202.2 and 202.3; ~~and~~
  - (5) Unrelated to funds borrowed to purchase assets in excess of cost or fair market value; and
  - (6) When representative of borrowing for the purpose of making capital expenditures for assets that were owned by any other hospital or facility on or after July 18, 1984, limited to that amount of interest cost which such hospital or facility may have reported, for medicaid ratesetting purposes, had the asset undergone neither refinancing nor a change of ownership.
- b. In such cases where it was necessary to issue bonds for financing, any bond premium or discount shall be amortized over the life of the bond issue.
2. Interest paid by the provider to partners, stockholders, or related organizations of the provider is not allowable as a cost. Where the owner loans funds to a facility, the funds are considered capital, rather than borrowed funds.
  3. Where the provider has invested funds from gifts or grants which are unrestricted as to use, and these funds are commingled with other funds so that identity is lost, the provider's allowable interest expense is reduced by the amount of investment income earned by the fund. Any investment income in excess of interest expense will not be used to offset other operating expenses. However, if the unrestricted gifts and grants are not commingled with other funds or identity is maintained as in a "pool", the investment income earned by the fund does not reduce allowable interest expense.
  4. Restricted gifts will be treated in a manner consistent with HIM-15, Section 600.
  5. If a facility incurs interest expense because of late payments by patients and charges the patients a service charge or interest for late payments, such income must be offset against interest expense.
  6. Funded depreciation.
    - a. Funding of depreciation is the practice of setting aside cash or other liquid assets, in a fund separate from the general funds of the provider, to be used for replacement of the assets depreciated, or for other capital purposes.

The deposits are, in effect, made from the cash generated by the noncash expense depreciation.

- b. Deposits to the funded depreciation account are generally in an amount equal to the depreciation expense charged to costs each year. In order to qualify for all provisions of funded depreciation, the minimum deposits, exclusive of interest income to the account, must be fifty percent of the depreciation expensed that year. Deposits in excess of accumulated depreciation are allowable; however, the interest income generated by the "extra" deposits will be considered as a reduction of allowable interest expense. This provision is recommended as a means of conserving funds for the replacement of depreciable assets and purchase of capital assets. It is expected that the funds will be invested to earn revenues. The revenues generated by this investment will not be considered as a reduction of allowable interest expense, provided the interest remains in the funded depreciation account.
- c. Monthly or annual deposits representing depreciation must be in the funded depreciation account for six months or more to be considered as valid funding transactions. Deposits of less than six months are not eligible for the benefits of a funded depreciation account. However, if deposits invested before the six-month period remain in the account after the six-month period, the investment income for the entire period will not reduce the allowable interest expensed in that period. Total funded depreciation in excess of accumulated depreciation on patient-related assets will be considered as ordinary investments and the income therefrom will be used to offset interest expense.
- d. Withdrawals for the acquisition of capital assets, the payment of mortgage principal on these assets and for other capital expenditures are on a first-in, first-out basis. Withdrawals for general operating purposes or for loans to the general fund are made on a last-in, first-out basis. Such loans must meet the "necessary and proper" requirements for need of the loan. Interest paid from the general fund to the funded depreciation account on the loan is an allowable cost, except as mentioned in subdivision c, where the deposit has not been in the fund for the six-month period, the interest paid on the loan is not an allowable cost. Loans made to the general fund may not be made for a period or term which is longer than three years. Documentation on prevailing interest rates at the time of the loan shall be maintained on file. The necessary and proper requirements set forth in HIM-15 paragraphs 202.2 and 202.3 will apply to all loans made.

- e. The provider may use the funds in the funded depreciation account for purposes other than the improvement, replacement, or expansion of facilities or equipment related to patient care. However, allowable interest expenses for the period of withdrawal will be reduced to adjust for offsets not made in prior years for earnings applicable to such funds. For example, if the provider withdraws funds equal to two years' deposits, using the last-in, first-out method, any earnings applicable to these deposits during the two-year period are applied as a reduction of interest expense incurred during the period of withdrawal. When funded depreciation accounts are used for capital and noncapital purchases, the total interest income will be offset.
- f. When money is borrowed to fund depreciation, interest paid by the provider on the money borrowed for this purpose is not an allowable cost.
- g. Funded depreciation is to be used both for the replacement of existing assets and for expansion. These funds must be used for all capital outlays in excess of five hundred dollars except with regard to those assets purchased exclusively with donated funds, and cannot be restricted for a specific or future purpose. For example, restricting the account to funding depreciation for "building" would negate the intent of funding depreciation as defined by this section.
- h. When capital purchases are made with borrowed funds rather than funds from the funded depreciation account, the entire interest income for funded depreciation will be offset up to the entire interest expense.

**History:** Effective September 1, 1980; amended effective December 1, 1983; December 1, 1984.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(32); 42 CFR Part 447, Subpart C

**AGENCY SYNOPSIS:** Section 75-02-06-06 establishes a limit on the return on investment allowed to facilities operated for profit.

**75-02-06-06. Return on investment.** For a return on investment for proprietary homes, an allowance of eight and one-half percent of average net investment of fixed assets relating to patient care will be established. The "net investment of fixed assets relating to patient care" means the cost, less accumulated depreciation and the balance of notes and mortgages payable, pertaining to the fixed assets relating to

patient care. The allowance for the return on an investment will be made on the cost report. The allowance ~~shall~~ may not exceed the amount allowable under section 1200 of HIM-15. The allowance must exclude that portion of the current owner's net investment in fixed assets in existence and purchased from any other hospital or facility, on or after July 18, 1984, which exceed the net investment (as adjusted for depreciation recapture, if any), in those assets, of the first owner on or after July 18, 1984.

**History:** Effective September 1, 1980; amended effective December 1, 1983; December 1, 1984.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(32)

**AGENCY SYNOPSIS:** Subsection 2 of section 75-02-06-12 renders unallowable, for the purposes of ratesetting, costs incurred in arranging the sale or purchase of capital assets where the cost of the asset had been previously reported and included in their rate paid to any hospital or long-term care facility.

Subsection 2 also disallows costs which, incurred by a provider through a subcontracting or lease arrangement where the cost is incurred by the subcontractor or lessor, are passed on to the provider, and which would not have been allowed had the provider incurred the cost directly.

#### **75-02-06-12. Adjustment to cost and cost limitation.**

##### **1. Income to offset cost.**

- a. Several items of income to the home will be considered as offsets against various costs as recorded in the books of the facility. Any income which is received by the home for reimbursements of cost, with the exception of the basic daily rate and income from charges to private pay patients for care items which are included in the title XIX rate, will be offset against costs to the extent it does not exceed costs reported. Any reimbursement not listed below, which may be classified as an offset, must be shown as such on the cost report and costs reduced accordingly. Items of income, whether in cash or in any other form, to offset cost include, but are not limited to, the following:

- (1) "Activities income." Income from the activities department and the gift shop.
- (2) "Confections income." All income from the sale of pop, candy, or other items.

- (3) "Dietary income." Amounts received from or on behalf of employees, guests, or other nonpatients for lunches, meals, or snacks.
- (4) "Drugs or supplies income." Amounts received from employees, doctors, or others not admitted as patients.
- (5) "Insurance recoveries income." Any amount received from insurance for a loss incurred shall be offset against costs reported in the current year if the facility did not adjust the basis for depreciable assets.
- (6) "Interest or investment income." Interest received on investment except amounts allowable as funded depreciation or from earnings on restricted gifts or donations.
- (7) "Laundry income." All amounts received for services rendered to or on behalf of employees, doctors, or others.
- (8) "Maintenance of personnel." The cost of providing meals and lodging to nursing home personnel living on premises.
- (9) "Nonrelated depreciation expense." All depreciation expense for facility assets which is not related to patient care.
- (10) "Private duty nurse reimbursement." All reimbursement received for the providing of a private duty nurse.
- (11) "Purchase discounts." All discounts received from vendors on purchases included in costs.
- (12) "Rebates and refunds income." Amounts received on expense or cost items must be offset against the appropriate cost.
- (13) "Rentals of nursing home space income." Any revenues received from outside sources for the use of nursing home space and equipment.
- (14) "Telegraph and telephone income." All revenues received from patients, guests, or employees.
- (15) All therapy and other professional services revenue unless services rendered to medical assistance program eligible patients and outpatients are

identified and revenue from those services offset to the related cost.

- b. Payments to a provider by its vendor will be considered as discounts, refunds, or rebates in determining allowable costs under the program even though these payments may be treated as "contributions" or "unrestricted grants" by the provider and the vendor. However, such payments may represent a true donation or grant. Examples include, but are not limited to, when: (1) they are made by a vendor in response to building or other fundraising campaigns in which communitywide contributions are solicited; (2) they are in addition to discounts, refunds, or rebates, which have been customarily allowed under arrangements between the provider and the vendor; (3) the volume or value of purchases is so nominal that no relationship to the contribution can be inferred; (4) the contributor is not engaged in business with the provider or a facility related to the provider.
- c. Where an owner or other official of a provider directly receives from a vendor monetary payments or goods or services for the owner's or official's own personal use as a result of the provider's purchases from the vendor, the value of such payments, goods, or services constitutes a type of refund or rebate and must be applied as a reduction of the provider's costs for goods or services purchased from the vendor.
- d. Where the purchasing function for a provider is performed by a central unit or organization, all discounts, allowances, refunds, and rebates must be credited to the costs of the provider in accordance with the instructions above. These should not be treated as income of the central purchasing function or used to reduce the administrative costs of that function. Such administrative costs are, however, properly allocable to the facilities serviced by the central purchasing function.
- e. Amounts paid by a supplier for the use of space or equipment in a hospital or long-term care facility will ordinarily be found to constitute a form of discount, whether paid as a percentage of charges or as a flat amount per bed or per time period. Payments made by a supplier to a provider in recognition of the fact that the supplier is relieved of the need to collect individual bills from the patients of the provider, sometimes called "accounting fees" or "collection fees", are considered a form of discount, refund, or rebate and must be used to reduce the costs of the goods or services purchased from the supplier.

f. Purchase discounts, allowances, refunds, and rebates are reductions of the cost of whatever was purchased. They are not to be considered a form of income. They must be used to reduce the specific costs to which they apply. If possible, they should accrue to the period to which they apply. If not, they will reduce expenses in the period in which they are received. The reduction to expense for supplies or services must be used to reduce the total cost of the goods or services for all patients without regard to whether the goods or supplies are designated for all patients or a specific group, e.g., medicare or nonmedicare.

- (1) "Purchase discounts" include cash discounts, trade, and quantity discounts. "Cash discount" is for prepaying or paying within a certain time of receipt of invoice. "Trade discount" is a reduction of cost granted certain customers. "Quantity discounts" are reductions of price because of the size of the order.
- (2) Allowances are reductions granted or accepted by the creditor for damage, delay, shortage, imperfection, or other cause, excluding discounts and refunds.
- (3) Refunds are amounts paid back by the vendor generally in recognition of damaged shipments, overpayments, or returned purchases.
- (4) Rebates represent refunds of a part of the cost of goods or services.
- (5) "Other cost-related income" includes amounts generated through the sale of a previously expensed item, e.g., supplies or equipment.

2. Costs not related to patient care are costs which are not appropriate or necessary and proper in developing and maintaining the operation of patient care facilities and activities. Such costs are not allowable in computing reimbursable costs. They include, but are not limited to, the following:

- a. Costs which are unallowable when incurred by a facility are also unallowable for a home office and cannot be allocated to facilities in a chain organization.
- b. Certain corporate costs, such as stockholder servicing costs, organization costs, or reorganization costs are not related to patient care and are not allowable.
- c. Costs incurred in the form of dues or contributions paid to all charitable or civic organizations, in excess of one

hundred fifty dollars per year will be allowed only upon a clear showing that they are patient related.

- d. The full cost of items or services such as telephone, television, and radio which are located in patient accommodations and which are furnished solely for the personal comfort of the patients are not includable in allowable costs.
- e. Fundraising costs, including salaries, advertising, promotional or publicity costs incurred for such a purpose are not includable in allowable costs.
- f. Costs of advertising exclusive of personnel procurement and yellow page ads limited to the information furnished in the white page listing in the telephone directory.
- g. The cost of any equipment, whether owned or leased, not exclusively used by the facility except to the extent that the facility demonstrates, to the satisfaction of the department, that any particular use of equipment was related to patient care.
- h. Costs, including, by way of illustration and not by way of limitation, legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies, attributed to the negotiation or settlement of the sale or purchase of any capital assets, whether by sale or merger, when the cost of the asset has been previously reported and included in the rate paid to any hospital or facility.
- i. Costs which are incurred by the provider's subcontractors, or by the lessor of property which the provider leases, and which become an element in the subcontractor's or lessor's charge to the provider, if such costs would not have been allowable had they been incurred by a provider directly furnishing the subcontracted services, or owning the leased property, provided, however, that no facility shall have a particular item of cost disallowed under this subdivision if that cost arises out of a transaction which was completed before July 18, 1984.

- 3. All costs for services reimbursed by the department directly to the provider, e.g., pharmacy and therapies, must be excluded from the rate calculation.

**History:** Effective September 1, 1980; amended effective December 1, 1983; December 1, 1984.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(32); 42 CFR Part 447, Subpart C

**CHAPTER 75-03-14  
FAMILY FOSTER CARE HOMES**

**STAFF COMMENT:** Chapter 75-03-14 contains all new material but is not underscored so as to improve readability.

Section	
75-03-14-01	Definitions
75-03-14-02	License
75-03-14-03	Minimum Physical Standards for the Home
75-03-14-04	Qualifications of Persons Residing in the Home
75-03-14-05	Operation of the Home
75-03-14-06	Permanency Planning

**AGENCY SYNOPSIS:** Section 75-03-14-01, Definitions. This section defines five terms used in this chapter.

**75-03-14-01. Definitions.** Those definitions set forth in North Dakota Century Code section 50-11-00.1 are applicable to this chapter. In this chapter, unless the context or subject matter requires otherwise:

1. "Adult" means a person twenty-one years of age or older.
2. "Department" means the department of human services.
3. "Home" means family foster home.
4. "Regional center" means the regional human service center.
5. "Supervising agency" means the agency or person having care, custody, and control of the foster child as ordered by a court of competent jurisdiction or the designee of that agency or person.

**History:** Effective December 1, 1984.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-00.1

**AGENCY SYNOPSIS:** Section 75-03-14-02, License. This section in five subsections, sets forth the manner and form for the issuance of a license, permits licenses to be issued subject to stated limitations, restrictions, and conditions, provides that the licenses should not be transferable, and provides that licenses may be issued to native American homes, on Indian reservations, upon receipt of an affidavit of an appropriate tribal officer in lieu of regular licensing procedures.

**75-03-14-02. License.**

1. Application for a license must be made in the manner and form prescribed by the department.
2. The license is issued for a specific number of children, a specified age group of the children, and the sex of the child or children. The duration of the license is not to exceed a one-year period, but may be for less than one year.
3. The license may be issued with stated limitations, restrictions, and conditions.
4. The license is not transferable and is valid only for the physical location of the home at the time of issuance, or at another location for a period not to exceed sixty days, provided that the supervising agency performs an onsite visit within seven days of the move, and thereafter approves the temporary location.
5. In those cases where the home of a native American family, not subject to the jurisdiction of the state of North Dakota for licensing purposes, is located on a recognized Indian reservation in North Dakota, an affidavit from an agent of the tribal child welfare agency or an appropriate tribal officer shall be accepted in lieu of a licensing procedure if the affidavit represents the following:
  - a. An investigation was completed of the home by the tribe's child welfare agency or tribal council.
  - b. The prospective home is in compliance with the standards required by North Dakota Century Code section 50-11-02.

**History:** Effective December 1, 1984.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-01, 50-11-02

**AGENCY SYNOPSIS:** Section 75-03-14-03, Minimum Physical Standards for the Home. This section sets forth, in 11 subsections, certain requirements for the condition and equipment of any home in which foster children will be provided care.

**75-03-14-03. Minimum physical standards for the home.**

1. The home must be a dwelling, mobile home, housing unit, or apartment occupied by an individual or a single family, which may include other relatives of at least second degree of kinship.

2. The home should have an operational telecommunications device, and must have available to it some means to make immediate contact with authorities in emergencies.
3.
  - a. The home shall have sleeping rooms adequate for the foster care family and the foster children.
  - b. All sleeping rooms shall be outside rooms and have ample window space for light and ventilation.
  - c. A room with a floor more than thirty inches [76.20 centimeters] below ground level on all sides should be considered a basement. Basements can be used for sleeping accommodations for children twelve years of age and older. Basement bedrooms must be equipped with the appropriate fire alarms and smoke detectors as recommended by the local fire department or state fire marshal. A basement which shall be used for the care of children must be equipped with more than one exit. The exit may be an accessible window.
4. Exterior doors must be maintained in such a manner which would permit easy exit. Interior doors should be designed to prevent children from being trapped.
5. Every closet door must be one that can be opened from the inside. Any bathroom doors must be designed so that the opening of the locked door can be accomplished from the outside in an emergency.
6. The house and premises must be clean, neat, and free from hazards that jeopardize health and safety.
7. The home must be equipped with adequate light, heat, ventilation, and plumbing for safe and comfortable occupancy. The house and grounds must be in compliance with any applicable state and local zoning requirements.
8. Any source other than an approved municipal water supply must be tested annually for compliance for approved drinking water standards. The sample should be tested and approved by the North Dakota state department of health and the report submitted to the licensing agency.
9. The milk supply must be obtained from an approved source.
10. The home must comply with all local fire ordinances and requirements. The home must satisfactorily complete a fire inspection by the local fire inspector or, in the absence of a local fire inspector, the state fire marshal at the time of initial licensing and every two years thereafter. If substantial physical changes take place in the home between these inspection requirements, the home must also be inspected

at that time. All deficiencies noted during the inspection must be remedied.

11. The home must be equipped with the approved Underwriters' Laboratories fire extinguishers, smoke detectors, and smoke alarms as recommended by the local fire inspector or state fire marshal. They must be in working condition at all times. In an apartment building, the fire extinguisher, smoke detectors, and smoke alarms must be inside the apartment.

**History:** Effective December 1, 1984.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**AGENCY SYNOPSIS:** Section 75-03-14-04, Qualifications of Persons Residing in the Home. This section sets forth, in five subsections, certain requirements to be met by the foster family.

**75-03-14-04. Qualifications of persons residing in the home.**

1. The persons residing in a home may include only:
  - a. Adults who, if married, are residing with their spouse or persons included in subdivision c or d;
  - b. Adults who, if unmarried, are residing only with persons included in subdivision c or d;
  - c. Persons who are within the third degree of kinship to a resident of the home other than a foster child; or
  - d. A foster child.
2. No person residing in the home, except a foster child, may have a present condition of substance abuse, or emotional instability. No person may smoke, in the foster home, in circumstances which present a hazard to the health of a foster child. All foster parents should be aware of the potential hazards of smoking in the presence of children, particularly infants and children with respiratory or allergic sensitivity. If a condition of substance abuse or emotional instability occurs in a foster home at a time when a foster child is in long-term placement, every effort should be made to keep the placement intact if the resident of the foster home is seeking treatment for the problem. No further placements will be made until successful completion of the treatment has occurred. A resident of a foster home, who has a past condition of substance abuse or emotional instability, should have had no incidents of substance abuse or emotional instability for a period of at least twelve months prior to licensure.

3. No person residing in the home, except a foster child, may have been the subject of a probable cause determination that the person has abused or neglected a child unless the director or foster care supervisor of the regional center, after making appropriation consultation with persons qualified to evaluate the capabilities of the home's resident, documenting criteria used in making the determination, and imposing any restrictions deemed necessary, approves the issuance of a license; and
  - a. The home's resident can demonstrate the successful completion of an appropriate therapy; or
  - b. The home's resident can demonstrate the elimination of an underlying basis precipitating the neglect or abuse.
4. All foster parents, prior to licensing and annually thereafter, must submit a declaration of good health including all residents of the home, except any foster child, in a manner and form determined by the department. The department may require a physical examination or psychological testing of any resident of the home as deemed necessary. The cost of any physical examinations required pursuant to the subsection is the responsibility of the supervising agency. The cost of any psychological testing required pursuant to this subsection is the responsibility of the department.
5. Physical disabilities or age of foster parents do not affect licensing of the home provided that the applicant can show that these factors do not significantly inhibit the ability of the foster parents to efficiently carry on the duties required of them.

**History:** Effective December 1, 1984.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**AGENCY SYNOPSIS:** Section 75-03-14-05, Operation of the Home. This section sets forth, in nine subsections, standards of care which must be met by those who provide foster homes.

**75-03-14-05. Operation of the home.**

1. The foster parents shall admit to the home, at any reasonable time, public officials, such as fire and building inspectors, for the purpose of determining fire and building safety. For the purposes of this subsection, "any reasonable time" means a time mutually convenient to the foster parents and the public official.

2. The foster parents shall admit to the home, at any reasonable time, personnel of the supervising agency. For the purposes of this subsection, "any reasonable time" means a time mutually convenient to the foster parents and the supervising agency's personnel and any time the supervising agency determines that a foster child's health, safety, or welfare require the admittance.
3. The foster parents must cooperate with the supervising agency in that agency's efforts to develop plans for the child, implement those plans, and meet the needs of the child and the child's family. The foster parents must cooperate with the supervising agency in developing plans for the child to visit with the natural parents or guardian. If the foster parents agree, and it is appropriate, these visits may take place in the foster parents' home. Visits between the foster child and natural parents or guardian must be arranged within a plan approved by the agency, foster child where appropriate, foster parents, and the foster child's parents or guardian. The foster parents need not admit a foster child's parent, relative, or guardian who has been using alcohol, drugs, or any other intoxicating substance, or who attempts a visit in a manner that is not in accordance with the approved visitation plan.
4. The foster parents may not accept other foster children or special education boarding care children, or accept children for supplemental parental care, as defined in North Dakota Century Code chapter 50-11.1, into their home without the prior approval of the supervising agency. All changes in the number of persons living in the foster home must be immediately reported to the supervising agency.
5. When a foster child is placed in substitute care during the absence of the foster parents, prior approval of the substitute care must be given by the supervising agency. Prior approval is not required for short periods of substitute care such as a portion of one day. A foster child may not be removed from this state without the prior approval of the supervising agency.
6. The foster parents must make opportunities available for a foster child to attend religious ceremonies chosen by the foster child, or that child's parents, within the community in which the foster family resides. The foster parents must respect and not interfere with the religious belief of the child and the natural family.
7. Discipline must be constructive or educational in nature and may include diversion, separation from problem situation, talk with the child about the situation, praise for appropriate behavior, and gentle physical restraint such as holding.

- a. No child may be punched, spanked, shaken, pinched, roughly handled, or struck with an inanimate object by foster parents or any other adult living in the home.
  - b. Authority to discipline may not be delegated to or be accomplished by children.
  - c. Separation, when used as discipline, must be brief and appropriate to a child's age and circumstances, and the young child must be within hearing of an adult in a safe, lighted, well-ventilated room. No child may be isolated in a locked room or closet.
  - d. No child may be physically punished for lapses in toilet training.
  - e. Verbal abuse or derogatory remarks about the child, the child's family, race, religion, or cultural background may not be used or permitted.
  - f. No child may be force fed unless medically prescribed and administered under a physician's care.
  - g. Deprivation of means may not be used as a form of discipline or punishment.
- 8. All information given to the foster parents by the supervising agency or the natural family concerning the foster child must remain confidential and may not be disclosed to any person without prior approval of the supervising agency.
  - 9. All foster care payments must be used to meet the needs of the foster child.

**History:** Effective December 1, 1984.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**AGENCY SYNOPSIS:** Section 75-03-14-06, Permanency Planning. This section sets forth, in five subsections, requirements imposed upon the agencies which supervise foster children so that plans are promptly made for the foster child. This requirement is intended to see that children do not remain in foster care any longer than is necessary.

**75-03-14-06. Permanency planning.**

- 1. Every county social service board must have a county permanency planning committee that meets not less than once each quarter in which the county social service board acts as a supervising agency to any foster child. If the county social service board acts as supervising agency for five or

more children in foster care, the county permanency planning committee must meet at least once each month. The regional supervisor of foster care services shall serve as the chairperson for each county permanency planning committee. The county social service board director or designee shall serve as the vice chairperson for the county permanency planning committee.

2. The supervising agency must invite the natural parents and the foster parents to participate in the permanency planning meeting for the foster child unless good cause exists to exclude any person from the planning meeting. The good cause basis must be determined by the supervising agency and the basis for the determination must be made a part of the foster child's file.
3. The foster parents shall participate in the permanency planning for the child. The foster parents shall cooperate in carrying out the objectives and goals of the permanency plan for the foster child in their care.
4. The foster parents, when requested by the supervising agency or the juvenile court, shall provide requested information concerning the foster child and the natural family.
5. The foster parents and the supervising agency, working in cooperation, must attempt to maintain and improve the relationships between the foster child and the natural family whenever appropriate and possible. In no case may the foster parents attempt to diminish the relationship between the foster child and the natural parents or between supervising agency staff and the foster child.

**History:** Effective December 1, 1984.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

JUNE 1985

AGENCY SYNOPSIS: Amends the definition of "facility," as found in existing subsection 10, to provide for a specific time (July 1, 1987) after which the Grafton and San Haven facilities will not be regarded as facilities for the purposes of this chapter.

**75-02-06-01. Definitions.** In this chapter, unless the context or subject matter requires otherwise:

1. "Accrual basis" means the recording of revenue in the period when it is earned, regardless of when it is collected, and the recording of expenses in the period when incurred, regardless of when they are paid.
2. "Allowable cost" means the facility's actual cost after appropriate adjustments as required by medical assistance regulations.
3. "Bad debts" means those amounts considered to be uncollectible from accounts and notes receivable.
4. "Charity allowances" means the reductions in charges made by the provider of services because of patient indigence.
5. "Cost center" means a division, department, or subdivision thereof, group of services or employees or both, or any unit or type of activity into which functions of a facility are divided for purposes of cost assignment and allocations.
6. "Cost finding" means the process of analyzing the data derived from the accounts ordinarily kept by the provider to ascertain costs of the various types of services rendered; it is the determination of these costs by the allocation of direct costs and proration of indirect costs.

7. "Courtesy allowance" means a reduction in charges in the form of allowances to physicians, clergy, and others for services received from the provider.
8. "Consumer price index rate (CPI)" means the "all items" index for United States city average.
9. "Department" means the department of human services.
10. "Facility" means a skilled nursing or intermediate nursing care facility or a distinct part of a hospital providing skilled or intermediate nursing care or distinct parts of state institutions for the mentally retarded which are certified as intermediate care facilities for the mentally retarded. From and after July 1, 1987, or at such time as might be agreed by the director of institutions pursuant to section 75-04-05-24, it does not mean distinct parts of state institutions for the mentally retarded which are certified as intermediate care facilities for the mentally retarded. It does not otherwise mean an intermediate care facility for the mentally retarded.
11. "Fair market value" means value at which an asset could be sold in the open market in a transaction between informed, unrelated parties.
12. "Fringe benefits" means all nonsalary employee benefits, including, but not limited to, self-employment (FICA) taxes, unemployment insurance, workmen's compensation, pensions, bonuses, health and life insurance premiums, and accrued compensation for absences.
13. "Generally accepted accounting principles" means the accounting principles approved by the American institute of certified public accountants.
14. "Historical cost" means those costs reported on the cost statement which were incurred and recorded in the facility's accounting records.
15. "Intermediate care" means the level of care in which a licensed facility provides professional nursing services and personal care services to individuals requiring these services at least eight hours per day, seven days per week.
16. "Interest" means the cost incurred with the use of borrowed funds.
17. "Level of care" means the determination of the services required.
18. "Patient day" means, for cost determination purposes, all days that the facility has received payment. Hospital days,

therapeutic days, and reserved bed days must be included. The day of admission will be counted, but not the day of discharge. The day of death shall be counted.

19. "Professional nursing service" means a service which must be furnished by or under the immediate personal supervision of licensed nursing personnel (registered nurse or licensed practical nurse) and under the general direction of the physician.
20. "Reasonable cost" means the cost that must be incurred by an efficiently and economically operated facility to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards. Reasonable cost takes into account that the provider seeks to minimize its costs and that its actual costs do not exceed what a prudent and cost conscious buyer pays for a given item or services.
21. "Related organization" means an organization which a provider is, to a significant extent, associated with, affiliated with, able to control, or controlled by, and which furnishes services, facilities, or supplies to the provider. Control exists where an individual or an organization has the power, directly or indirectly, significantly to influence or direct the policies of an organization or facility.
22. "Screening" means the method of patient review used by the department to determine the level of care required by individuals residing in a facility.
23. "Skilled nursing care" means a level of care in which a licensed facility provides professional nursing services and personal care services to individuals requiring these services on a twenty-four-hour daily basis, seven days per week.

**History:** Effective September 1, 1980; amended effective December 1, 1983; June 1, 1985.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(32); 42 CFR Part 447

**AGENCY SYNOPSIS:** Repeals Section 75-04-02-05, concerning restrictions on payments to members of governing boards, and also repeals subsection 3 of Section 75-04-02-06, which subsection refers to Section 75-04-02-05. The provisions heretofore included in these sections have been transferred to a new subsection 42 of NDAC Section 75-04-05-13.

**75-04-02-05. Payments to members of governing boards restricted.**

- 1- Payments to members of the governing board are prohibited except:
  - a- Payments for reasonable and actual expenses incurred in the conduct of applicant business.
  - b- Payments for a service or product unavailable from another source at a lower cost except that this subparagraph shall not be construed to permit the employment of a member of the governing board in lieu of any staff.
- 2- The restrictions of this section are applicable to the families of members of governing boards, including spouse and relatives within the third degree of kinship.

History: Effective April 17, 1982-

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-10

Repealed effective June 1, 1985.

**75-04-02-06. Payments to related organizations restricted.**

1. Payments, to related organizations, by the provider shall be limited to the actual and reasonable cost of the service received or the product purchased.
2. Financial transactions between the provider and the related organization shall be documented by the provider. The terms of such transactions shall be those which would be obtained by a prudent buyer negotiating at arms length with a willing and knowledgeable seller.
- 3- Payments by the provider to members of the governing board of a related organization are subject to the restrictions of section 75-04-02-05.

History: Effective April 1, 1982; amended effective June 1, 1985.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-10

AGENCY SYNOPSIS: Adds two new definitions, and revises, for clarity, four of the existing definitions.

**75-04-05-01. Definitions.** In this chapter, unless the context or subject matter requires otherwise:

1. "Accrual basis" means the recording of revenue in the period when it is earned, regardless of when it is collected, and the recording of expenses in the period when incurred, regardless of when they are paid.
2. "Allowable cost" means the program's actual and reasonable cost after appropriate adjustments for nonallowable costs, income, offsets, and limitations.
3. "Bad debts" means those amounts considered to be uncollectible from accounts and notes receivable which were created or acquired in providing services.
4. "Board" means all food and dietary supply costs.
5. "Clients" means eligible developmentally disabled persons on whose behalf services are provided or purchased.
- ~~5-~~ 6. "Consumer" means a developmentally disabled person.
- ~~6-~~ 7. "Consumer representative" means a parent, guardian, or relative, to the third degree of kinship, of a developmentally disabled person.
- ~~7-~~ 8. "Continuing ~~contract~~ service provider" means a legal entity subject to licensure by the department who is and has been under contract authorizing the provisions provision of a service eligible for state financial participation.
- ~~8-~~ 9. "Cost center" means a division, department, or subdivision thereof, group of services or employees or both, or any unit or type of activity into which functions of an institution are divided for purposes of cost assignment and allocations.
- ~~9-~~ 10. "Cost finding" means the process of analyzing the data derived from the accounts ordinarily kept by the provider to ascertain costs of the various types of services rendered; it is the determination of these costs by the allocation of direct costs and proration of indirect costs.
- ~~10-~~ 11. "Department" means department of human services.
- ~~11-~~ 12. "Documentation" means the furnishing of written records including, but not limited to, original invoices, contracts, timecards, and workpapers prepared to complete reports or for filing with the department.
- ~~12-~~ 13. "Fair market value" means value at which an asset could be sold in the open market in an arms-length transaction between unrelated parties.

- ~~13-~~ 14. "Generally accepted accounting principles" means the accounting principles approved by the American institute of certified public accountants.
- ~~14-~~ 15. "Historical cost" means those costs incurred and recorded on the facility's accounting records as a result of an arm-length transaction between unrelated parties.
- ~~15-~~ 16. "Individual ~~habilitation~~ service plan team" means an interdisciplinary and multiagency individual plan development team, which includes the developmentally disabled individual or that individual's representative, or both, convened to identify the provision of services for that individual.
- ~~16-~~ 17. "Initial ~~contract~~ service provider" means a legal entity, subject to licensure by the department, entering into its first contract authorizing the provision of a service eligible for state financial participation.
- ~~17-~~ 18. "Interest" means the cost incurred with the use of borrowed funds.
- ~~18-~~ 19. "Net investment in fixed assets" means the cost, less accumulated depreciation and the balance of notes and mortgages payable.
- ~~19-~~ 20. "Reasonable cost" means the cost that must be incurred by an efficiently and economically operated facility to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.
- ~~20-~~ 21. "Related organization" means an organization which a provider is, to a significant extent, associated with, affiliated with, able to control, or controlled by, and which furnishes services, facilities, or supplies to the provider. Control exists where an individual or an organization has the power, directly or indirectly, significantly to influence or direct the action or policies of an organization or institution.
22. "Room" means the cost associated with the provision of shelter and the maintenance thereof, including depreciation and interest or lease payments of a vehicle used for transportation of residents.
- ~~21-~~ 23. "Service" means the provision of living arrangements and programs of daily activities subject to licensure by the department.
- ~~22-~~ 24. "Staff training" means an organized program to improve staff performance.
- ~~23-~~ 25. "Units of service" for billing purposes means, in residential settings, one person served for one 24-hour day and in day

service settings, one person served for one 8-hour day, Monday through Friday. The day of admission, but not the day of discharge, is treated as a day served.

**History:** Effective July 1, 1984; amended effective June 1, 1985.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-15-01, 25-16-10, 50-24.1-01

**AGENCY SYNOPSIS:** Makes technical amendments, removes language from subsection 1.g. which has proved unnecessary, and adds a new subsection requiring providers to accept the reimbursement rate as payment in full.

**75-04-05-02. Eligibility for reimbursement.**

- 1- Providers of service are eligible for reimbursement for the costs of rendered services contingent upon the following:
  - a- 1. The provider, other than a state owned or operated provider, holds, and is required to hold, a current valid license, issued pursuant to the provisions of chapter 75-04-01 authorizing the delivery of the service, the cost of which is subject to reimbursement.
  - b- 2. The provider's clients have on file with the department a current individual ~~habilitation~~ service plan.
  - c- 3. The provider has a current valid contract with the department authorizing the reimbursement.
  - d- 4. The provider adopts and uses a system of accounting prescribed by the department.
  - e- 5. The provider participates in the program audit and utilization review process established by the department.
  - f- 6. The provider is in compliance with chapter 75-04-02.
    - g- The provider governing board of directors consists of members whose nontemporary place of residence is within the service area in which the provider is located and consists of at least one-third consumer or consumer representatives, except for elected or appointed governmental boards or commissions.
  - 7. Providers, as a condition of eligibility for reimbursement for the cost of services for developmentally disabled persons, must accept, as payment in full, sums paid in accordance with the final rate of reimbursement.

**History:** Effective July 1, 1984; amended effective June 1, 1985.  
**General Authority:** NDCC 25-01.2-18, 50-06-16  
**Law Implemented:** NDCC 25-15-01, 25-16-10, 50-24.1-01

AGENCY SYNOPSIS: Technical amendments only.

**75-04-05-03. Startup costs.** Initial ~~contract~~ service providers incur costs incidental to the preparation of a program of services prior to the admission of clients. These costs cannot be allocated to services as there is no client to receive a service. The initial ~~contract~~ service provider may be eligible for state financial assistance for startup costs incidental to program establishment, exclusive of the cost of construction, reconstruction, or acquisition of property and improvements.

**History:** Effective July 1, 1984; amended effective June 1, 1985.  
**General Authority:** NDCC 25-01.2-18, 50-06-16  
**Law Implemented:** NDCC 25-15-01, 25-16-10, 50-24.1-01

AGENCY SYNOPSIS: Technical amendments only.

**75-04-05-04. Application for advancement of startup costs.** The prospective initial ~~contract~~ service provider seeking a state advancement of funds shall provide information in a form and manner prescribed by the department sufficient to enable the department to determine:

1. The basic service proposed.
2. The number of clients to be served.
3. That client referrals are identified in sufficient numbers to verify the feasibility of the service.
4. That a facility or facilities necessary to the provision of the service are or will be under the effective control of the provider.
5. The estimated startup costs for the period ending upon the first day of entry by eligible clients into the service.
6. That the service proposed is consistent with the implementation plan of the department, is cost effective, and does not represent an unnecessary duplication of services.

**History:** Effective July 1, 1984; amended effective June 1, 1985.  
**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-15-01, 25-16-10, 50-24.1-01

**AGENCY SYNOPSIS:** Makes technical changes and alters the provision for imposing penalties for late filing or certain other actions.

**75-04-05-08. Financial reporting requirements.**

**1. Records.**

- a. The provider shall maintain on the premises the required census records and financial information sufficient to provide for a proper audit or review. For any cost being claimed on the cost report, sufficient data must be available as of the audit date to fully support the report item.
- b. Where several programs are associated with a group and their accounting and reports are centrally prepared, additional fiscal information shall be submitted for costs, undocumented at the reporting facility, with the cost reporting plan or provided to the local program prior to the audit or review of the facility. Accounting or financial information regarding related organizations must be readily available to substantiate cost.
- c. Each provider shall maintain, for a period of not less than five years following the date of submission of the cost report to the department, financial and statistical records of the period covered by such cost report which are accurate and in sufficient detail to substantiate the cost data reported. If an audit has begun, but has not been finally resolved, the financial and statutory records relating to the audit shall be retained until final resolution. Each provider shall make such records available upon reasonable demand to representatives of the department or to the secretary of health and human services or representatives thereof.

**2. Accounting and reporting requirements.**

- a. The accounting system must be double entry.
- b. The basis of accounting for reporting purposes must be accrual.
- c. To properly facilitate auditing, the accounting system must be maintained in such a manner that cost accounts will be grouped by cost center and be readily traceable to the cost report.

d. The forms for annual reporting for reimbursement purposes must be the report forms designated by the department. The statement of budgeted costs must be submitted to ~~management services division, provider audit unit,~~ the developmental disabilities division at least sixty days before the end of the facility's normal accounting year reflecting budgeted costs and units of service for establishing an interim rate in the subsequent year. The statement of actual costs must be submitted on or before the last day of the third month following the end of the facility's normal accounting year. The report must contain the actual costs, adjustments for nonallowable costs, and units of service for establishing the final rate.

e. The mailing of cost reports by registered mail, return receipt requested, will ensure documentation of the filing date. ~~If a facility fails to file the required financial and statistical report on or before the due date, the department shall, for the subsequent rate period, certify a rate using the following calculation:-~~

(1) After the last day of the fourth month following the program's accounting year, there will be a nonrefundable penalty of ten percent of any amount claimed for reimbursement-

(2) The penalty is automatically applied each month past the deadline and continues through the month the report is received-

(3) The penalty may be waived by the department upon a showing of good cause for delay-

f. Costs reported must include all actual costs and adjustments for nonallowable costs. Adjustments required made by the audit unit, to ~~attain~~ determine allowable cost, though not meeting the criteria of fraud or abuse on their initial identification, may be considered as possible fraud or abuse. The audit unit will forward all such items identified to the appropriate investigative unit.

3. **Auditing.** In order to properly validate the accuracy and reasonableness of cost information reported by the ~~contract~~ service provider, the department will provide for audits as necessary.

4. Penalties.

- a. If a provider fails to file the required statement of budgeted costs and cost report on or before the due date, the department may invoke the following provisions:
- (1) After the last day of the first month following the due date, there will be a nonrefundable penalty of ten percent of any amount claimed for reimbursement.
  - (2) The penalty continues through the month in which the statement or report is received.
- b. At the time of audit and final computation for settlement, the department may invoke a penalty of five percent of a provider's administrative costs for the period of deficiency if:
- (1) Poor or no daily census records are available to document client units. Poor census records exist if those records are insufficient for audit verification of client units against submitted claims for reimbursement.
  - (2) After identification and notification through a previous audit, a provider continues to list items exempted in audit as allowable costs on the cost report.
  - (3) For intermediate care facilities for the developmentally disabled, the provider fails the certification requirements one hundred twenty days after the initial startup date or is decertified after having been previously certified.
- c. Penalties may be separately imposed for each violation.
- d. A penalty may be waived by the department upon a showing of good cause.

**History:** Effective July 1, 1984; amended effective June 1, 1985.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-15-01, 25-16-10, 50-24.1-01

AGENCY SYNOPSIS: Requires providers to reimburse clients for excess room and board charges, deletes the contents of a subsection which was reinserted in Section 75-04-05-02, replaces an existing subsection on occupancy requirements with a different subsection governing the same subject matter, and provides a new mechanism for the establishment of an interim rate, and makes technical changes.

75-04-05-09. Rate payments.

1. Except for intermediate care facilities for the developmentally disabled, payment rate limits will be established for services, room, and board.
2. Interim rates based on budgeted data, as approved, will be used for payment of services during the year.
3. Room and board rates will be established by the department at a rate no higher than the maximum supplemental security income payment less twenty-five dollars for the personal incidental expenses of the resident, plus the average dollar value of food stamps to the eligible clientele in the facility. If the interim room and board rate exceeds the final room and board rate, the provider shall reimburse clients in a manner approved by the department.
4. In residential facilities where rental assistance is available to individual residents or the facility, the rate for room costs chargeable to individual residents will be established by the governmental unit providing the subsidy.
5. In residential facilities where energy assistance program benefits are available to individual residents or the facility, room and board rates will be reduced to reflect the average annual dollar value of such benefits.
6. Income from client production must be applied to client wages and the cost of production. The department will not participate in the gains or losses associated with client production conducted pursuant to the applicable provision of 29 CFR 525.
7. The final rate established is payment of all allowable, reasonable, and actual costs for all elements necessary to the delivery of a basic service to eligible clients subject to limitations and cost offsets of this chapter.
8. No payments may be solicited or received by a provider from a client or any other person to supplement the final rate of reimbursement.
9. The rate of reimbursement established must be no greater than the rate charged to a private payor for the same or similar service.
- ~~10.~~ Providers, as a condition of eligibility for reimbursement for the cost of services for developmentally disabled persons, must accept, as payment in full, sums paid in accordance with the final rate of reimbursement.

- ~~11-~~ 10. The department will determine interim and final rates of reimbursement for continuing contract providers based upon cost data from the:
- a. Submission requirements of section 75-04-05-02; and
  - b. Field and desk audits.
- ~~12-~~ Rates of continuing contract providers will be based upon ninety-five percent of the rated occupancy established by licensure or actual occupancy, whichever is greater. A daily census report must be maintained by the provider.
11. Rates of continuing service providers, except for those identified in subdivision f of subsection 3 of section 75-04-05-10, will be based on the following:
- a. Rate for continuing contract providers, who have had no increase in the number of clients the provider is licensed to serve, will be based upon ninety-five percent of the rated occupancy established by the department or actual occupancy, whichever is greater.
  - b. Rates for continuing service providers, who have an increase in the number of clients the provider is licensed to serve in an existing service, will be based upon:
    - (1) Subdivision a of subsection 11 of section 75-04-05-09 for the period until the increase takes effect; and
    - (2) Ninety-five percent of the projected units of service for the remaining period of the fiscal year based upon an approved plan of integration or actual occupancy, whichever is greater.
- ~~13-~~ 12. The final rate of reimbursement for initial contract service providers shall be established by review of cost reports.
- a- To establish an initial interim rate,
  - b- Upon completion of one hundred eighty days of provider operation to establish an interim rate, and
  - c- Upon completion of one year of provider service and the conduct of a field audit to establish the final rate of reimbursement upon completion of the initial contract period and a field audit. Interim rates of reimbursement for the initial contract shall be calculated based upon one hundred percent of licensed capacity.

- ~~14-~~ 13. Payments to initial ~~contract~~ service providers ~~will~~ may be disbursed in equal monthly installments for the duration of the initial ~~contract~~ period of operation.
- ~~15-~~ 14. The rate of payment will be sufficient to provide for the conversion of the initial ~~contract~~ service provider to a reimbursement schedule upon completion of the initial ~~twelve~~ months period of operation.
- ~~16-~~ 15. The initial ~~contract~~ service provider must project the anticipated units of service, subject to the approval of the department, which will be used in establishing the rate of reimbursement for the purpose of determining monthly payments.
- ~~17-~~ 16. If vacancies continue to exist sixty days after the date of occupancy, the department may notify the ~~initial~~ service provider of its intent to place developmentally disabled persons into those vacancies. The provider must, within ten days of such notification, either demonstrate, to the satisfaction of the department, that the department should not invoke its authority under this provision, or accept referred clients.
- ~~18-~~ 17. Adjustments and appeal procedures are as follows:
- a. Rate adjustments may be made to correct errors subsequently determined and shall also be retroactive to the beginning of the facility's fiscal year.
  - b. A final adjustment will be made for those facilities which have terminated participation in the program and have disposed of all its depreciable assets. Federal medicare regulations pertaining to gains and losses on disposable assets will be applied.
  - c. Any requests for reconsideration of the rate may must be submitted in writing to management services the developmental disabilities division within ten days of the date of the rate notification.
  - d. A provider may appeal a decision by requesting a fair hearing within thirty days after mailing of the rate notification or the written notice of the decision on a request for reconsideration of the rate.

**History:** Effective July 1, 1984; amended effective June 1, 1985.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-15-01, 25-16-10, 50-24.1-01

AGENCY SYNOPSIS: Adds a subdivision governing interprovider settlements of rates, makes technical amendments, identifies additional services which are exempted from certain rules in this subsection, and limits management fees and costs.

**75-04-05-10. Reimbursement.** Reported allowable costs will be included in determining the interim and final rate. The method of finalizing the reimbursement rate per unit will be through the use of the retrospective ratesetting system.

1. Retrospective ratesetting requires that an interim rate be established prior to the year in which it will be effective. The determination of a final rate for all services begins with the reported cost of the provider's operations for the previous fiscal year. Once it has been determined that reported costs are allowable, reasonable, and client-related, those costs are compared to the reimbursements received through the interim rate.
2.
  - a. Settlements will be made through a rate reduction or refund to the department for an overpayment, or an additional payment to the provider for an underpayment.
  - b. Interprovider settlements between intermediate care facilities for the developmentally disabled and day services will be made through a rate reduction or refund to the department from the day service provider to correct an overpayment; or a payout to the intermediate care facilities for the developmentally disabled, for the day service provider, to correct an underpayment.
3. Limitations.
  - a. The department will accumulate and analyze statistics on costs incurred by providers. These statistics may be used to establish reasonable ceiling limitations for efficiency and economy based on a determination of the standards of operations necessary for efficient delivery of needed services. These limitations may be established on the basis of cost of comparable facilities and services and may be applied as ceilings on the overall costs, on the costs of providing services, or on the costs of specific areas of operations. The department may implement such ceilings at any time, based upon the statistics available, or as required by guidelines, regulations, or statutes concerning title XIX of the Social Security Act.
  - b. Providers, to maintain reasonable rates of reimbursement, must deliver units of service at or near their rated capacity. Upon a finding by the department that an excess idle capacity exists and has existed, the cost of which is borne by the department, the provider will be notified of

the department's intention to reduce the level of state financial participation or invoke the cancellation provisions of the provider agreement. The provider must, within ten days of such notification, demonstrate, to the satisfaction of the department, that the department should not invoke its authority under this provision, or accept the department's finding.

- c. Providers will not be reimbursed for services, rendered to clients, which exceed the rated occupancy of any facility as established by a fire prevention authority.
- d. Providers of residential services must offer services to each resident three hundred sixty-five days per year (except for leap years in which three hundred sixty-six days must be offered). Costs and budget data must be reported on this basis and rates of reimbursement will be established on the same basis. Providers will not be reimbursed for those days in which services are not offered to residents.
- e. Providers of day services must offer services to each client two hundred sixty days per year (except for leap years in which two hundred sixty-one days may be offered). Costs and budget data must be reported on this basis and rates of reimbursement will be established on the same basis. Providers will not be reimbursed for those days services are not offered to the clients. State recognized holidays will be treated as days in which services are offered.
- f. Services exempted from the application of subdivisions d and e are:
  - (1) Emergency services.
  - (2) Respite care.
  - (3) Extended respite care.
  - (4) Infant ~~evaluation~~ development.
  - (5) Vocational evaluation.
  - (6) Family subsidy.
  - (7) Supported living.
  - (8) Technical employment.
  - (9) On-the-job training.

- g. (1) Days of services in facilities subject to the application of subdivision d must be provided for a minimum of three hundred thirty-five days per year per resident. A reduction of payment to the provider in an amount equal to the rate times the number of days of service less than the minimum will be made unless the regional developmental disability coordinator determines that a failure to meet the minimum was justified.
- (2) Days of services in facilities subject to the application of subdivision e must be provided for a minimum of two hundred forty days per year per client. A reduction of payment to the provider in an amount equal to the rate times the number of days of service less than the minimum will be made unless the regional developmental disability coordinator determines that a failure to meet the minimum was justified.
- (3) For purposes of this subdivision, the fiscal year of the facility will be used, and all days before the admission, or after the discharge of the resident or client will be counted towards meeting the minimum.
- h. Salary and fringe benefit cost limits, governing the level of state financial participation, may be established by the department by calculating:
- (1) Comparable salaries and benefits for comparable positions, by program size and numbers served, and programs in and out of state;
- (2) Comparable salaries and benefits for comparable positions in state government;
- (3) Comparable salaries and benefits for comparable positions in the community served by the provider; or
- (4) Data from paragraphs 1, 2, and 3, taken in combination.
- By using private funds, providers may establish higher salaries and benefit levels than those established by the department.
- i. Management fees and costs may not exceed the lesser of two percent of administrative costs or the price of comparable services, facilities, or supplies purchased elsewhere, primarily in the local market.

**History:** Effective July 1, 1984; amended effective June 1, 1985.  
**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-15-01, 25-16-10, 50-24.1-01

**AGENCY SYNOPSIS:** Adds subdivisions governing the reporting of production costs, general client costs, and administrative costs to production, and replaces the existing subdivision on administrative costs with a different subdivision on the same subject.

**75-04-05-11. Cost report.**

1. The cost report provides for the identification of the allowable expenditures and basic services subject to reimbursement by the department. Where costs are incurred solely for a basic service, the costs must be assigned directly to that basic service. Where costs are incurred jointly for two or more basic services, the costs will be allocated as follows:
  - a. **Personnel.** The total cost of all staff identified in payroll records must be listed by position title and distributed to basic services subject to the approval of staff client ratios by the department. Time studies may be performed for one week at least quarterly for allocation. Where no time studies exist, the applicable units must be used for allocation.
  - b. **Fringe benefits.** The cost of fringe benefits must be allocated to basic services based on the ratio of the basic service personnel costs to total personnel costs. Personnel costs on which no fringe benefits are paid will be excluded.
  - c. **Equipment.** The total cost of all equipment, whether rented, leased, purchased, or depreciated, must be distributed to basic service based on usage or applicable units.
  - d. **Real property expense.** The total of all property costs, whether rented, leased, purchased, or depreciated, must be allocated based on direct square footage. Where multiple usage of direct use area occurs, the allocation will first be done by square footage and then by applicable units.
  - e. **Travel.** The total of all unassigned travel costs, which must not exceed the state rate of reimbursement, must be included in administrative costs.
  - f. **Supplies.** The total of all unassigned supply costs must be included with administrative costs.

- g. **Food services.** The total of all food costs should be allocated based on meals served. Where the number of meals served has not been identified, applicable units must be used.
  - h. **Insurance and bonds.** The total of all such costs except insurance costs representing real property expense must be included as administrative costs.
  - i. **Contractual services.** The total of all contractual costs must be allocated based upon applicable units or, if appropriate, included as part of the administrative costs.
  - j. **Administrative costs.** Administrative costs must be allocated to the basic service costs based upon the ratio of the basic service costs to total cost excluding administrative costs. Production costs. Total expenses for day activity, work activity, vocational development, and extended employment must be allocated in part to production using the mean productivity percentage for each service where production occurred.
  - k. General client costs. Total general client expenses must be allocated to service categories, exclusive of production, room, board, and extended employment based on actual census days.
  - l. Administrative costs. Total administrative expenses must be allocated to all service categories, exclusive of room, board, and production, based upon the ratio of the basic service cost to total cost excluding administrative and production costs. The percentage calculated for residential services must be based on total costs for training, room, and board for the specific residential service with the allocation made only to training.
  - m. Administrative costs to production. A portion of the administrative expense allocated to day activity, work activity, vocational development, and extended employment must be allocated to production based upon the mean productivity percentage for each service wherein production occurred.
2. Identification of the means of financing is to be as follows:
- a. Budget reports require the disclosure of all revenues currently used to finance costs and those estimated to finance future costs, inclusive of the provider's estimate of state financial participation.
  - b. Revenues must be distributed on the appropriate budget report by program. Where private contributions are used

to supplement or enrich services, the sum may be distributed accordingly. Where contributions are held in reserve for special purposes, it may be described by narrative.

- c. The department may determine that the provider is including costs which are more appropriately financed from another source. Upon a finding by the department that available alternative sources of financing exists, but are not used, reimbursement may be reduced subject to notification of the provider thirty days in advance of the imposition of the reduction.
- d. The disclosure of contract income and production costs is required to establish a rate of reimbursement supplemental to, and not duplicative of, these revenues and costs.
- e. d. State financial participation in the habilitative costs associated with production activities where contract income is realized shall not exceed the percentage difference between the mean productivity of the clients, as determined pursuant to 29 CFR 525, and one hundred percent.

**History:** Effective July 1, 1984; amended effective June 1, 1985.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-15-01, 25-16-10, 50-24.1-01

**AGENCY SYNOPSIS:** Makes explicit the requirements for meeting the exception to the nonallowability of the cost of direct care staff in residential settings for eight hours each night, identifies twelve specific items of cost which are not allowable, verifies the provisions of four existing items of nonallowable costs, and makes technical changes.

**75-04-05-13. Nonallowable costs.** Nonallowable costs include, but are not necessarily limited to:

1. Advertising to the general public exclusive of procurement of personnel and yellow page advertising limited to the information furnished in the white page listing.
2. Amortization of noncompetitive agreements.
3. Bad debt expense.
4. Barber and beautician services.

5. Basic research.
6. Capital improvements by the provider to the buildings of a lessor.
7. Compensation of officers, directors, or stockholders other than reasonable and actual expenses related to client services.
8. Concession and vending machine costs.
9. Contributions or charitable donations.
10. Corporate costs, such as organization costs, reorganization costs, and other costs not related to client services.
11. The cost of direct-care staff in residential settings for eight hours each night, except where the provider has demonstrated, to the satisfaction of the department, that:
  - a. The clients served have been determined incapable of taking action for self-preservation; provided, that the records of the facility demonstrate planning, and plan execution, which is intended to develop, in each resident who has the capacity for such development, the capacity of taking action for self-preservation;
  - b. The clients require the supervision of a medical practitioner without which a serious threat to health may occur;
  - c. The clients of a residence have contracted an infectious or contagious disease resulting in quarantine;
  - d. A resident manifests maladaptive behavior representing a threat to the health or safety of himself or another resident; provided, that the records of the facility demonstrate planning, and plan execution, which is intended to limit such behavior in each resident who manifests it;
  - e. There has occurred a calamity, natural disaster, or emergency of such gravity that continuous supervision is required to maintain the health and safety of the residents;
  - f. A single building is of sixteen or more licensed beds; or
  - g. Staff are awakened by the residents and are compensated for those specified time periods, subject to the applicable requirements of the department of labor 29 CFR section 785, et seq.

12. Costs for which payment is available from another primary third party payor or for which the department determines that payment may lawfully be demanded from any source.
13. Costs of functions performed by clients in a residential setting which are typical of functions of any person living in their own home, such as keeping the home sanitary, performing ordinary chores, lawnmowing, laundry, cooking, and dishwashing. These activities shall be an integral element of an individual program plan consistent with the client's level of function.
- ~~13-~~ 14. Costs of participation in ~~professional~~, civic, charitable, or fraternal organizations.
15. Costs, including, by way of illustration and not by way of limitation, legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies, attributed to the negotiation or settlement of the sale or purchase of any capital assets, whether by sale or merger, when the cost of the asset has been previously reported and included in the rate paid to any hospital or facility.
16. Costs which are incurred by the provider's subcontractors, or by the lessor of property which the provider leases, and which becomes an element in the subcontractor's or lessor's charge to the provider, if such costs would have not been allowable under this section had they been incurred by a provider directly furnishing the subcontracted services, or owning the leased property.
17. Costs, exceeding the amounts budgeted as "salaries and fringes", "board expenses", "property expenses", "production expenses", or "other costs", unless the written prior approval of the department has been received.
- ~~14-~~ 18. Depreciation on assets acquired with federal or state grants.
19. Education costs incurred for the provision of services to clients who are, could be, or could have been, included in a student census. Education costs do not include costs incurred for a client, defined as an "exceptional child" by subsection 1 of North Dakota Century Code section 15-59-01, who is no longer enrolled in a school district pursuant to an interdepartmental plan of transition.
- ~~15-~~ 20. Education or training costs ~~not~~ approved by the department, for provider staff, which exceed the provider's approved budget costs.
- ~~16-~~ 21. Employee benefits not offered to all full-time employees.
- ~~17-~~ 22. Entertainment costs.

- ~~23.~~ 23. Equipment costs for any equipment, whether owned or leased, not exclusively used by the facility except to the extent that the facility demonstrates to the satisfaction of the department that any particular use of the equipment was related to client services. Equipment used for client services, other than developmental disabilities contract services, will be allocated by time studies, mileage, client census, percentage of total operational costs, or otherwise as determined appropriate by the department.
- ~~18-~~ 24. Expense of litigation or liabilities established through or under threat of, litigation against the state of North Dakota or any of its agencies; provided, that reasonable insurance expense shall not be limited by this subsection.
- ~~19-~~ 25. Federal and other governmental income taxes.
26. Fringe benefits exclusive of Federal Insurance Contributions Act, unemployment insurance, medical insurance, workmen's compensation, retirement, and other benefits which have received written prior approval of the department.
- ~~20-~~ 27. Fundraising costs, including salaries, advertising, promotional, or publicity costs incurred for such a purpose.
- ~~21-~~ 28. Funeral and cemetery expenses.
- ~~22-~~ 29. Goodwill.
- ~~23-~~ 30. Home office costs when unallowable if incurred by facilities in a chain organization.
- ~~24-~~ 31. Housekeeping staff or service costs.
- ~~25-~~ 32. In-state travel not directly related to industry conferences, state or federally sponsored activities, or client services.
- ~~26-~~ 33. Interest cost related to money borrowed for funding depreciation.
- ~~27-~~ 34. Items or services, such as telephone, television, and radio, which are located in a client's room and which are furnished solely for the convenience of the clients.
- ~~28-~~ 35. Key man insurance.
- ~~29-~~ 36. Laboratory salaries and supplies.
- ~~30-~~ 37. Matriculation fees and fees associated with the granting of college credit.
- ~~31-~~ 38. Meals and food service in day service programs.

- ~~39.~~ 39. Membership fees or dues for professional organizations exceeding five hundred dollars in any fiscal year or where the facility has not demonstrated an effort to maximize the professional development of its staff.
- ~~32-~~ 40. Miscellaneous expenses not related to client services.
- ~~33-~~ 41. Out-of-state travel expense which is not directly related to client services or which has not received written prior approval by the department.
42. Payments to members of the governing board of the provider, the governing board of a related organization, or families of members of those governing boards, including spouses and relatives within the third degree of kinship, except:
- a. Payments for reasonable and actual expenses incurred in the conduct of the provider's business.
- b. Payments for a service or product unavailable from another source at a lower cost except that this subdivision shall not be construed to permit the employment of any person subject to this limitation.
- ~~34-~~ 43. Penalties, fines, and related interest and bank charges other than regular service charges.
- ~~35-~~ 44. Personal purchases.
- ~~36-~~ 45. Pharmacy salaries.
- ~~37-~~ 46. Physician and dentist salaries.
- ~~38-~~ 47. Production costs.
- ~~39-~~ 48. Religious salaries, space, and supplies.
- ~~40-~~ 49. Room and board costs in residential services other than an intermediate care facility for the developmentally disabled, except when such costs are incurred on behalf of persons who have been found not to be disabled by the social security administration, but who are certified by the department as indigent and appropriately placed. Allowable room and board cost shall not exceed the room and board rate established pursuant to subsections 2 and 3 of section 75-04-05-09. Services offering room and board temporarily, to access medical care, vocational evaluation, respite care, or similar time limited purposes are or may be exempt from the effect of this provision.
- ~~41-~~ 50. Salary costs of employees determined by the department to be inadequately trained to assume assigned responsibilities, but

where an election has been made to not participate in appropriate training approved by the department.

- ~~42-~~ 51. Salary costs of employees who fail to meet the functional competency standards established or approved by the department.
- ~~43-~~ 52. Travel of clients visiting relatives or acquaintances in or out of state.
- 53. Travel expenses in excess of state allowances.
- ~~44-~~ 54. Undocumented expenditures.
- ~~45-~~ 55. Value of donated goods or services.
- ~~46-~~ 56. Vehicle and aircraft costs not directly related to provider business or client services.
- ~~47-~~ 57. X-ray salaries and supplies.

**History:** Effective July 1, 1984; amended effective June 1, 1985.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-15-01, 25-16-10, 50-24.1-01

**AGENCY SYNOPSIS:** Adds a requirement that the allowance for return on investment exclude that portion of the current owner's net investment which exceeds the net investment in fixed assets of the first owner on or after July 18, 1984.

**75-04-05-14. Profit motivated entities - Return on investment.**

Eight and one-half percent of net investment in fixed assets related to client care will be allowed annually, as a return on investment, to profit motivated entities. The allowance must exclude that portion of the current owner's net investment in fixed assets in existence and purchased from any other hospital or facility, on or after July 18, 1984, which exceed the net investment, in those assets, of the first owner on or after July 18, 1984.

**History:** Effective July 1, 1984; amended effective June 1, 1985.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-15-01, 25-16-10, 50-24.1-01

**AGENCY SYNOPSIS:** Adds language describing the purpose for recognizing depreciation as a cost, substitutes specific provisions for useful life of depreciable property in substitution for the useful life guidelines

formerly published by the IRS, requires the capitalization of major repair and maintenance costs only if those costs exceed \$5,000, provides for the recapture of depreciation by a new subsection, and makes technical changes.

#### 75-04-05-15. Depreciation.

1. The principles of reimbursement for provider costs require that payment for services should include depreciation on depreciable assets that are used to provide allowable services to clients. This includes assets that may have been fully or partially depreciated on the books of the provider, but are in use at the time the provider enters the program. The useful lives of such assets are considered not to have ended and depreciation calculated on the revised extended useful life is allowable. Likewise, a depreciation allowance is permitted on assets that are used in a normal standby or emergency capacity. Depreciation is recognized as an allocation of the cost of an asset over its estimated useful life. If any depreciated asset is sold or disposed of for an amount in excess of its undepreciated value, the excess represents an overstatement of the cost of the asset to the facility.
2. Depreciation methods are as follows:
  - a. The straight-line method of depreciation must be used. The method and procedure for computing depreciation must be applied on a basis consistent from year to year and detailed schedules of individual assets must be maintained. If the books of account reflect depreciation different than that submitted on the cost report, a reconciliation must be prepared.
  - b. The depreciable life of an asset is its expected useful life to the provider, not necessarily the inherent useful or physical life. If a difference is considered, a salvage value should be established prior to the application of the depreciation rate. The useful life is determined in the light of the provider's experience and the general nature of the asset and other pertinent data. In projecting a useful life, providers are to follow the useful life guidelines published by the United States internal revenue service. Depreciation will be computed using a useful life of ten years for all items except vehicles, which shall be four years, and buildings, which shall be twenty-five years or more. A different useful life may be used; however, when the useful life selected differs significantly from that established by the guidelines, the deviation must be based on convincing reasons supported by adequate documentation, generally

describing the realization of some unexpected event. A composite useful life may be used for a class or group of assets.

3. Acquisitions are treated as follows:

- a. If a depreciable asset has, at the time of its acquisition, an estimated useful life of at least two years and a historical cost of at least three hundred dollars, or if it is acquired in quantity and the cost of the quantity is at least five hundred dollars, its cost must be capitalized and depreciated over the estimated useful life of the asset in accordance with subdivision b of subsection 2. Cost during the construction of an asset, such as architectural, consulting and legal fees, interest, etc., should be capitalized as a part of the cost of the asset.
- b. Major repair and maintenance costs on equipment or buildings must be capitalized if the repairs have increased the useful life of the asset by at least two years they exceed five thousand dollars and will be depreciated in accordance with subdivision b of subsection 2.

4. Proper records will provide accountability for the fixed assets and also provide adequate means by which depreciation can be computed and established as an allowable client-related cost.

5. The basis for depreciation is as follows:

- a. The amount of historical costs shall not exceed the lower of:
  - (1) Current reproduction costs less straight-line depreciation over the life of the asset to the time of purchase; or
  - (2) Fair market value at the time of purchase.

In the case of a trade-in, the historical cost will consist of the sum of the book value of the trade-in plus the cash paid.

- b. For depreciation and reimbursement purposes, donated depreciable assets may be recorded and depreciated based on their fair market value. In the case where the provider's records do not contain the fair market value of the donated asset, as of the date of the donation, an appraisal must be made. An appraisal made by a recognized appraisal expert will be accepted for depreciation.

- c. No provision shall be made for increased costs due to the sale of a facility.
- 6. Providers which finance facilities pursuant to North Dakota Century Code chapter 6-09.6, subject to the approval of the department, may elect to be reimbursed based upon the mortgage principle payments rather than depreciation. Once an election is made by the provider, it may not be changed without department approval.
- 7. Recapture of depreciation.

a. At any time that the operators of a facility sell an asset, or otherwise remove that asset from service in or to the facility, any depreciation costs asserted after June 1, 1984, with respect to that asset, are subject to recapture to the extent that the sale or disposal price exceeds the undepreciated value. If the department determines that a sale or disposal was made to a related party, or if a facility terminates participation as a provider of services in a department program, any depreciation costs asserted after June 1, 1984, with respect to that asset or facility, are subject to recapture to the extent that the fair market value of the asset or facility exceeds the depreciated value.

b. The seller and the purchaser may, by agreement, determine which shall pay the recaptured depreciation. If the parties to the sale do not inform the department of their agreement, the department will offset the amount of depreciation to be recaptured against any amounts owed, or to be owed, by the department to the seller and buyer. The department will first exercise the offset against the seller, and shall only exercise the offset against the buyer to the extent that the seller has failed to repay the amount of the recaptured depreciation.

**History:** Effective July 1, 1984; amended effective June 1, 1985.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-15-01, 25-16-10, 50-24.1-01

**AGENCY SYNOPSIS:** Identifies specific limits on the recognition of interest expense.

**75-04-05-16. Interest expense.**

1. In general:

a. To be allowable under the program, interest must be:

- (1) Supported by evidence of an agreement that funds were borrowed and that payment of interest and repayment of the funds are required;
  - (2) Identifiable in the provider's accounting records;
  - (3) Related to the reporting period in which the costs are incurred; ~~and~~
  - (4) Necessary and proper for the operation, maintenance, or acquisition of the provider's facilities used therein;
  - (5) Unrelated to funds borrowed to purchase assets in excess of cost or fair market value; and
  - (6) When representative of borrowing for the purpose of making capital expenditures for assets that were owned by any other hospital, facility, or service provider on or after July 18, 1984, limited to that amount of interest cost which such hospital, facility, or service provider may have reported, for ratesetting purposes, had the asset undergone neither refinancing nor a change of ownership.
- b. In such cases where it was necessary to issue bonds for financing, any bond premium or discount shall be accounted for and written off over the life of the bond issue.
2. Interest paid by the provider to partners, stockholders, or related organizations of the provider is not allowable as a cost except when interest expense is incurred subject to North Dakota Century Code chapter 6-09.6.
  3. A provider may combine or "pool" various funds in order to maximize the return on investment. Where funds are pooled, proper records must be maintained to preserve the identity of each fund in order to permit the earned income to be related to its source. Income earned on gifts and grants does not reduce allowable interest expense.
  4. Funded depreciation requirements are as follows:
    - a. Funding of depreciation is the practice of setting aside cash or other liquid assets to be used for replacement of the assets depreciated or for other capital purposes. The deposits are, in effect, made from the cash generated by the noncash expense depreciation.
    - b. Deposits to the funded depreciation account are generally in an amount equal to the depreciation expense charged to costs each year. In order to qualify for all provisions of funding depreciation, the minimum deposits to the

account must be fifty percent of the depreciation expensed that year. Deposits in excess of accumulated depreciation are allowable; however, the interest income generated by the "extra" deposits will be considered as a reduction of allowable interest expense. This provision is recommended as a means of conserving funds for the replacement of depreciable assets. It is expected that the funds will be invested to earn revenues. The revenues generated by this investment will not be considered as a reduction of allowable interest expense provided such revenues remain in the fund.

- c. Monthly or annual deposits representing depreciation must be in the funded depreciation account for six months or more to be considered as valid funding transactions. Deposits of less than six months are not eligible for the benefits of a funded depreciation account. However, if deposits invested before the six-month period remain in the account after the six-month period, the investment income for the entire period will not reduce the allowable interest expensed in that period. Total funded depreciation in excess of accumulated depreciation on client-related assets will be considered as ordinary investments and the income therefrom will be used to offset interest expense.
- d. Withdrawals for the acquisition of capital assets, the payment of mortgage principal on these assets and for other capital expenditures are on a first-in, first-out basis.
- e. The provider may not use the funds in the funded depreciation account for purposes other than the improvement, replacement, or expansion of facilities or equipment replacement or acquisition related to client services.
- f. Existing funded depreciation accounts must be used for all capital outlays in excess of three hundred dollars except with regard to those assets purchased exclusively with donated funds or from the operating fund, provided no amount was borrowed to complete the purchase. Should funds be borrowed, or other provisions not be met, the entire interest for the funded depreciation income account will be offset up to the entire interest expense paid by the facility for the year in question.

**History:** Effective July 1, 1984; amended effective June 1, 1985.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-15-01, 25-16-10, 50-24.1-01

AGENCY SYNOPSIS: Technical amendments only.

**75-04-05-17. Related organization.**

1. Costs applicable to services, facilities, and supplies furnished to a provider by a related organization shall not exceed the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere primarily in the local market. Providers must identify such related organizations and costs in the cost report. An appropriate statement of cost and allocations must be submitted with the cost report. For cost reporting purposes, management fees will be considered administrative costs.
2. A chain organization consists of a group of two or more program entities service providers which are owned, leased, or through any other device, controlled by one business entity.
3. Home offices of chain organizations vary greatly in size, number of locations, staff, mode of operations, and services furnished to their member facilities. Although the home office of a chain is normally not a provider in itself, it may furnish to the individual provider, central administration or other services such as centralized accounting, purchasing, personnel, or management services. Only the home office's actual cost of providing such services is includable in the provider's allowable costs under the program. Any services provided by the home office which are included in cost as payments to an outside provider will be considered a duplication of costs and not be allowed.

**History:** Effective July 1, 1984; amended effective June 1, 1985.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-15-01, 25-16-10, 50-24.1-01

**75-04-05-18. Rental expense paid to a related organization.**

1. A provider may lease a facility from a related organization within the meaning of the principles of reimbursement. In such a case, the rent paid to the lessor by the provider is not allowable as a cost, except for providers subject to chapter 75-04-03, whose rent payments shall not exceed the actual cost of mortgage payments of principal and interest. The cost of ownership of the facility would, however, be an allowable cost to the provider. Generally, these would be

costs such as depreciation, interest on the mortgage, real estate taxes, and other property expenses attributable to the leased facility. The effect is to treat the facility as though it were owned by the provider. Therefore, the owner's equity in the leased assets is includable in the equity capital of the provider.

2. In order to be considered an allowable cost, the home office cost must be directly related to those services performed for individual providers and relate to client services. An appropriate share of indirect costs will also be considered. Documentation as to the time spent, the services provided, the hourly valuation of services and the allocation method used must be available to substantiate the reasonableness of the cost.

**History:** Effective July 1, 1984; amended effective June 1, 1985.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-15-01, 25-16-10, 50-24.1-01

**AGENCY SYNOPSIS:** Technical amendments only.

**75-04-05-20. Personal incidental funds.**

1. Each client is allowed to retain a specific monthly amount of income for personal needs. These personal needs include such items as clothes, tobacco, or other day-to-day incidentals. This monthly allowance is not to be applied toward the resident's cost of care. Generally, the source of income for personal needs is from social security, veterans benefits, private income, economic assistance, or supplemental security income (SSI).
2. Providers managing client funds must maintain a current client account record in a form and manner prescribed by the department. Copies of the client account record must be provided to the client without charge.
3. The department ~~will~~ may conduct audits ~~of random samples~~ of client account records in conjunction with regular field audits.
4. Adult client funds may be disbursed with the client's permission in the absence of a guardian or declaration of incompetency.
5. The department uses the amount of a resident's income to determine:
  - a. Eligibility for medical assistance benefits.

- b. Amount of income and other resources which must be applied toward the resident's care.
  - c. Amount of income and other resources which can be retained by the resident.
6. The following personal incidental items, supplies, or services furnished as needed or at the request of the resident, may be paid for by the resident from his personal incidental allowance or by outside sources, such as relatives and friends:
- a. Outside barber and beautician services, if requested by the resident for regular shaves, haircuts, etc.
  - b. Personal supplies, such as toothbrushes, toothpaste or powder, mouthwashes, dental floss, denture cleaners, shaving soap, cosmetic and shaving lotions, dusting powder, cosmetics, personal deodorants, hair combs and brushes, and sanitary pads and belts for menstrual periods.
  - c. Drycleaning of personal clothing.
  - d. Recliner chairs, standard easy chairs, radios, television sets, etc., that the resident desires for his personal use.
  - e. Special type wheelchairs, e.g., motorized, permanent leg support, hand controlled, if needed by resident, recommended by his attending physician, and if no other payment resource is available.
  - f. Personal clothing, including robes, pajamas, and nightgowns.
  - g. Miscellaneous items, such as tobacco products and accessories, beverages and snacks served at other than mealtime except for supplemental nourishment, television rental for individual use, stationery supplies, postage, pens and pencils, newspapers and periodicals, cable television, and long-distance telephone services. Nonprescription vitamins or combinations of vitamins with minerals may be paid when ordered by the attending physician and the resident, parent, guardian, or responsible relative approves such use of the resident's funds.
7. Charges by the program for items or services furnished clients will be allowed as a charge against the client or outside sources, only if separate charges are also recorded by the facility for all clients receiving these items or services directly from the program. All such charges must be for

direct, identifiable services or supplies furnished individual clients. A periodic "flat" charge for routine items, such as beverages, cigarettes, etc., will not be allowed. Charges may be made only after services are performed or items are delivered, and charges are not to exceed charges to all classes of clients for similar services.

8. Residents' private property must be clearly marked with his name. The facility must keep a record of private property. If items are lost, the circumstances of disappearance must be documented in the facility's records.
9. If client funds are deposited in a bank, they must be deposited in an account separate and apart from any other bank accounts of the facility. Any interest earned on this account will be credited to the applicable resident's accounts.
10. Residents' funds on deposit with the facility must be available to residents on their request. No funds may be withdrawn from accounts of residents capable of managing their own funds without their permission.
11. Should a disagreement exist as to whether a resident is capable of managing the resident's own funds, a joint determination will be made by the individual habilitation service plan team, parent, guardian, or responsible relative in settling this dispute. The decision must be documented in the provider's records.
12. On discharge, the facility must provide the resident with a final accounting of personal funds, and remit any balance on deposit with the facility.
13. Upon death, the balance of a resident's personal incidental funds along with name and case number, will be maintained in an interest-bearing account for disposition by the resident's estate. Personal property, such as television sets, radios, wheelchairs, and other property of more than nominal value, will be maintained for disposition by the resident's estate.
14. Upon sale or other transfer of ownership interest of a facility, both transferor and transferee must transfer client's personal incidental funds moneys and records in an orderly manner.
15. Failure to properly record the receipt and disposition of personal incidental funds will constitute grounds for suspension of provider payments.
16. Client personal incidental funds must not be expended for the purchases of meals served in licensed day service programs nor may the purchase of such meals be a condition for admission to such programs.

**History:** Effective July 1, 1984; amended effective June 1, 1985.  
**General Authority:** NDCC 25-01.2-18, 50-06-16  
**Law Implemented:** NDCC 25-15-01, 25-16-10, 50-24.1-01

**AGENCY SYNOPSIS:** Technical amendments only.

**75-04-05-21. Transfer, discharge, and expulsion of clients.**

1. Movement of clients between levels of service by a provider or between providers must be pursuant to a determination by an individual habilitation team. Reimbursement for the cost of the new service must be contingent upon the timely submission to the department of a revised individual habilitation service plan.
2. Movement of clients must be subject to the policies and procedures of the North Dakota case management system and the approval of the department.
3. Any emergency movement may be initiated by the provider only with immediate notification of the department, parent, guardian, and advocate. The movement will be subject to the subsequent review by the department which will determine if:
  - a. An emergency existed;
  - b. The rights of the client were protected and preserved;
  - c. Documentation exists in support of the provider's action;
  - d. A prognosis of the client's potential for returning has been made; and
  - e. Services required to maintain the client in a habilitative setting least restrictive of liberty have been provided prior to movement.
4. The department will determine whether a payment should be stopped as a consequence of the vacancy caused by movement of a client.
5. Upon a finding, by the department, that movement of a client constituted a violation of any right secured to the client by North Dakota Century Code chapter 25-01.2, the department may withhold payment for services provided during the period of time that the violation existed.

**History:** Effective July 1, 1984; amended effective June 1, 1985.  
**General Authority:** NDCC 25-01.2-18, 50-06-16  
**Law Implemented:** NDCC 25-15-01, 25-16-10, 50-24.1-01

AGENCY SYNOPSIS: Changes the minimum ratios for transitional community living facilities, minimally supervised living arrangements, minimally supervised apartment living arrangements, and supportive living arrangements, and makes technical changes.

**75-04-05-22. Staff to client ratios.**

- ~~i-~~ The following overall direct-care staff to client ratios shall form the basis for the determination of the rate of reimbursement for providers of service to developmentally disabled persons. Additional staff may be necessary to meet the needs of the clients and may be added subject to the approval of the department.
- ~~a-~~ 1. Intermediate care facilities for the developmentally disabled shall be subject to the direct-care staffing requirements of 42 CFR 442.445.
- ~~b-~~ 2. Transitional community living facility shall maintain a one to eight direct-care staff to client ratio during those periods when the clients are awake and on the premises, and a ~~one to~~ sixteen ratio direct-care staff when clients are asleep.
- ~~c-~~ 3. Minimally supervised living arrangements and providers of congregate care for the aged shall maintain one direct-care staff onsite when clients are present, ~~but in no case shall the direct-care staff to client ratio be less than one to sixteen~~ when required by the department.
- ~~d-~~ 4. In minimally supervised apartment living arrangements, one direct-care staff shall be onsite when clients are present, ~~but in no case shall the direct-care staff to client ratio be less than one to twenty~~ when required by the department.
- ~~e-~~ 5. Supported living arrangements shall maintain a direct-care staff to client ratio of one to ~~twenty-five~~ twenty.
- ~~f-~~ 6. Developmental day activity shall maintain a direct-care staff to client ratio of one to five.
- ~~g-~~ 7. Developmental work activity shall maintain a direct-care staff to client ratio of one to five for the first fifteen clients and one to ten for additional clients.
- ~~h-~~ 8. Vocational development shall maintain a direct-care staff to client ratio of three to twenty for the first twenty clients and one to ten for additional clients.
- ~~i-~~ 9. Vocational evaluation shall maintain one work evaluator for sixty evaluations per annum.

- ~~j-~~ 10. Infant development shall maintain one therapist for every fifteen children.
- ~~k-~~ 11. Adult day care shall maintain a direct-care staff to client ratio of one to eight.
- ~~l-~~ 12. On-the-job training and ~~work adjustment training~~ extended employment shall maintain a staff to client ratio of one to twenty.
- ~~m-~~ 13. Congregate living arrangements for children shall maintain a direct-care staff to client ratio of one to four.

**History:** Effective July 1, 1984; amended effective June 1, 1985.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-15-01, 25-16-10, 50-24.1-01

**AGENCY SYNOPSIS:** Delays the general application of this chapter to July 1, 1985, and applies the chapter, with specific exceptions, to Grafton and San Haven after July 1, 1987.

**75-04-05-24. Application.** This chapter will be applied to providers of services to developmentally disabled persons, except distinct parts of state institutions for the mentally retarded which are certified as intermediate care facilities for the mentally retarded, starting the first day of a facility's first fiscal year which begins on or after July 1, 1985; provided, however, that neither this section, nor the effective date, shall preclude the application and implementation of some or all of the provisions of this chapter through contract or through official statements of department policy. Effective July 1, 1987, or at such earlier time as the director of institutions might, in writing, agree to, this chapter, except for subsections 2 and 3 of section 75-04-05-02, subsection 4 of section 75-04-05-08, and subsections 13, 31, 36, 39, 45, 46, 48, and 57 of section 75-04-05-13, will be applied to services provided in distinct parts of state institutions for the mentally retarded which are certified as intermediate care facilities for the mentally retarded.

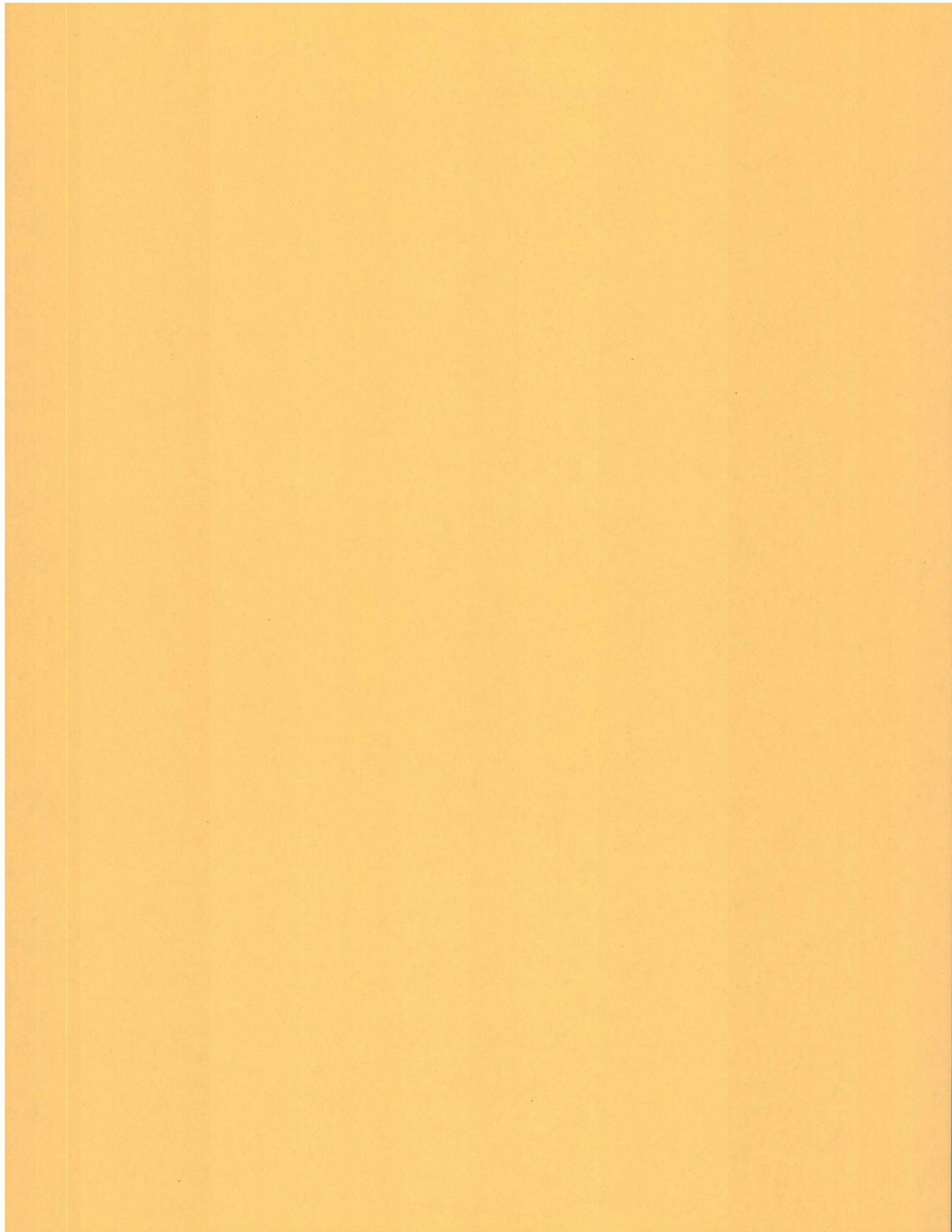
**History:** Effective July 1, 1984; amended effective July 1, 1984; June 1, 1985.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-15-01, 25-16-10, 50-24.1-01







**TITLE 81**  
**Tax Commissioner**



JULY 1985

STAFF COMMENT: Chapters 81-01.1-01, 81-01.1-02, and 81-01.1-03 contain all new material but are not underscored so as to improve readability.

ARTICLE 81-01.1

PRACTICE AND PROCEDURE

Chapter	
81-01.1-01	General Provisions
81-01.1-02	Administrative Hearings
81-01.1-03	Rules

CHAPTER 81-01.1-01  
GENERAL PROVISIONS

Section	
81-01.1-01-01	Applicability
81-01.1-01-02	Definitions
81-01.1-01-03	Examination or Investigation for Purposes of an Audit

**81-01.1-01-01. Applicability.** This article applies to practice and procedure before the tax commissioner unless rendered inconsistent by a specific statute or rule, in which instance the more specific statute or rule will apply.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 57-01-02

**81-01.1-01-02. Definitions.** As used in this article and in the provisions of North Dakota Century Code Title 57, unless otherwise required, all terms and phrases have the same meaning as defined in the North Dakota Century Code, and, in addition:

1. "Assessment" means the determination and imposition of tax by the tax commissioner of any state tax due and owing based upon information on a tax return, upon information obtained through an audit, or upon the best information available. The term does not include a self-assessment made by a taxpayer on a tax return, a calculation of tax made by a taxpayer with the assistance of the tax commissioner, or an adjustment made due to a mathematical or clerical error on a tax return.
2. "Audit" means an examination or investigation by the tax commissioner to determine the accuracy of information on a tax return or to determine whether a tax liability exists.
3. "Determination" means a decision by the tax commissioner on a refund or an assessment of tax. The term does not include a self-assessment made by a taxpayer on a tax return, a calculation of tax made by a taxpayer with the assistance of the tax commissioner, or an adjustment made due to a mathematical or clerical error on a tax return.
4. "Mathematical error" or "clerical error" means:
  - a. An error in addition, subtraction, multiplication, or division shown on any tax return.
  - b. An incorrect use of any table provided by the tax commissioner with respect to any tax return if such incorrect use is apparent from the existence of other information on the tax return.
  - c. An entry on a tax return of an item that is inconsistent with another entry of the same or another item on such tax return.
  - d. An omission of information that is required to be supplied on the tax return to substantiate an entry on the tax return.
  - e. An entry on a tax return of a deduction or credit in an amount that exceeds a statutory limit.
5. "Notice" means a communication in writing issued by the tax commissioner.

6. "Tax form" means a document prescribed by the tax commissioner requesting specific information.
7. "Tax return" means a tax form containing facts required and sufficient information from which the tax commissioner can determine a tax liability and includes information returns. The terms "tax form" and "tax return" are not synonymous.
8. "Taxpayer" means an individual, partnership, firm, corporation, joint venture, association, estate, fiduciary, trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number who is or may be required to file a tax return under North Dakota Century Code Title 57.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 57-01-02

**81-01.1-01-03. Examination or investigation for purposes of an audit.** In order to determine the accuracy of a tax return, the correct tax liability, or whether a filing requirement exists, the tax commissioner may investigate or examine material including but not limited to a taxpayer's books, records, memoranda, computer printouts, accounts, vouchers, corporate or committee minutes, any other pertinent documents, tangible personal property, equipment, computer systems, business facilities, plants, and shops.

A taxpayer must make all items and places available to the tax commissioner upon request. The tax commissioner may require the taxpayer to be present to answer questions, provide testimony, and submit proof of material or information examined. The taxpayer must answer all questions to the best of that taxpayer's information and ability.

An examination or investigation by the tax commissioner may extend to any person having access to information which may be relevant to an audit of a taxpayer.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 57-01-02

## CHAPTER 81-01.1-02 ADMINISTRATIVE HEARINGS

Section	
81-01.1-02-01	Formal Hearing Before Tax Commissioner
81-01.1-02-02	Taxpayer Right to Administrative Hearing

On Refund Issue

81-01.1-02-03 Notice of Hearing - Answer - Time for Filing  
81-01.1-02-04 Place of Formal Hearing  
81-01.1-02-05 Powers of Hearing Officer

**81-01.1-02-01. Formal hearing before tax commissioner.** When provided by statute, a taxpayer may request a formal hearing before the tax commissioner.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 57-01-02

**81-01.1-02-02. Taxpayer right to administrative hearing on refund issue.** If the tax commissioner denies any portion of a taxpayer's request for a refund, the taxpayer has the right to protest and the right to administrative review only when such protest or review is specifically provided by the statutes governing the specific tax type. When there is no specific statutory provision giving a taxpayer the right of administrative review, the decision by the tax commissioner is final and irrevocable.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 57-01-02

**81-01.1-02-03. Notice of hearing - Answer - Time for filing.**

1. When a taxpayer files a complaint and requests a hearing, the tax commissioner must serve a notice of hearing upon the taxpayer and upon a designated representative of the tax commissioner within a reasonable time from the date of service of the complaint. The designated representative of the tax commissioner must file an answer to the complaint within twenty days of receipt of the complaint and the notice of hearing.
2. When a representative of the tax commissioner files a complaint and requests a hearing, the tax commissioner must serve a notice of hearing together with a copy of the complaint upon the taxpayer and the designated representative of the tax commissioner within a reasonable time from the service of the complaint. The taxpayer must file an answer to the complaint within twenty days of service of the notice of hearing and complaint.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 28-32-05, 57-01-02

**81-01.1-02-04. Place of formal hearing.** All formal hearings, regardless of the taxpayer's residence, must be held at the office of the tax commissioner in the State Capitol, Bismarck, North Dakota.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 57-01-02

**81-01.1-02-05. Powers of hearing officer.** A person appointed as a hearing officer may:

1. Issue notice of hearing and specifications of issues.
2. Issue subpoenas.
3. Administer oaths.
4. Regulate the course of the hearing to assure that it proceeds in an orderly fashion.
5. Rule on offers of proof and receive relevant evidence.
6. Elicit all facts necessary to clearly present the issues. The hearing officer may examine or cross-examine witnesses in order to develop and clarify the facts and issues.
7. Exclude evidence which is cumulative or repetitious.
8. Order or allow discovery proceedings and set and regulate time limits for obtaining and exchanging information.
9. Hold appropriate conferences before or during hearing. A summary of the conference must be made by the hearing officer either in writing or orally as part of the hearing record.
10. Dispose of procedural matters and rule upon procedural motions.
11. Authorize any party to furnish and serve designated late filed exhibits within thirty days after the hearing is adjourned.
12. Request or allow the filing of briefs by the parties and set a time limit during which the briefs must be filed.
  - a. The hearing officer, at that officer's discretion, may extend the due date of the briefs for good cause. An extension must be requested and responded to in writing.
  - b. Any party who does not file a brief on or before the initial or extended due date forfeits the right to do so.

13. Allow any party to the proceedings to file proposed findings of fact, conclusions of law, and decision. The proposal must be filed with the tax commissioner within a reasonable time after the date of the formal hearing.
14. Grant or deny continuances or postponements.
15. Take any other action necessary to discharge the duties vested in the tax commissioner and the appointed hearing officer and which is consistent with the statutes and rules under which the tax commissioner operates.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 57-01-02

### CHAPTER 81-01.1-03 RULES

Section

81-01.1-03-01      Public Notice and Hearing on Proposed Rules

**81-01.1-03-01. Public notice and hearing on proposed rules.** The tax commissioner must give public notice of intent to amend or create rules.

1. The tax commissioner must schedule a public hearing and notify the public of the date, time, and place of such hearing by publishing a legal notice in all daily newspapers of North Dakota no later than thirty days before the date set for hearing. In addition, the tax commissioner will supply copies of the proposed rules to any person whose name is on a permanent mailing list. Any person who wishes to be placed on the permanent mailing list for rules, must notify the tax commissioner in writing.
2. The hearing must be held at the office of the tax commissioner, State Capitol, Bismarck, North Dakota.
3. Any member of the public may obtain a copy of the proposed rules free of cost by contacting the office of the tax commissioner.
4. Any member of the public may attend the hearing and may testify for or against the proposed rules.
5. The tax commissioner may appoint a hearing officer to preside at the hearing.

6. A record must be made of the public hearing by use of an electronic recording device or by a qualified court reporter, and the testimony will be transcribed for the purpose of permanent record.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 57-01-02

**81-02.1-01-01. Requirements for application.** The term "owner" for the purpose of determining who must apply for a mobile home tax ~~deca~~ permit means the person holding legal title to the mobile home. A vendee, mortgagor, or lessee is the owner if the mobile home is subject to a conditional sales agreement or lease with an option to purchase upon expiration of the agreement and if the vendee, mortgagor, or lessee is entitled to possession of the mobile home.

**History:** Effective June 1, 1984; amended effective July 1, 1985.  
**General Authority:** NDCC 57-55-09  
**Law Implemented:** NDCC 57-55-01.1, 57-55-02

**81-02.1-01-02. Filing requirements.** The owner of every mobile home subject to tax must apply for a tax ~~deca~~ permit each year to the county director of tax equalization in the county of the owner's domicile. If the mobile home is permanently located in a county other than the owner's domicile, the application must be made in the county where the mobile home is located.

A mobile home owner exempt from the tax must apply to the county director of tax equalization for a tax-exempt ~~deca~~ permit. If the owner's exempt status is established, the county treasurer will issue a special tax-exempt ~~deca~~ which must be attached to the mobile home permit.

**History:** Effective June 1, 1984; amended effective July 1, 1985.  
**General Authority:** NDCC 57-55-09  
**Law Implemented:** NDCC 57-55-01, 57-55-02

**81-02.1-01-03. Form and contents of application.** The application for a tax ~~deca~~ permit must be made on forms furnished by the county director of tax equalization. An original and two copies must be filed with the director. The application must include a full description of the mobile home, the name of the manufacturer, the serial number, age, length and width, the location, and the owner's name and address.

**History:** Effective June 1, 1984; amended effective July 1, 1985.  
**General Authority:** NDCC 57-55-09

Law Implemented: NDCC 57-55-02

**81-02.1-01-05. Filing procedures for the counties.** When the computation of the mobile home tax ~~deea±~~ permit section of the application is complete, the county director of tax equalization must retain one copy and deliver the original and one copy to the county treasurer.

If the taxes are paid in full, the treasurer must issue a prenumbered ~~deea±~~ permit and a receipt showing the amount of payment and the type of tax. The receipt and ~~deea±~~ permit number must be recorded on the face of the application. The copy is then returned to the owner and the original retained by the treasurer.

The county treasurer must maintain an account for tax payments received in installments. If payment of the tax is made in installments, a receipt indicating the amount of payment and the type of tax must be issued to the owner. The tax ~~deea±~~ permit must be issued upon payment of the second final installment. The county treasurer must inform the county director of tax equalization if an installment becomes delinquent, and the director must give the owner notice of the delinquency as provided in North Dakota Century Code section 57-55-11.

**History:** Effective June 1, 1984; amended effective July 1, 1985.

**General Authority:** NDCC 57-55-09

**Law Implemented:** NDCC 57-55-03, 57-55-04

**81-02.1-01-06. Accounting of mobile home taxes.** Mobile home taxes, including penalties for delinquencies, must be credited by the county treasurer to a special account established for each year. The account must be designated as the "Mobile Home Tax Account" for the year in which the tax ~~deea±~~ permit was issued. The taxes must be retained by the county treasurer in the account until the monthly disbursements are made as provided for in North Dakota Century Code section 11-14-16.

**History:** Effective June 1, 1984; amended effective July 1, 1985.

**General Authority:** NDCC 57-55-09

**Law Implemented:** NDCC 57-55-01.1, 57-55-02, 57-55-04

**81-02.1-01-07. Due dates.** The due date for the mobile home tax is the day fixed by law on which the tax first becomes due and payable. If the mobile home is brought into or acquired in this state on or after January first, the tax becomes due on the eleventh tenth day thereafter. The eleventh day is computed by counting day one as the first day it was brought into or acquired in this state.

The due date must be distinguished from the delinquency date, which is the date penalties fixed by law attach to unpaid taxes.

**History:** Effective June 1, 1984; amended effective July 1, 1985.

**General Authority:** NDCC 57-55-09

**Law Implemented:** NDCC 57-55-01.1, 57-55-03

**81-02.1-01-08. Noncompliance by mobile home owner.** A mobile home owner is not in compliance with the mobile home tax law if the owner:

1. Has not applied for a tax ~~decal~~ permit within the required time.
2. Has applied for a tax ~~decal~~ permit but has not paid the tax or installment on time.
3. Has not paid the full penalty which has attached to a delinquent tax.
- 4- ~~Has not properly attached the tax decal to the mobile home.~~

**History:** Effective June 1, 1984; amended effective July 1, 1985.

**General Authority:** NDCC 57-55-09

**Law Implemented:** NDCC 57-55-07, 57-55-11

**81-02.1-01-11. Application by new owner not required if mobile home has current ~~decal~~ permit.** If a mobile home with a current ~~decal~~ permit is acquired during a year, the new owner is not required to obtain a new ~~decal~~ permit for that year. If a ~~tax-exempt decal~~ is attached to the mobile home the former owner possesses a tax-exempt permit, the new owner must apply for a tax ~~decal~~ permit within the statutory time.

**History:** Effective June 1, 1984; amended effective July 1, 1985.

**General Authority:** NDCC 57-55-09

**Law Implemented:** NDCC 57-55-04

**81-02.1-01-12. ~~Decal~~ Permit nontransferable.** The tax ~~decal~~ permit issued for a particular mobile home is nontransferable and cannot be used on any other mobile home. If the mobile home is sold, traded in on another mobile home or property, or disposed of in any manner, the ~~decal~~ permit must remain ~~on~~ with the mobile home.

**History:** Effective June 1, 1984; amended effective July 1, 1985.

**General Authority:** NDCC 57-55-09

**Law Implemented:** NDCC 57-55-07

**81-02.1-01-15. Liability for taxes upon sale of mobile home.** When a mobile home upon which the yearly ~~deea~~ permit tax has not been paid is sold, it is presumed that the tax was taken into consideration during the price negotiations between the buyer and the seller. The tax is imposed upon the property itself even though the owner is required to pay it. When the tax remains unpaid after the sale, it will be collected as follows:

1. The county director of tax equalization will collect the tax due from the seller prorated for the period of ownership during the year.
2. The buyer is liable for tax prorated for the period of ownership during the year of purchase.
3. If the tax cannot be collected from the seller, the buyer is liable for the full amount of tax due for the year of purchase.

**History:** Effective June 1, 1984; amended effective July 1, 1985.

**General Authority:** NDCC 57-55-09

**Law Implemented:** NDCC 57-55-01.1, 57-55-05

**81-02.1-01-17. Tax ~~deea~~ permit or tax release displayed during transport.** A licensed mobile home dealer transporting a mobile home from the dealer's lot to a purchaser's lot is not required to display a current mobile home tax ~~deea~~ permit or a tax release statement.

**History:** Effective June 1, 1984; amended effective July 1, 1985.

**General Authority:** NDCC 57-55-09

**Law Implemented:** NDCC 57-55-11

**81-02.1-01-18. Tax ~~deea~~s permits lost or destroyed.** If a tax ~~deea~~ permit issued by the county treasurer is lost, destroyed, or mutilated, a replacement ~~deea~~ permit may be obtained from the county treasurer by paying one dollar and furnishing information indicating the reason for the replacement.

**History:** Effective June 1, 1984; amended effective July 1, 1985.

**General Authority:** NDCC 57-55-09

**Law Implemented:** NDCC 57-55-02, 57-55-06

STAFF COMMENT: Chapter 81-03-01.1 contains all new material but is not underscored so as to improve readability.

## ARTICLE 81-03

### INCOME TAXES AND PRIVILEGE TAXES BASED ON INCOME

Chapter	
81-03-01	General Considerations [Superseded]
81-03-01.1	General Considerations
81-03-02	Income Tax on Individuals, Estates, Trusts, and Fiduciaries [Superseded]
81-03-02.1	Income Tax on Individuals, Estates, Trusts, and Fiduciaries
81-03-02.2	Income Tax on Nonresident Individuals, Estates, Trusts, and Fiduciaries
81-03-03	Income Tax Withholding [Superseded]
81-03-03.1	Income Tax Withholding
81-03-04	Declarations of Estimated Tax
81-03-05	Income Tax on Corporations [Superseded]
81-03-05.1	Income Tax on Corporations
81-03-06	Exempt Organizations [Repealed]
81-03-07	Business and Corporation Privilege Tax
81-03-08	Vietnam Bonus Surtax [Repealed]
81-03-09	Division of Income
81-03-09.1	Division of Income for Financial Institutions

#### CHAPTER 81-03-01 GENERAL CONSIDERATIONS

[Superseded by Chapter 81-03-01.1]

#### CHAPTER 81-03-01.1 GENERAL CONSIDERATIONS

Section	
81-03-01.1-01	Reaudit and Reassessment
81-03-01.1-02	Taxpayer May be Required to File a Pro Forma Federal Income Tax Return
81-03-01.1-03	Interest on Obligations of the United States and of the States and Their Political Subdivisions

**81-03-01.1-01. Reaudit and reassessment.** After auditing an income tax return and making an assessment of tax, the tax commissioner may reaudit that return and assess or reassess any additional tax found due provided the reaudit relates to matters of law or matters of fact which do not require a redetermination of facts determined in a prior audit.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38-33, 57-38-38, 57-38-39, 57-38-40

**81-03-01.1-02. Taxpayer may be required to file a pro forma federal income tax return.**

1. A taxpayer who does not have a federal income tax filing requirement but who has income taxable in this state and is, therefore, required to file a North Dakota income tax return, must prepare a pro forma federal income tax or information return to determine a starting point for the North Dakota tax return. The pro forma federal income tax or information return must be filed with the state tax commissioner together with the taxpayer's North Dakota income tax return.
2. "Pro forma federal income tax return" for purposes of this article and North Dakota Century Code chapter 57-38 means a federal income tax return prepared in accordance with the provisions of the Internal Revenue Code of 1954 as amended and effective during the period covered in the tax return. The tax return must contain complete and accurate information on the taxpayer's income and deductions and must be prepared as though the taxpayer were required to file it with the Internal Revenue Service.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38-30.3, 57-38-31, 57-38-32, 57-38-34, 57-38-42

**81-03-01.1-03. Interest on obligations of the United States and of the states and their political subdivisions.** Interest received from obligations of the United States or of its possessions and from this state or its political subdivisions is not subject to income tax imposed by this state.

Interest received from obligations of any other state or its political subdivisions is subject to income tax imposed by this state for a taxpayer who files an individual income tax return form 37, but is not subject to income tax imposed by this state for a taxpayer who files an individual income tax return form 37-S.

"Obligations" as used in this section means only those obligations, such as municipal or other government bonds, arising out of the borrowing power of the federal government or a state government or its political subdivisions.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38-01.2, 57-38-01.3, 57-38-30.3

## CHAPTER 81-03-02

### INCOME TAX ON INDIVIDUALS, ESTATES, TRUSTS, AND FIDUCIARIES

[Superseded by Chapter 81-03-02.1]

**STAFF COMMENT:** Chapters 81-03-02.1, 81-03-02.2, 81-03-03.1, 81-03-04, and 81-03-05.1 contain all new material but are not underscored so as to improve readability.

## CHAPTER 81-03-02.1

### INCOME TAX ON INDIVIDUALS, ESTATES, TRUSTS, AND FIDUCIARIES

#### Section

81-03-02.1-01	Credit for Taxes Paid to Another State
81-03-02.1-02	Federal Income Tax Adjustment to Taxable Income
81-03-02.1-03	Moving Expenses - Adjustment
81-03-02.1-04	Reporting - Resident Trusts or Estates
81-03-02.1-05	Reporting - Income Earned By Husband and Wife
81-03-02.1-06	Adjustments for Pay Received From Armed Forces
81-03-02.1-07	Adjustments for Sale or Lease of Agricultural Land To Beginning Farmer
81-03-02.1-08	Adjustments for Sale or Lease of Revenue-producing Enterprise to Beginning Businessman
81-03-02.1-09	Exemptions - Separate Filers

**81-03-02.1-01. Credit for taxes paid to another state.** A resident who pays income tax to another state on income which is also taxed by this state, is entitled to a tax credit. The tax credit may be deducted from the North Dakota income tax liability. A copy of the income tax return filed with another state must be filed with the North Dakota income tax return and the tax commissioner may require the taxpayer to have the copy certified by the other state.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 57-38-56  
**Law Implemented:** NDCC 57-38-04, 57-38-30.3

**81-03-02.1-02. Federal income tax adjustment to taxable income.**

An individual who files North Dakota individual income tax return form 37 is subject to the following limitations:

1. Only that portion of the individual's federal income tax deduction relating to income assignable to this state may be deducted from income taxable in this state.
2. The federal income tax deduction reported on the nonresident individual's income tax return for this state may not include any credit for taxes paid to foreign countries. That is, the credit may not be added into the federal income tax deduction for North Dakota income tax purposes.
3. The deduction for the alternative minimum tax must be limited to the percentage of tax preference items in this state as compared to the total tax preference items reported on the individual's federal income tax return.
4. The deduction for the alternative minimum tax must also be limited to the amount that the alternative minimum tax exceeds the investment tax credit reported on the individual's federal income tax return.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 57-38-56  
**Law Implemented:** NDCC 57-38-01.2, 57-38-06

**81-03-02.1-03. Moving expenses - Adjustment.**

1. An individual who moves out of this state and who claims moving expenses as a deduction on that individual's federal income tax return for the year in which the move was made may not deduct those expenses for purposes of computing North Dakota taxable income on form 37.
2. An individual who moves into this state and who claims moving expenses as a deduction on that individual's federal income tax return for the year in which the move was made may deduct those expenses for the purpose of computing North Dakota taxable income on form 37.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 57-38-56  
**Law Implemented:** NDCC 57-38-01.1

**81-03-02.1-04. Reporting - Resident trusts or estates.**

1. Every fiduciary for a resident trust or estate must file an income tax return with the tax commissioner.
2. A trust or estate is a resident trust or estate when it has a relationship to the state sufficient to create nexus. This includes but is not limited to the following contacts:
  - a. A beneficiary of the trust or estate is a domiciliary or resident of this state.
  - b. The trustee or executor is a domiciliary or resident of this state.
  - c. Assets making up any part of the trust or estate have situs in this state.
  - d. Any or all of the administration or income production of the trust or estate takes place within this state.
  - e. The laws of this state are specifically made applicable to the trust or estate or to the opposite parties with respect to their fiduciary relationship.
  - f. The trust is a revocable trust, and the grantor is a domiciliary or resident of this state.
3. A trust, or a portion of a trust, is revocable if subject to power by the grantor, at any time, to revest title in the grantor.
4. A nonresident trust or estate is a trust or estate other than a resident trust or estate.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38-31

**81-03-02.1-05. Reporting - Income earned by husband and wife.**

Requirements for a husband and wife who file a joint federal income tax return and who elect to file separate North Dakota income tax returns include:

1. Income from nonbusiness property owned by one spouse cannot be divided between husband and wife, but must be reported only by the spouse with the ownership interest.
2. Nonbusiness income from jointly or commonly owned real estate, stocks, bonds, bank accounts, and other nonbusiness income must be reported by each spouse on the separate tax return as if their federal adjusted gross income was determined separately. Reporting of this income depends on the nature of the ownership interest and is subject to the following:

- a. A husband and wife owning property as joint tenants with a right of survivorship must each report one-half of the income from the property on their separate North Dakota income tax returns.
  - b. Income from property held by husband and wife as tenants in common must be reported in proportion to their legally enforceable interests in the property.
3. Salary and wages earned by each spouse must be reported by each spouse as if their federal adjusted gross income was determined separately. Reporting of wages and salary by each spouse depends upon the nature of the employment relationship and is subject to the following:
  - a. Wages or compensation for services or labor performed by one spouse with respect to a business or property owned by the other spouse may be reported on a separate North Dakota income tax return if the payment is reasonable for the labor or services actually performed. It is presumed that compensation or wages paid by one spouse to the other are unreasonable and disallowed for separate reporting unless a bona fide employer-employee relationship exists. Evidence of the relationship includes actual services performed, adherence to regular working hours and standards, and compliance with workmen's compensation and unemployment compensation laws.
  - b. Wages or compensation for services or labor performed pursuant to an employment agreement with a nonspousal employer is income which may be reported only by the spouse earning the wages.
4. Business income derived from property owned by both spouses, as evidenced by recognized methods of establishing legal ownership, may be allocated between spouses and reported on separate North Dakota income tax returns. The interest of each spouse must be allocated according to the capital interest, the management and control exercised, and the services performed by each spouse according to the following rules:
  - a. Allocation of partnership income between spouses is valid only if current partnership information returns have been filed with this state and the federal government and there has been compliance with federal self-employment laws.
  - b. When a business is owned by a husband and wife but one spouse claims all of the income for federal self-employment tax purposes, it is assumed that the claim was made with the full consent of the other spouse. Therefore, all of the income must be claimed for North Dakota income tax purposes by the spouse claiming such income on the

federal return. The presumption of consent may be overcome by presentation of evidence sufficient to negate the presumption.

- c. In order to determine the amount of capital contribution by each spouse, only invested capital which is legally traceable to each spouse is considered. Capital existing under the right, domain, and control of one spouse which is invested in the business is presumed to be a capital contribution of that spouse. Sham transactions that do not effect any real change in ownership of capital between spouses are disregarded in determining capital contribution of the recipient spouse.
- d. Contribution to management and control of the business must be substantial to be given weight in allocating income. Substantial participation involves legitimate consultation with respect to major business decisions, familiarity with the operations, problems, and policies of the business, and sufficient background and maturity to understand the various demands of the business. General statements as to family discussions are insufficient to demonstrate consultation.
- e. Services which make a direct contribution to the business are given weight in determining the proper allocation of income between spouses. Services performed for the family are not considered rendered for the benefit of the business.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38-34.2

**81-03-02.1-06. Adjustments for pay received from armed forces.**

A portion of the pay received for service in the armed forces by a resident of this state is not subject to income tax imposed by this state. This portion is determined as follows:

1. An amount up to a maximum of one thousand dollars for pay received by an individual for services performed while on active duty for the armed forces of the United States or as payment for attending periodic training meetings for drill and instruction as a member of the national guard or of a reserve unit of the armed forces of the United States may be deducted from income taxable in this state subject to the following:
  - a. The deduction may not exceed actual total pay received from such services for the tax year.
  - b. The deduction may not be claimed as an adjustment on the North Dakota individual income tax return if the amount

received for such services was excluded or deducted from gross income for federal income tax purposes.

2. An amount up to but not exceeding three hundred dollars per month for pay received by an individual for services performed while on active duty for the armed forces of the United States outside of the United States or the District of Columbia may be deducted from income taxable in this state subject to the following:
  - a. During the time for which the deduction is taken, the individual's rank must have been below major in the United States army, air force, or marines; below lieutenant commander in the United States navy; or below surgeon in the United States public health service.
  - b. The individual must have been on active duty stationed outside any state of the United States or the District of Columbia for thirty consecutive days in the year the deduction is claimed. After the initial thirty consecutive days, the person may claim the deduction for any full month or for a fraction of a month.
  - c. The individual must have earned three hundred dollars or more per month. If the individual was paid less than three hundred dollars per month, the deduction must be limited to actual pay received for the month.
  - d. The three hundred dollar per month deduction is in addition to the one thousand dollar deduction in subsection 1, and the total of the two may not exceed the individual's total pay for such services for the tax year the deduction is claimed.
  - e. The deduction may not be claimed as an adjustment on the North Dakota individual income tax return if the amount received for such services was excluded or deducted from gross income for federal income tax purposes.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 57-38-56  
**Law Implemented:** NDCC 57-38-01.2

**81-03-02.1-07. Adjustments for sale or lease of agricultural land to beginning farmer.** Adjustments to determine net taxable income received from the sale or lease of agricultural land and from interest income received on a contract for deed are subject to the conditions and limitations established in North Dakota Century Code chapter 57-38 and as follows:

1. Net rental income up to twenty-five thousand dollars, interest income, capital gains, or ordinary income of an individual

selling or leasing agricultural land to a beginning farmer is deductible, for North Dakota income tax purposes, only in the year that the income is reported on the individual's federal income tax return. Unused deductions may not be carried back or forward to another year.

2. Deductions for rental income may not be claimed by the landowner for lease agreements with more than one beginning farmer on the same tract or parcel of land.
3. A beginning farmer must be eighteen years of age or older at the time of the sale or lease. (See North Dakota Century Code section 14-10-09.)
4. A husband and wife living together who together purchase agricultural land are regarded as one beginning farmer.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38-01.2, 57-38-67, 57-38-68, 57-38-69, 57-38-70

**81-03-02.1-08. Adjustments for sale or lease of revenue-producing enterprise to beginning businessman.** Adjustments to determine net taxable income received from the sale or lease of a revenue-producing enterprise and from interest received on a contract are subject to conditions and limitations established in North Dakota Century Code chapter 57-38 and as follows:

1. Net rental income up to twenty-five thousand dollars, interest income, capital gains in the year of the sale, or ordinary income, of a businessman selling or leasing a revenue-producing enterprise is deductible for North Dakota income tax purposes, only in the year that the income is reported on the businessman's federal income tax return. Unused deductions may not be carried back or forward to another year.
2. Deductions for rental income cannot be claimed by the businessman for lease agreements with more than one beginning businessman on the same revenue-producing enterprise.
3. A beginning businessman must be eighteen years of age or older at the time of sale or lease. (See North Dakota Century Code section 14-10-09.)
4. A husband and wife living together who together purchase a revenue-producing enterprise are regarded as one beginning businessman.
5. "Year of sale" for purposes of North Dakota Century Code section 57-38-72 means the year during which the

revenue-producing enterprise was sold to the beginning businessman. In the case of a contract, it means the year during which the contract was entered into between the seller and the beginning businessman.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38-01.2, 57-38-71, 57-38-72, 57-38-73, 57-38-74

**81-03-02.1-09. Exemptions - Separate filers.** Where married persons who file separate returns and one person elects to file under North Dakota Century Code section 57-38-30.3 and the other person does not, the person not electing to file under that section is limited to one personal exemption plus an additional exemption if that person is age sixty-five or over, and an additional exemption if that person is legally blind. The person not electing to file pursuant to North Dakota Century Code section 57-38-30.3 may not claim exemptions for that person's spouse or for that person's dependents.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38-01.15

## CHAPTER 81-03-02.2 INCOME TAX ON NONRESIDENT INDIVIDUALS, ESTATES, TRUSTS, AND FIDUCIARIES

### Section

- |               |   |
|---------------|---|
| 81-03-02.2-01 | Nonresident Filing Status and Reporting<br>of Income  |
| 81-03-02.2-02 | Income of Nonresident From Tangible Property<br>Located in North Dakota   |
| 81-03-02.2-03 | Computation of North Dakota Income Tax Liability<br>By a Nonresident Individual, Estate, or Trust<br>Electing to File Under North Dakota Century<br>Code Section 57-38-30.3 |

### **81-03-02.2-01. Nonresident filing status and reporting of income.**

A nonresident individual who moves into this state with the intent to establish permanent residence acquires status as a resident immediately upon entering this state. That individual may file an individual income tax return for the first tax year either as a resident or as a nonresident.

An individual who elects to file an individual income tax return as a resident the first tax year in this state must report to this state total income from all sources for the entire year and must pay taxes on

that income. That individual is entitled to a tax credit for taxes paid to another state on any portion of that income.

An individual who elects to file an individual income tax return as a nonresident the first tax year in this state, must report to this state total income from all sources for that portion of the tax year during which the individual resided in this state. Income from tangible property located in this state must be reported to this state for the entire year.

If a resident individual moves out of this state during a tax year with the intent to change residency, that individual must file an individual income tax return as a nonresident and must report to this state total income from all sources for that portion of the tax year during which the individual resided in this state. Income from tangible property located in this state must be reported to this state for the entire year.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 57-38-56  
**Law Implemented:** NDCC 57-38-04

**81-03-02.2-02. Income of nonresident from tangible property located in North Dakota.** A nonresident must report to this state income from tangible property located in this state and must pay North Dakota tax on that income. Such income may not be excluded by a reciprocal agreement or for any other reason unless specifically excluded by statute.

Income from tangible property located in this state includes but is not limited to income from royalty interests and all other lease interests in minerals, income from rental of tangible property, gains from sales of tangible property, and gains from the sale or assignment of land contracts.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 57-38-56  
**Law Implemented:** NDCC 57-38-04, 57-38.1-04, 57-38.1-05, 57-38.1-06

**81-03-02.2-03. Computation of North Dakota income tax liability by a nonresident individual, estate, or trust electing to file under North Dakota Century Code section 57-38-30.3.** Subsection 10 of North Dakota Century Code section 57-38-30.3 provides for the recomputation of the federal income tax liability by nonresident individuals, estates, or trusts to prevent any income from becoming exempt from taxation because of the provisions of North Dakota Century Code section 57-38-30.3 if that income would otherwise have been subject to taxation under the provisions of North Dakota Century Code chapter 57-38. Therefore, a nonresident individual, estate, or trust that files under North Dakota Century Code section 57-38-30.3 and that has out-of-state losses that

exceed out-of-state income must make a separate computation to determine a recomputed federal income tax liability.

This computation consists of adding out-of-state losses that exceed out-of-state income to federal adjusted gross income and then using this figure to determine a recomputed federal income tax liability. A schedule prescribed by the tax commissioner must be used to determine the recomputed federal income tax liability. The recomputed income tax liability is the amount that must be used to compute the North Dakota income tax liability.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 57-38-56  
**Law Implemented:** NDCC 57-38-30.3

## CHAPTER 81-03-03

### INCOME TAX WITHHOLDING

[Superseded by Chapter 81-03-03.1]

### CHAPTER 81-03-03.1 INCOME TAX WITHHOLDING

#### Section

81-03-03.1-01	Certificate of Residence - Penalty
81-03-03.1-02	Employer's Application for Identification Number
81-03-03.1-03	Exemptions - Federal or State Withholding Certificate
81-03-03.1-04	Amount of Wages Payable Before Withholding Applies

**81-03-03.1-01. Certificate of residence - Penalty.** A nonresident employee, for purposes of North Dakota income tax withholding, is an individual, except a domestic or farm worker, who does not file a signed certificate of residence with the employer. An individual is a resident of this state for income tax withholding purposes and legally entitled to sign and submit a certificate of residence if both of the following requirements are met:

1. The employee filed a North Dakota individual income tax return for either of the two preceding tax years.
2. The employee continuously maintained a domicile in this state for a full calendar year prior to the current year and continues to maintain the domicile.

An employee who makes a false statement in the certificate and who submits that certificate is guilty of a class A misdemeanor.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 57-38-56  
**Law Implemented:** NDCC 57-38-58, 57-38-59

**81-03-03.1-02. Employer's application for identification number.** Employers who employ one or more nonresident employees as defined for North Dakota income tax withholding purposes must apply for an employer's identification number within seven days of hiring a nonresident employee. The application must be made to the tax commissioner on forms prescribed by the tax commissioner.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 57-38-56  
**Law Implemented:** NDCC 57-38-58, 57-38-59, 57-38-60

**81-03-03.1-03. Exemptions - Federal or state withholding certificate.** An individual may not claim exempt status for purposes of income tax withholding in this state. An employer must use an employee's federal withholding certificate to determine the number of exemptions for purposes of computing North Dakota income tax withholding. However, if an employee claims an exempt status on the federal withholding certificate, the employer must have the employee complete a withholding certificate prescribed by the tax commissioner on which the employee may claim only those exemptions allowable by this state. If an employee fails to provide the employer with a completed state withholding certificate when required, the employer must compute the employee's North Dakota income tax withholding as though the employee were single and had one exemption.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 57-38-56  
**Law Implemented:** NDCC 57-38-59, 57-38-60

**81-03-03.1-04. Amount of wages payable before withholding applies.** Employers must withhold North Dakota income taxes from total gross wages paid to a nonresident employee beginning with the first payment of wages to that employee under the following circumstances:

1. When it is anticipated that the period of employment of the employee will cover sixty days or more in any one year; or
2. When it is anticipated that the employee will be paid more than six hundred dollars in wages for employment in any one year.

**History:** Effective July 1, 1985.  
**General Authority:** NDCC 57-38-56  
**Law Implemented:** NDCC 57-38-58, 57-38-59

**CHAPTER 81-03-04  
DECLARATIONS OF ESTIMATED TAX**

Section

81-03-04-01

Corporation Required to Report and Pay Estimated  
Tax, Penalty, and Interest - Refund of  
Overpayment

**81-03-04-01. Corporation required to report and pay estimated tax, penalty, and interest - Refund of overpayment.**

1. Any corporation may elect to file a declaration of estimated income tax with the tax commissioner.
2. Any corporation that reasonably expects its current state income tax liability to be in excess of five thousand dollars must file a declaration of estimated tax with the tax commissioner. When making the declaration, a corporation has the option of basing its estimation on the tax liability for the previous year or on an estimate of its liability for the current tax year.
3. The declaration of estimated tax must be filed on or before the fifteenth day of the fourth month of the current corporate tax year. The original declaration may be amended by filing an amended declaration any time before the fifteenth day of the first month of the tax year following the current tax year.
4. A corporation must pay its estimated tax liability in four equal installments payable on the fifteenth day of the fourth, sixth, and ninth month of the current tax year and the fifteenth day of the first month of the following tax year. As an alternative to paying in quarterly installments, a corporation may pay the entire estimated amount on the fifteenth day of the fourth month of the current tax year.
5. Penalty and interest apply in the following conditions:
  - a. A corporation did not timely file a declaration of estimated tax.
  - b. A corporation did not pay the estimated tax on or before the quarterly due date.
  - c. The quarterly estimated payments were underpaid by more than ten percent of the actual tax liability for the current tax year divided by four. However, no penalty or interest will apply if the quarterly estimated payments equaled the previous year's total tax divided by four.

6. A corporation having a total state income tax liability of less than five thousand dollars in the previous tax year and more than five thousand dollars in the current tax year, will be subject to penalty and interest if the conditions of subsection 5 apply.
7. Interest is computed from the due date of the quarterly installment to the date of actual payment. Estimated tax payments, received as a result of an amended declaration of estimated tax, will have interest computed from the date paid to the date due in the related quarters.
8. If the total amount of estimated tax payments exceed the total amount of tax required to be paid for the current tax year, the overpayment will be refunded. Interest will be paid on any overpayment of tax if the overpayment is not refunded within sixty days after the due date of the income tax return or within sixty days after the date the income tax return was filed, whichever comes later.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38-62

## CHAPTER 81-03-05

### INCOME TAX ON CORPORATIONS

[Superseded by Chapter 81-03-05.1]

## CHAPTER 81-03-05.1

### INCOME TAX ON CORPORATIONS

**Section**

81-03-05.1-01	Cooperatives Required To File
81-03-05.1-02	Computation of Unitary Business Income Subject To Apportionment
81-03-05.1-03	DISC and FSC Subject to North Dakota Income Tax
81-03-05.1-04	DISC Distributions

**81-03-05.1-01. Cooperatives required to file.** Cooperative corporations, such as grain elevators, oil companies, creameries, locker plants, and others, which distribute their income through patronage dividends are not exempted from filing state income tax returns.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38-09, 57-38-09.1, 57-38-32

**81-03-05.1-02. Computation of unitary business income subject to apportionment.** Taxpayers who file a combined report must compute unitary business income subject to apportionment using one of two methods:

**1. Method one:**

- a. Begin with federal taxable income of those corporations included in the combined report which are required to file a federal income tax return, allowing for intercompany transactions.
- b. Add book income adjusted to conform to the provisions of the Internal Revenue Code of those corporations included in the combined report which are not required to file a federal income tax return.
- c. Add or deduct North Dakota statutory adjustments.
- d. Add or deduct nonbusiness income and nonbusiness losses and related expenses.

**2. Method two:**

- a. Begin with federal taxable income of those corporations included in the combined report which are required to file a federal income tax return, allowing for intercompany transactions.
- b. Add book income of those corporations included in the combined report which are not required to file a federal income tax return.
- c. Add or deduct North Dakota statutory adjustments.
- d. Add or deduct nonbusiness income and nonbusiness losses and related expenses.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38-12, 57-38-13, 57-38-14, 57-38.1-01, 57-38.1-02, 57-38.1-09, 57-59-01

**81-03-05.1-03. DISC and FSC subject to North Dakota income tax.** A DISC (domestic international sales corporation) is treated as an ordinary corporation and subject to state income tax. If the domestic international sales corporation has no activity within this state, but the parent corporation is required to file a tax return with this state,

the deemed and actual distributions made by the domestic international sales corporation must be included in business income of the parent and subject to state tax.

The tax commissioner may require a combined report whereby income of the domestic international sales corporation is included in the parent's income for state tax purposes and deemed distributions and intercompany items are eliminated.

If both the parent corporation and the domestic international sales corporation are North Dakota corporations, the domestic international sales corporation must be required to file a return and compute income subject to state tax based on its total income, and the parent corporation will be allowed a deduction for the deemed distribution to the extent of the domestic international sales corporation's business activity taxed in this state. If the domestic international sales corporation is taxed on its total income, then the parent corporation may deduct one hundred percent of the deemed distribution.

A FSC (foreign sales corporation) must be treated the same as a domestic international sales corporation for state tax purposes. Distributions made by the foreign sales corporation to the parent corporation must be included in the parent's income for state tax purposes. The tax commissioner may also require a combined report by the parent corporation to include the income of the foreign sales corporation, with deemed distributions and intercompany items eliminated.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38-01, 57-38-01.3

**81-03-05.1-04. DISC distributions.** Actual distributions received from a DISC (domestic international sales corporation), or a former domestic international sales corporation, after December 31, 1984, on accumulated earnings derived before January 1, 1985, must be treated as taxable income and included in apportionable income for state tax purposes. Therefore, the taxable income of a corporation as computed pursuant to the provisions of the Internal Revenue Code of 1954, as amended, must be adjusted as necessary to include the actual domestic international sales corporation distributions received after December 31, 1984, in apportionable income for state tax purposes.

Actual distributions received after December 31, 1984, from accumulated earnings before January 1, 1985, from a domestic international sales corporation, or a former domestic international sales corporation, previously included in a combined report filed with this state, must be treated as previously taxed income and no adjustment to income for state tax purposes is necessary.

**History:** Effective July 1, 1985.

General Authority: NDCC 57-38-56  
Law Implemented: NDCC 57-38-01, 57-38-01.3

## CHAPTER 81-03-06

### EXEMPT ORGANIZATIONS

[Repealed effective July 1, 1985]

## CHAPTER 81-03-08

### VIETNAM BONUS SURTAX

[Repealed effective July 1, 1985]

81-03-09-21.1. Property factor - Intangible drilling costs. Intangible drilling and development costs incurred by oil and gas producing companies in connection with oil and gas properties must be included in the property factor. Intangible drilling and development costs include such elements as wages, fuel, repairs, hauling, draining, roadbuilding, surveying, geological works, construction of derricks, tanks, pipelines, and other physical structures necessary for the drilling of wells and their preparation for the production of oil and gas, and supplies incident to and necessary for the drilling of wells and clearing of ground.

The amount to be included in the property factor is the amount capitalized for financial reporting purposes using the successful effort accounting method. An election to expense intangible drilling costs for federal income tax purposes has no effect on their inclusion in the property factor.

Unproven properties must be included in the property factor until such time as they have been determined to be impaired and have been expensed for book purposes.

All costs relating to exploratory wells that have been capitalized and classified as uncompleted wells, equipment, and facilities (wells in progress or wells in process) must be included in the property factor until such time as the well is determined to be a dry hole and the costs have been expensed for book purposes.

Delay rentals, which are not capitalized for book purposes, are includable in the property factor at their net annual rental rate and are not capitalized times eight.

History: Effective July 1, 1985.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38-12, 57-38-13, 57-38-14, 57-38.1-02, 57-38.1-10, 57-38.1-11, 57-38.1-12, 57-59-01

81-03-09-35. Special rules - Railroads. The following special rules are established in respect to railroads:

1. In general. Where a railroad has income from sources both within and without this state, the amount of business income from sources within this state must be determined pursuant to this section. In such cases, the first step is to determine what portion of the railroad's income constitutes "business" income and which portion constitutes "nonbusiness" income under North Dakota Century Code section 57-38.1-01 and North Dakota Century Code section 57-59-01, article IV(1), and section 81-03-09-03. Nonbusiness income is directly allocable to specific states pursuant to the provisions of North Dakota Century Code sections 57-38.1-05 through 57-38.1-08 and North Dakota Century Code section 57-59-01, article IV(5) to (8), inclusive. Business income is apportioned among the states in which the business is conducted pursuant to the property, payroll, and sales apportionment factors set forth in the regulation. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income attributable to this state constitutes the amount of the taxpayer's entire net income which is subject to tax by this state.
2. Business and nonbusiness income. For definitions, rules, and examples for determining business and nonbusiness income, see sections 81-03-09-03 through 81-03-09-06.
3. Apportionment of business income.
  - a. In general. The property factor shall be determined in accordance with sections 81-03-09-15 through 81-03-09-21, inclusive, the payroll factor in accordance with sections 81-03-09-22 through 81-03-09-25, and the sales factor in accordance with sections 81-03-09-26 through 81-03-09-31, inclusive, except as modified in this regulation.
  - b. The property factor.
    - (1) Property valuation. Owned property shall be valued at its original cost and property rented from others shall be valued at eight times the net annual rental rate in accordance with North Dakota Century Code section 57-38.1-11 and North Dakota Century Code section 57-59-01, article IV(11), and sections 81-03-09-19 and 81-03-09-20. Railroad cars owned and

operated by other railroads and temporarily used by the taxpayer in its business and for which a per diem or mileage charge is made are not included in the property factor as rented property. Railroad cars owned and operated by the taxpayer and temporarily used by other railroads in their business and for which a per diem charge is made by the taxpayer are included in the property factor of the taxpayer.

(2) General definitions. The following definitions are applicable to the numerator and denominator of the property factor:

(a) "Original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal income tax adjustments except for subsequent capital additions, improvements thereto or partial dispositions); or, if the property has no such basis, the valuation of such property for interstate commerce commission purposes. If the original cost of property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer. Section 81-03-09-19.

(b) "Rent" does not include the per diem and mileage charges paid by the taxpayer for the temporary use of railroad cars owned or operated by another railroad.

(c) The "value" of owned real and tangible personal property shall mean its original cost. See North Dakota Century Code section 57-38.1-11 and North Dakota Century Code section 57-59-01, article IV(11), and section 81-03-09-19.

(d) "Average value" of property means the amount determined by averaging the values at the beginning and ending of the income tax year, but the office of state tax commissioner may require the averaging of monthly values during the income year or such averaging as necessary to effect properly the average value of the railroad's property. See North Dakota Century Code section 57-38.1-12 and North Dakota Century Code section 57-59-01, article IV(12), and section 81-03-09-21.

(e) The "value" of rented real and tangible personal property means the product of eight times the net annual rental rate. See North Dakota

Century Code section 57-38.1-11 and North Dakota Century Code section 57-59-01, article IV(11), and section 81-03-09-20.

(f) "Net annual rental rate" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(g) "Property used during the income year" includes property that is available for use in the taxpayer's trade or business during the income year.

(h) A "locomotive mile" is the movement of a locomotive (a self-propelled unit of equipment designed solely for moving other equipment) a distance of one mile [1.61 kilometers] under its own power.

(i) A "car mile" is a movement of a unit of car equipment a distance of one mile [1.61 kilometers].

(3) The denominator and numerator of the property factor. The denominator of the property factor must be the average value of all of the taxpayer's real and tangible personal property owned or rented and used during the income year. The numerator of the property factor must be the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the income year.

In determining the numerator of the property factor, all property except mobile or movable property such as passenger cars, freight cars, locomotives, and freight containers which are located within and without this state during the income year must be included in the numerator of the property factor in accordance with North Dakota Century Code sections 57-38.1-10 through 57-38.1-12 and North Dakota Century Code section 57-59-01, article IV(10)(11)(12), inclusive, and sections 81-03-09-15 through 81-03-09-21, inclusive.

Mobile or movable property such as passenger cars, freight cars, locomotives, and freight containers which are located within and without this state during the income year must be included in the numerator of the property factor in the ratio which "locomotive miles" and "car miles" in the state bear to the total everywhere.

c. The payroll factor. The denominator of the payroll factor is the total compensation paid everywhere by the taxpayer during the income year for the production of business income. See North Dakota Century Code sections 57-38.1-13 and 57-38.1-14 and North Dakota Century Code section 57-59-01, article IV(13)(14), and sections 81-03-09-22 through 81-03-09-25. The numerator of the payroll factor is the total amount paid in this state during the income year by the taxpayer for compensation. With respect to all personnel except enginemen and trainmen performing services on interstate trains, compensation paid to such employees must be included in the numerator as provided in North Dakota Century Code sections 57-38.1-13, 57-38.1-14, and North Dakota Century Code section 57-59-01, article IV(13)(14), and sections 81-03-09-22 through 81-03-09-25.

With respect to enginemen and trainmen performing services on interstate trains, compensation paid to such employees must be included in the numerator of the payroll factor in the ratio which their services performed in this state bear to their services performed everywhere. Compensation for services performed in this state must be deemed to be the compensation reported or required to be reported by such employees for determination of their income tax liability to this state.

d. The sales (revenue) factor.

(1) In general. All revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer which produces business income, except per diem and mileage charges which are collected by the taxpayer, is included in the denominator of the revenue factor. See North Dakota Century Code section 57-38.1-01 and North Dakota Century Code section 57-59-01, article IV(1), and sections 81-03-09-03 through 81-03-09-06.

The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year. The total revenue of the taxpayer in this state during the income year, other than revenue from hauling freight, passengers, mail and express must be attributable to this state in accordance with North Dakota Century Code sections 57-38.1-15 through 57-38.1-17 and North Dakota Century Code section 57-59-01, article IV(15)(16)(17), and sections 81-03-09-26 through 81-03-09-31.

(2) Numerator of sales (revenue) factor from freight, mail, and express. The total revenue of the taxpayer in this state during the income year for the numerator of the revenue factor from hauling freight,

mail, and express must be attributable to this state as follows:

- (a) All receipts from shipments which both originate and terminate within this state.
  - (b) That portion of the receipts from each movement or shipment passing through, into, or out of this state is determined by the ratio which the miles traveled by such movement or shipment in this state bears to the total miles traveled by such movement or shipment from point of origin to destination.
- (3) Numerator of sales (revenue) factor from passengers. The numerator of the sales (revenue) factor must include:
- (a) All receipts from the transportation of passengers (including mail and express handled in passenger service) which both originate and terminate within this state; and
  - (b) That portion of the receipts from the transportation of interstate passengers (including mail and express handled in passenger service) determined by the ratio which revenue passenger miles in this state bear to the total everywhere.

History: Effective July 1, 1985.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38.1-01, 57-38.1-02, 57-38.1-05, 57-38.1-06, 57-38.1-07, 57-38.1-08, 57-38.1-09, 57-38.1-10, 57-38.1-11, 57-38.1-12, 57-38.1-13, 57-38.1-14, 57-38.1-15, 57-38.1-16, 57-38.1-17, 57-59-01

81-03-09-36. Special rules - Airlines. The following special rules are established with respect to airlines:

1. In general. Where an airline has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to North Dakota Century Code chapter 57-38.1 and North Dakota Century Code section 57-59-01, article IV of the multistate tax compact, except as modified by this section.
2. Apportionment of business income.
  - a. General definitions. The following definitions are applicable to the terms used in the apportionment factor descriptions:

- (1) "Value" of owned real and tangible personal property means its original cost. See North Dakota Century Code section 57-38.1-11 and North Dakota Century Code section 57-59-01, article. IV(11), and section 81-03-09-19.
- (2) "Cost of aircraft by type" means the average original cost or value of aircraft by type which are ready for flight.
- (3) "Original cost" means the initial federal tax basis of the property plus the value of capital improvements to such property, except that, for this purpose, it must be assumed that safe harbor leases are not true leases and do not effect the original initial federal tax basis of the property. See section 81-03-09-19.
- (4) "Average value" of property means the amount determined by averaging the values at the beginning and ending of the income year, but the office of the state tax commissioner may require the averaging of monthly values during the income year if such averaging is necessary to reflect properly the average value of the airline's property. See North Dakota Century Code section 57-38.1-12 and North Dakota Century Code section 57-59-01, article IV(12), and section 81-03-09-21.
- (5) The "value" of rented real and tangible personal property means the product of eight times the net annual rental rate. See North Dakota Century Code section 57-38.1-11 and North Dakota Century Code section 57-59-01, article IV(11), and section 81-03-09-20.
- (6) "Net annual rental rate" means the annual rental rate paid by the taxpayer.
- (7) "Property used during the income year" includes property that is available for use in the taxpayer's trade or business during the income year.
- (8) "Aircraft ready for flight" means aircraft owned or acquired through rental or lease (but not interchange) which are in the possession of the taxpayer and are available for service on the taxpayer routes.
- (9) "Revenue service" means the use of aircraft ready for flight for the production of revenue.

(10) "Transportation revenue" means revenue earned by transporting passengers, freight, and mail, as well as revenue earned from liquor sales, and pet crate rentals and so forth.

(11) "Departures" means for purposes of this section all takeoffs, whether they be regularly scheduled or charter flights, that occur during revenue service.

b. Property factor.

(1) Property valuation. Owned aircraft must be valued at its original cost and rented aircraft must be valued at eight times the net annual rental rate in accordance with North Dakota Century Code section 57-38.1-11 and North Dakota Century Code section 57-59-01, article IV(11), and sections 81-03-09-19 and 81-03-09-20. The use of the taxpayer's owned or rented aircraft in an interchange program with another air carrier will not constitute a rental of such aircraft by the airline to the other participating airline. Such aircraft must be accounted for in the property factor of the owner. Parts and other expendables, including parts for use in contract overhaul work, will be valued at cost.

(2) The denominator and numerator of the property factor. The denominator of the property factor must be the average value of all of the taxpayer's real and tangible personal property owned or rented and used during the income year. The numerator of the property factor must be the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the income year.

In determining the numerator of the property factor, all property except aircraft ready for flight must be included in the numerator of the property factor in accordance with North Dakota Century Code sections 57-38.1-10 through 57-38.1-12 and North Dakota Century Code section 57-59-01, article IV(10)(11)(12), inclusive. Aircraft ready for flight must be included in the numerator of the property factor in the ratio calculated as follows: Departures of aircraft from locations in this state weighted as to the cost and value of aircraft by type compared to total departures similarly weighted.

c. The payroll factor. The denominator of the payroll factor is the total compensation paid everywhere by the taxpayer during the income year. The numerator of the payroll factor is the total amount paid in this state during the

income year by the taxpayer for compensation. See North Dakota Century Code sections 57-38.1-13, 57-38.1-14, and North Dakota Century Code section 57-59-01, article IV(13)(14). With respect to nonflight personnel, compensation paid to such employees must be included in the numerator as provided in North Dakota Century Code sections 57-38.1-13, 57-38.1-14, and North Dakota Century Code section 57-59-01, article IV(13)(14). With respect to flight personnel (the air crew aboard an aircraft assisting in the operations of the aircraft or the welfare of passengers while in the air), compensation paid to such employees must be included in the ratio that departures of aircraft from locations in this state, weighted as to the cost and value of aircraft by type compared to total departures similarly weighted, multiplied by the total flight personnel compensation.

d. Sales (transportation revenue) factor. The transportation revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer and miscellaneous sales of merchandise, and so forth, are included in the denominator of the revenue factor. See North Dakota Century Code section 57-38.1-01 and North Dakota Century Code section 57-59-01, article IV(1), and sections 81-03-09-03 through 81-03-09-06. Passive income items such as interest, rental income, dividends, and so forth, will not be included in the denominator nor will the proceeds or net gains or losses from the sale of aircraft be included. The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year. The total revenue of the taxpayer in this state during the income year is the result of the following calculation: The ratio of departures of aircraft in this state weighted as to the cost and value of aircraft by type, as compared to total departures similarly weighted multiplied by the total transportation revenue. The product of this calculation is to be added to any nonflight revenues directly attributable to this state.

3. Records. The taxpayer must maintain the records necessary to arrive at departures by type of aircraft as used in these regulations. Such records are to be subject to review by the respective state taxing authorities or their agents.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38.1-01, 57-38.1-02, 57-38.1-09, 57-38.1-10, 57-38.1-11, 57-38.1-12, 57-38.1-13, 57-38.1-14, 57-38.1-15, 57-38.1-16, 57-38.1-17, 57-59-01



APPORTIONMENT OF NET INCOME TO NORTH DAKOTA

	(X)Within North Dakota	(Y)Without North Dakota	(Z)Total	North Dakota Ratio
1. Tangible property held and owned in connection with business				(X divided by Z)
2. Business of Corporation:				
(a) Wages, salaries paid for services performed	\$.....	.....	.....	
(b) Receipts from sales and other business sources as defined in section 57-38-13(6)	\$.....	.....	.....	
(c) Total of (a) and (b)	.....	.....	.....	(X divided by Z)
3. Total of North Dakota property and business ratios .....				
4. Average ratio of North Dakota property and business to total (one-half of item 3) .....				

History: Effective July 1, 1985.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38-12(3)(a)&(b), 57-38-13

81-04.1-01-08. **Monthly sales tax deposits returns.** Qualified sales or use tax permitholders who fail to comply with the monthly requirement, fail to file the forms on time, or fail to pay ~~ninety-five percent~~ of the tax due for the month, forfeit the one and one-half percent compensation for expenses.

A quarterly sales and use tax return must be filed in addition to the monthly estimates each quarter. The quarterly return is to contain a reconciliation schedule which the sales and use tax permit holder must complete. Any additional sales or use tax due, over and above the ninety-five percent reported on each monthly estimate, must be paid together with the quarterly report.

The filed returns will be reviewed by the office of the tax commissioner each calendar year to determine if new sales or use tax permit holders qualify to file monthly estimates returns and to determine if sales or use tax permit holders who have filed monthly estimates returns must revert to quarterly filing status.

Sales or use tax permit holders who qualify to file monthly sales or use tax returns may deduct one and one-half percent from the tax due as compensation for expenses. Such compensation is limited to a maximum of eighty-three dollars and thirty-three cents per month.

**History:** Effective June 1, 1984; amended effective July 1, 1985.

**General Authority:** NDCC 57-39.2-19

**Law Implemented:** NDCC 57-39.2-12

**81-04.1-03-03. Food and food products for human consumption.** Candy, confectionary soft drinks, breath mints, and nonmedicated chewing gum are food products for human consumption and are not exempt from sales tax when purchased for consumption off the premises where purchased. These products sold at a place where they will be consumed on or near the premises are taxable in North Dakota.

Sales of food products prepared for immediate consumption on or near the premises of the seller are subject to sales tax even though they are sold on a "take out" or "to go" order by restaurants and drive-ins and are actually packaged or wrapped and taken from the premises.

When a package contains food and nonfood products, if the value of the nonfood items exceed fifty percent of the total selling price, the entire sale is subject to the tax.

**History:** Effective June 1, 1984; amended effective July 1, 1985.

**General Authority:** NDCC 57-39.2-19

**Law Implemented:** NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04.1

**81-04.1-03-05. Sales of legal tender coins and currency.** Coins or currency issued as legal tender by foreign nations are exempt from sales tax. Sales of gold or silver bullion, bars, ingots ingots, or other sales of precious metal not issued as legal tender by the United

States government or any foreign government are subject to sales tax if sales of these products takes place within North Dakota.

**History:** Effective June 1, 1984; amended effective July 1, 1985.

**General Authority:** NDCC 57-39.2-10

**Law Implemented:** NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

**81-04.1-04-02. Agriculture - Farm machinery and equipment.**

Farm machinery and irrigation equipment used principally for producing agricultural crops or livestock, including leasing or renting of farm machinery and equipment, are subject to sales tax at a reduced rate.

Machinery sold for nonagricultural purposes is subject to sales tax at the full rate. Items such as snowmobiles, snowblowers, lawn mowers, garden type tractors, and garden tillers are not farm machines and are subject to sales and use tax at the full rate. Irrigation equipment sold for nonagricultural purposes is subject to sales tax at the full rate. Tires, batteries, repair or replacement parts, accessories, communication equipment, tools, shop equipment, grain bins, feed bunks, fencing material, and other farm supplies are subject to sales tax at the full rate.

Contractors installing barn cleaners, milking systems, automatic feeding systems, irrigation systems, and similar installations which become a part of real property are subject to use tax on the cost of the materials.

**History:** Effective June 1, 1984; amended effective July 1, 1985.

**General Authority:** NDCC 57-39.2-19, 57-40.2-13

**Law Implemented:** NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-08.2, 57-40.2, 57-40.2-01, 57-40.2-02.1, 57-40.2-03.3, 57-40.2-05, 57-40.2-12

**81-04.1-04-31. Mobile homes - Factory manufactured homes.**

Factory manufactured homes Mobile homes are tangible personal property subject to sales tax at a reduced rate. A manufacturer or seller who permanently attaches such homes to a foundation is a construction contractor and is liable for tax based on the cost of materials to the manufacturer or seller.

Trade-ins are not to be deducted from the gross sales price prior to application of the sales tax if the property being traded-in was subject to either sales tax or the motor vehicle excise tax. No trade-ins are allowed on the purchase of a used mobile home.

**History:** Effective June 1, 1984; amended effective July 1, 1985.

**General Authority:** NDCC 57-39.2-19

**Law Implemented:** NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

**81-04.1-04-32. Mobile homes - Sales and rentals.** Leasing or renting mobile homes for nonresidential purposes is subject to sales tax. A mobile home dealer using a mobile home as an office must pay sales or use tax based on the dealer's cost. Sales tax is applied on the lease or rental of a new mobile home at a reduced rate. The lease or rental of a used mobile home ~~for residential purposes~~ is not subject to sales or use tax, ~~but rental of a used mobile home for nonresidential purposes is subject to tax.~~

**History:** Effective June 1, 1984; amended effective July 1, 1985.

**General Authority:** NDCC 57-39.2-19

**Law Implemented:** NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

**81-04.1-04-37. Photographers and photofinishers.** Commercial photographers are the producers and sellers of tangible personal property which is subject to sales tax.

Sitting or camera charges are not subject to sales tax if they are separately stated and are reasonable in relation to the total charge.

A photographer selling tangible personal property such as cameras, lenses, film, frames, photo equipment, and supplies may purchase them for resale. Sales tax must be collected when these items are sold to customers.

When photofinishers develop and print pictures, they are producing a completed article of tangible personal property and must collect the tax on the total selling price. Photofinishers engaged in the processing of color film who mount such film in frames are engaged in the production of tangible personal property and must collect the tax on the total charge or selling price.

The materials which become an integral part of the finished product are not taxable to the photofinisher. Chemicals which are used in the process of photofinishing and which do not become a part of the finished product are subject to tax when purchased by the photofinisher.

Charges for developing movie films are subject to sales tax.

**History:** Effective June 1, 1984; amended effective July 1, 1985.

**General Authority:** NDCC 57-39.2-19

**Law Implemented:** NDCC 57-39.2-01

**81-06.1-04-01. Motor vehicle fuel dealer's license, fee, and bond.** Each person who wishes to engage in the sale of motor fuel in this state must obtain a motor vehicle fuel dealer's license from the tax commissioner. To obtain the license, an applicant must file an application upon a form prescribed and furnished by the tax

commissioner. The fee for the license is ~~two~~ twenty dollars and is renewable on June thirtieth of each odd-numbered year. Licenses are nontransferable and remain valid until revoked for cause or are otherwise canceled. An applicant must also furnish a bond guaranteeing the payment of the motor vehicle fuel tax. Bonds will be required to equal approximately two months' tax collections and may not be less than one thousand dollars.

**History:** Effective June 1, 1984; amended effective July 1, 1985.

**General Authority:** NDCC 57-43.1-30

**Law Implemented:** NDCC 57-43.1-13, 57-43.1-14, 57-43.1-15

#### 81-06.1-04-02. Special fuels license and bonding.

1. Any person who wishes to act as a special fuels dealer in this state must obtain a special fuels dealer's license from the tax commissioner. Applications for a special fuels dealer's license are available upon request from the tax commissioner. The applicant must submit a completed application together with a surety bond to assure compliance with North Dakota Century Code chapter 57-43.2 and the payment of all taxes. Separate licenses are required for each place of business or location where special fuels are regularly sold. The amount of the bond is based on the equivalent of two months of fuel tax collections and may not be less than five hundred dollars. Upon receipt of application and bond and upon payment of the special fuels dealer's license fee of ten dollars, the tax commissioner will issue a license. Licenses are nontransferable and remain valid until revoked for cause or are otherwise canceled.
2. Any person who wishes to act as a dealer of liquefied petroleum gas must obtain a wholesale or retail special liquefied petroleum gas dealer's license issued by the tax commissioner. The wholesale liquefied petroleum gas dealer must post a continuous surety bond with the tax commissioner equal to two months of liquefied petroleum gas tax collections but not less than five hundred dollars. The license fee is ~~ten~~ twenty dollars and the license remains in effect until revoked for cause or canceled by the licenseholder.
3. The retail liquefied petroleum gas dealer must obtain a liquefied petroleum gas retail dealer's permit biennially from the tax commissioner. The cost of the permit is one dollar twenty dollars and the permit expires June thirtieth of each odd-numbered year license remains in effect until revoked for cause or canceled by the licenseholder.

**History:** Effective June 1, 1984; amended effective July 1, 1985.

**General Authority:** NDCC 57-43.2-22

Law Implemented: NDCC 57-43.2-05, 57-43.2-06, 57-43.2-07, 57-43.2-08, 57-43.2-25

**81-06.1-02-01. Motor vehicle fuel tax imposed.** Motor vehicle fuel sold or used in this state is taxed at the rate of thirteen cents per gallon [3.79 liters].

1. Agriculturally derived Qualifying alcohol-blended motor vehicle fuels are taxed as follows:
  - a. Through December 31, 1983, four cents per gallon [3.79 liters] less than the above-stated tax.
  - b. From January 1, 1984 July 1, 1985, through December 31, 1984 June 30, 1987, ~~five~~ eight cents per gallon [3.79 liters] less than the above-stated tax.
  - e- b. From January 1, 1985 July 1, 1987, through December 31, 1985 1992, ~~six~~ four cents per gallon [3.79 liters] less than the above-stated tax.
  - d. From January 1, 1986, through June 30, 1992, four cents per gallon [3.79 liters] less than the above stated tax.
  - e- c. After June 30 December 31, 1992, at the same rate as the tax stated in the first paragraph of this section.
2. Banks, trust companies, building and loan associations, credit unions, and public and private educational facilities are subject to the motor vehicle fuel tax. Federal credit unions organized under the Federal Credit Union Act are exempt.
3. Motor vehicle fuel used to operate power take-off equipment on well drilling rigs to transmit power from vehicles to auxiliary equipment is subject to motor vehicle fuel tax. However, the tax may be refunded in accordance with the provisions in section 81-06.1-03-01.
4. The motor vehicle fuel dealer is responsible for collecting and remitting the tax imposed. Monthly returns are required and the tax must be remitted upon filing of the returns.

History: Effective June 1, 1984; amended effective July 1, 1985.

General Authority: NDCC 57-43.1-30

Law Implemented: NDCC 57-43.1-02, 57-43.1-16, 57-43.1-23, 57-43.1-33

81-08-02-01. **Definitions.** As used in these sections and for the administration of North Dakota Century Code chapter 57-61, unless the context otherwise requires:

1. "Coal mine owner or operator" does not include any individual who mines coal from the individual's own land solely for use for heating the individual's own home.
2. "Cogeneration facility" means a facility which produces electrical energy and any other form of useful energy, such as steam or heat, which is used for industrial, commercial, heating, or cooling purposes.
- ~~2-~~ 3. "Industrial purposes" as applied to coal that has been severed includes the use of such coal for making products from it or for the consumption of such coal to produce power or heat, except that it does not include coal mined by an individual from the individual's own land for use for heating the individual's own home.
- ~~3-~~ 4. "Producer" means the coal mine owner, or the operator of the coal mine if different from the owner.
5. "Severed" as applied to coal means the actual separation and removal of coal from its natural position where situated in the coal bed in the earth and does not include the removal of it from the coal mine where it was situated or transportation of it away from such coal mine site.  
"Renewable resources" means biomass, waste, wind, solar, geothermal, or any combination of those resources.
- ~~4-~~ 6. "Sale" as applied to coal that has been severed means any transfer of title, conditional or otherwise, to such coal for a consideration regardless of where such transfer of title occurs.
- ~~6-~~ 7. "Tax commissioner" means the tax commissioner of the state of North Dakota.
8. "Wholesale price index" means the index of producer prices (formerly the index of wholesale prices) for all commodities that is prepared by the bureau of labor statistics in the United States department of labor.

**History:** Amended effective September 1, 1979; July 1, 1985.

**General Authority:** NDCC 57-61-08

**Law Implemented:** NDCC 57-61

81-08-02-03. **Reporting and paying coal severance tax.** Each coal mine owner, or the operator of the coal mine if different from the

owner, must file a report on forms prescribed by the tax commissioner for each ~~calendar quarter year period~~ month showing the number of tons of coal severed in each county in this state during such ~~period~~ month, the amount of severance tax due thereon, and such other information as the tax commissioner shall deem necessary. The report and payment shall be filed in the office of the tax commissioner at the State Capitol, Bismarck, North Dakota, ~~within thirty days after the end of the quarter year period for which it is made and payment of the amount of severance tax due as computed thereon shall accompany the report~~ by the twenty-fifth day of the following month.

History: Amended effective July 1, 1985.

General Authority: NDCC 57-61-08

Law Implemented: NDCC 57-61-02, 57-61-03

**81-08-02-04. Coal severance tax rate.** The coal severance tax rate is imposed at a minimum rate of eighty-five cents per ton of two thousand pounds [907.18 kilograms] of coal severed, which rate shall increase by one cent per ton of two thousand pounds [907.18 kilograms] for each four points of increase in the June 1979 wholesale price index. The revised level of the wholesale price index as of June 1979 for all commodities as prepared by the bureau of labor statistics in the United States department of labor is hereby found to be two hundred thirty-three and ~~one-tenth~~, but if such level is revised by the bureau of labor statistics, such revised level shall be the wholesale price index for June 1979, for the purposes of this chapter five-tenths.

The coal severance tax rate on coal severed during the period of July first through December thirty-first of any calendar year shall be the same for all coal severed during that period except as otherwise provided and the tax rate on coal severed during the period of January first through June thirtieth of any calendar year shall be the same for all coal severed during that period except as otherwise provided.

The coal severance tax rate on coal severed during any calendar half-year period shall be determined by the tax commissioner and made available to coal mine owners and operators as early in prior to such period as reasonably possible.

For purposes of determining the coal severance tax rate on each ton [907.18 kilograms] of coal severed in any calendar half-year period, the tax commissioner shall compute the amount by which the wholesale price index for the month of May or November preceding that half-year period increased over the June 1979 wholesale price index; the tax rate per ton of two thousand pounds [907.18 kilograms] of coal severed in that half-year period shall be eighty-five cents plus one cent for each four points of such increase in the wholesale price index, except that such tax rate shall not be less than the highest tax rate per ton of two

thousand pounds [907.18 kilograms] for any preceding calendar half-year period.

For purposes of computation of the tax rate for each calendar half-year period, a fractional point increase in the wholesale price index shall be disregarded if less than one-half point and treated as a full point if one-half point or more; for example, if the June 1979 wholesale price index of two hundred thirty-three and ~~one-tenth~~ five-tenths increased to ~~two~~ three hundred ~~forty and six-tenths~~ thirteen in ~~June 1980~~ May 1985, the tax rate per ton [907.18 kilograms] for the July 1 through December 31, ~~1980~~ 1985, half-year period would be ~~eighty-seven cents~~ one dollar and five cents.

History: Amended effective September 1, 1979; July 1, 1985.

General Authority: NDCC 57-61-08

Law Implemented: NDCC 57-61-01