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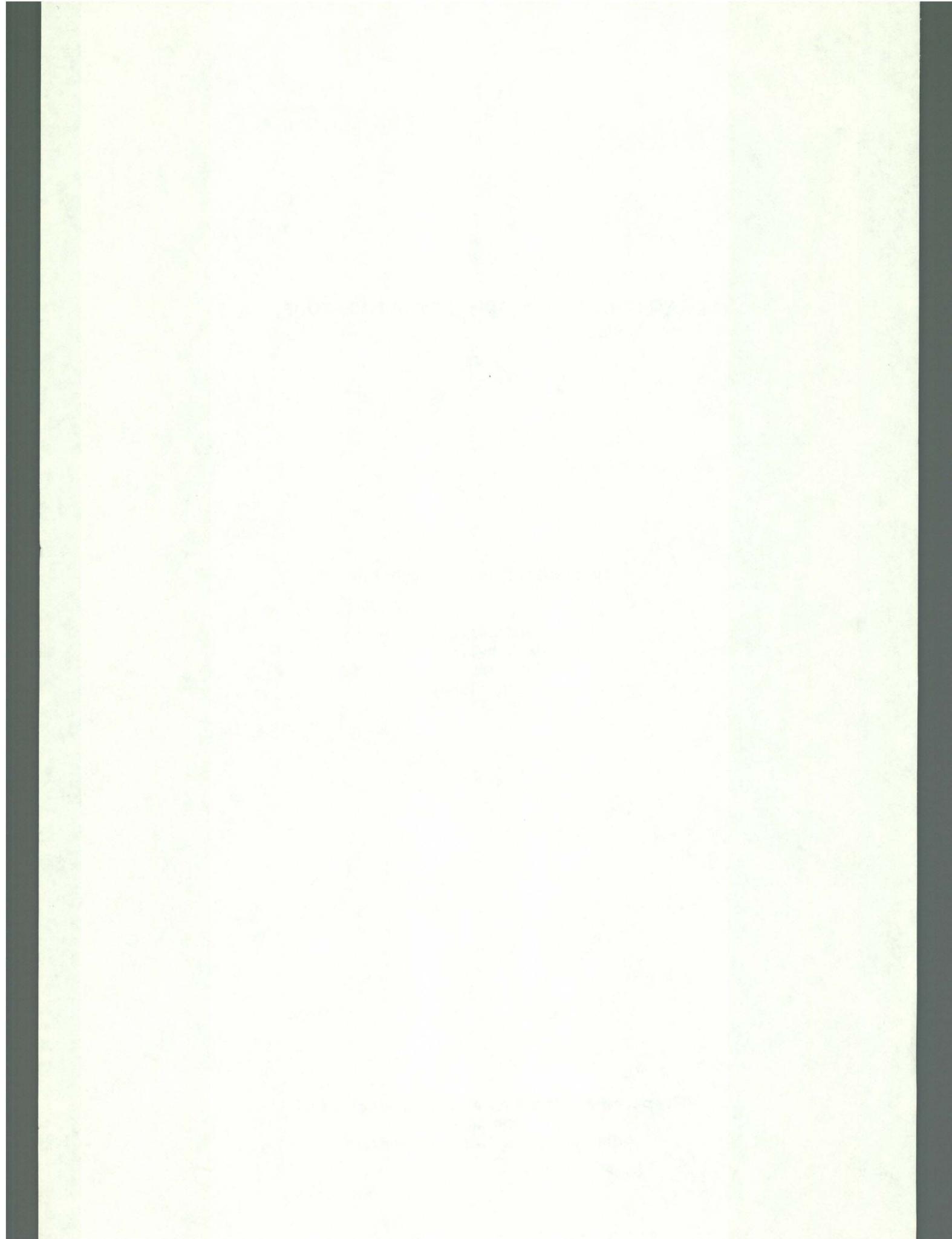


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TITLE 4
Management and Budget, Office of

JANUARY 1988

STAFF COMMENT: Article 4-06 contains all new material but is not underscored so as to improve readability.

ARTICLE 4-05

RECORDS MANAGEMENT AND CENTRAL MICROFILM

[Superseded by Article 4-06]

ARTICLE 4-06

COUNTY RECORDS MANAGEMENT

Chapter

4-06-01	Records Disposition Process
4-06-02	Procedures to Modify Record Retention Schedules
4-06-03	Records Disposal Procedures
4-06-04	Transfer of Records to State Archives

CHAPTER 4-06-01
RECORDS DISPOSITION PROCESS

Section

4-06-01-01	Records Disposition Process - Records Retention Schedules
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4-06-01-01. Records disposition process - Records retention schedules. The office of management and budget, state records management division, will provide each county office with a records retention schedule. The records retention schedules identify and describe record series for each office and provide retention periods based upon the fiscal, legal, administrative, and archival value of the records. Each county office will receive a records disposal report annually to outline exact disposal procedures for records which can be destroyed.

History: Effective January 1, 1988.

General Authority: NDCC 54-46-12

Law Implemented: NDCC 54-46-12

CHAPTER 4-06-02 PROCEDURES TO MODIFY RECORD RETENTION SCHEDULES

Section

4-06-02-01 Procedures to Modify Records Retention Schedules

4-06-02-01. Procedures to modify records retention schedules. The office of management and budget, state records management division, will provide in a records management program manual procedures to add, change, or delete record series on records retention schedules. This procedure must be utilized by any county office to add, change, or delete record series on county office records retention schedules.

History: Effective January 1, 1988.

General Authority: NDCC 54-46-12

Law Implemented: NDCC 54-46-12

CHAPTER 4-06-03 RECORDS DISPOSAL PROCEDURES

Section

4-06-03-01 Records Disposal Procedures

4-06-03-01. Records disposal procedures. Each county office will dispose of records as designated in the records disposal report. All nonconfidential records may be disposed of by landfill. All confidential records must be shredded or burned.

Record series must not be disposed of prior to the time approved by the office of management and budget, state records management division. If a situation warrants early disposal of a record, the county officer may petition the office of management and budget, state records management division, for an early disposal of that series.

The office of management and budget, state records management division, will provide, in a records management program manual, procedures to utilize for early disposal of record series in any manner not listed on county office records retention schedules.

History: Effective January 1, 1988.

General Authority: NDCC 54-46-12

Law Implemented: NDCC 54-46-12

CHAPTER 4-06-04 TRANSFER OF RECORDS TO STATE ARCHIVES

Section
4-06-04-01 Transfer of Records to State Archives

4-06-04-01. Transfer of records to state archives. The office of management and budget, state records management division, will provide, in a records management program manual, procedures for the transfer to the state archives of records determined to be of archival value. This procedure must be utilized by any county office to transfer all archival record series listed on county office records retention schedules. The county office will contact the state archives when ready to transfer records. Arrangements will be made to have the records retrieved within sixty days. The state archivist shall complete a certification for archival transfer and shall send it to the state records management division after all records have been transferred.

History: Effective January 1, 1988.

General Authority: NDCC 54-46-12

Law Implemented: NDCC 54-46-12

TITLE 7
Agriculture, Commissioner of

JANUARY 1988

7-04-02-01. Definitions.

1. "Annual" means a plant started from seed that makes its vegetative growth, flowers, and produces seed, and then dies within one year of the time the seed is sown. "Noncommercial" means sales made by nonprofit and charitable organizations, occasional sales of nursery stock that has not been specifically grown for sale purposes, and sales from hobby-type growers or propagators.
2. "Bedding plants" means all annuals and nonhardy herbaceous biennials and perennials that are sold for outdoor type plantings that are replanted each spring.
3. "Indoor house plants" means all nonhardy herbaceous and woody stemmed foliage and flowering perennial plants sold for indoor use.
4. "Nonadapted or borderline hardiness plants" means all nursery stock as designated annually by the commissioner, that may fail to overwinter in North Dakota and those that may perform satisfactorily only in protected or favorable planting sites.
5. "Noncommercial" means plant sales made by nonprofit and charitable organizations, occasional sales of home grown nursery stock that is not being specifically propagated for sale purposes, sales from hobby type plant propagators and distribution of nursery stock by firms for promotional purposes.
6. "Nursery stock" means all field grown, container grown, and greenhouse grown plants and plant parts

or collected wild plants and plant parts capable of propagation or growth. Nursery stock includes all woody perennial trees, shrubs and vines, all small fruits such as strawberry and raspberry plants, all herbaceous perennials such as comfrey, asparagus, rhubarb, poppy, bleeding heart, chrysanthemum, and phlox, all perennials known as "house plants" such as geranium, African violet, poinsettia, and philodendron, all perennial bulbs, roots, crowns, corms, rhizomes, and tubers which are used for ornamental or special purposes, and all biennials which are used for ornamental purposes such as canterbury bells and forget-me-nots. Nursery stock does not include forage, fiber, cereal, and other crop seed, seed potatoes, vegetable and flower seeds, vegetable plants grown as annuals such as tomato, cabbage, and onion, annual flower plants such as petunia, cornflower, marigold, and zinnia, all fruits, vegetables, and other plants and plant parts used for food or feed and not intended for propagation, and sod. "Occasional sales" means the sale of not more than twelve trees, shrubs, or woody vines within one calendar year. This exemption is restricted to only nursery stock grown by the seller.

History: Amended effective August 1, 1978; January 1, 1988.

General Authority: NDCC 4-21.1-02

Law Implemented: NDCC 4-21.1-01

7-04-02-02. Shipping tag required. A copy of the certificate of inspection from the state of origin shall accompany commercial shipments of nursery stock into the state. If the shipment requires a federal inspection certificate or tag, it must also be attached. Each certificate or tag accompanying each shipment must be retained with that shipment until all of the stock is either sold at retail, planted, reinspected, or the tags are collected by the commissioner.

History: Amended effective August 1, 1978.

General Authority: NDCC 4-21.1-02

Law Implemented: NDCC 4-21.1-05

Repealed effective January 1, 1988.

7-04-02-03. License to be posted. Nursery and dealer's licenses shall The nursery license must be posted conspicuously in each place of business. Dealers A person offering nursery stock for sale from a vehicle shall have the appropriate license in that vehicle. An agent shall carry the agent's license and a copy

of the license or certificate of the principal when soliciting orders of nursery stock in the state.

History: Amended effective January 1, 1988.

General Authority: NDCC 4-21.1-02

Law Implemented: NDCC 4-21.1-06, 4-21.1-07, 4-21.1-08

7-04-02-04. Labeling of nursery stock.

1. No person shall ~~may~~ sell, or offer for sale, or distribute any nursery stock which is not securely labeled in accordance with the "International Code of Nomenclature for Cultivated Plants" with the complete correct botanical or approved recognized common name as recognized by the latest edition of one of the following:
 - a. Bailey's "Hortus" Hortus Third, Liberty Hyde Bailey Hortorium.
 - b. Hillier's "Hilliers' Manual of Trees and Shrubs".
 - c. Rehder's "Manual of Cultivated Trees and Shrubs" Manual of Cultivated Conifers, Den Oudem and Boon.
 - d. Plant names recognized and accepted by the American association of nurserymen, incorporated as published annually in "Sources of Plants and Related Supplies".
 - e. Plant-name listings of well-recognized, nonprofit horticultural societies and organizations.
2. Fruit trees and small fruits must be labeled as to variety. All rosebushes, evergreens, shade trees, flowering trees, and shrubs must be labeled as to variety. Multipack assortments must have plants individually labeled. Sale by color alone is not acceptable except the sale of color mixture within types or species of flowering bulbs, or herbaceous plants, when sold as such, is permissible.
3. All collected wild plants shall offered for sale must be so labeled "collected from the wild" unless such the stock has been grown under cultivation for at least one year.

History: Amended effective August 1, 1978; January 1, 1988.

General Authority: NDCC 4-21.1-02

Law Implemented: NDCC 4-21.1-11

7-04-02-05. Storage and display requirements. All nursery stock offered for sale ~~or distribution~~ shall must be stored and displayed as follows:

1. Balled Roots of balled and burlapped stock shall must be kept moist at all times and should be kept in sawdust, shingle tow, peat, sphagnum moss, or other nonphytotoxic moisture-holding material not toxic to plants of sufficient depth to cover the top one-half of the ball of earth.
2. Container stock shall must be watered sufficiently to maintain the viability and vigor of the stock. Potting soil shall media must be maintained at a depth so as to cover all roots of the plants.
3. Bare-root stock shall must be kept under conditions of temperature and moisture to retard growth and maintain viability. Moisture must be supplied to the root system by high humidity conditions in storage or by covering the roots with soil, sawdust, peat, wood shavings or other moisture-holding material not toxic to plants. Such The material is to be kept moist at all times. Roots of heeled-in stock must be covered with well-packed soil at least one inch [2.54 centimeters] above the crown of the plant.
4. Prepackaged stock with roots packaged in moisture-retaining plastic, peat, wood shavings, or other material not toxic to plants must be stored and displayed under conditions that will retard etiolated (nongreen) or otherwise abnormal growth and will ensure an adequate supply of moisture to the roots at all times.

History: Amended effective January 1, 1988.

General Authority: NDCC 4-21.1-02

Law Implemented: NDCC 4-21.1-11

7-04-02-06. Minimum indices standards of viability. All nursery stock offered for sale or distribution shall must meet these minimum indices standards of viability; or be removed from public view and not offered for sale.

1. Woody-stemmed deciduous stock shall must have moist, green cambium tissue in the stems and branches and shall must have viable buds or normal green, unwilted growth sufficient to permit the stock to live and grow in a form characteristic of the species when planted and given reasonable care, except that in the case of rose bushes each stem must show moist, green undamaged cambium in at least the first eight inches {20-32 centimeters} above the graft. Any single stem on a rose bush not meeting this specification shall disqualify the entire plant. However, a bush may be pruned to comply with the specification if at least one stem meeting the specification remains and the grade designation is changed accordingly if sold by grade.

2. Nursery stock when in a wilted, rotted, or other such condition indicative of subnormal vitality ~~shall~~ may not be sold or offered for sale.
3. Any ~~bare-rooted~~ Bare-rooted or prepackaged woody-stemmed stock having more than two inches [5.08 centimeters] of etiolated (nongreen) growth from individual buds ~~shall~~ may not be sold or offered for sale.
4. Balled and burlapped stock in a weakened condition as evidenced by dieback or dryness of foliage or ~~such~~ stock having broken or loose soil balls or ~~earth~~ soil balls of a size smaller than that specified by the American association of nurserymen's "USA Standards American Standard for Nursery Stock" ~~shall~~ may not be sold or offered for sale.
5. Colored waxes or other materials used to coat the aerial parts of plants that change the appearance of the plant surface so as to prevent adequate inspection are prohibited.

Nursery stock on display at sales outlets not meeting the foregoing minimum indices of viability shall be destroyed or removed from public view and not offered for sale.

History: Amended effective January 1, 1988.

General Authority: NDCC 4-21.1-02

Law Implemented: NDCC 4-21.1-11

7-04-02-07. Exemptions. The following plant species are exempt from all provisions of North Dakota Century Code chapter 4-21.1:

1. Persons engaged as a nurseryman for the purpose of propagating nursery stock for research or experimental purposes and the stock is not produced for commercial purposes are exempt from a nursery license and fee. Inspection and certification may be required if the state entomologist determines that a pest risk is involved or if the stock is being shipped out of state. All clematis species.
2. Persons growing, selling, trading, or distributing nursery stock for noncommercial purposes shall be exempt from licenses and fees. Inspection and certification may be required if the state entomologist determines that a pest risk is involved or if the stock is being shipped out of state. All rosa species.
3. Soil conservation districts dealing with nursery stock plantings for the prevention of soil and wind erosion, or other conservation type plantings, are exempt from a dealer's license and fee.

- 4- Licensed North Dakota nursery and greenhouse growers who maintain more than one place of business within the state, may operate all of their places of business under one growers license provided all sales locations are operated as one business.
- 5- Retail and wholesale outlets that deal only in indoor house plants and seasonal sales of bedding plants shall be exempt from licenses, fees, labeling, and viability requirements.
- 6- Penalties for late renewal of licenses shall not apply if the place of business did not have any nursery stock available for sale during the delinquent period. A statement of nonsale may be required by the commissioner. All yucca species.

History: Amended effective August 1, 1978; January 1, 1988.

General Authority: NDCC 4-21.1-02

Law Implemented: NDCC 4-21.1-14

7-04-02-08. Misrepresentation. Nonadapted or borderline hardiness nursery stock shall be displayed separately from hardy nursery stock in such a manner so as to maintain its identity and shall be labeled with the statement: "These plants usually require special protection or favorable planting sites to establish or overwinter if planted in North Dakota."

History: Amended effective August 1, 1978.

General Authority: NDCC 4-21.1-02

Law Implemented: NDCC 4-21.1-12

Repealed effective January 1, 1988.

7-04-02-09. Certification of nursery stock.

1. An inspection certificate will not be issued for any deciduous nursery stock unless the stock has been inspected during active growth.
2. Persons growing Christmas trees and persons with overgrown trees or shrubs that will no longer be sold as nursery stock may be required to declare which trees are to be inspected for certification.
3. All field-grown nursery stock must be maintained by mechanical or chemical, or both, vegetation control. Nursery stock growing in grass or sod will not be certified.

History: Effective January 1, 1988.
General Authority: NDCC 4-21.1-02
Law Implemented: NDCC 4-21.1-05

7-04-02-10. License fees. A person with more than one place of business must operate all of the locations as one business to qualify for the ten dollar fee for additional licenses. The name and address of the principal place of business must be the same on all licenses issued to the person. The address of the other place of business must be on the license.

History: Effective January 1, 1988.
General Authority: NDCC 4-21.1-02
Law Implemented: NDCC 4-21.1-06

7-04-02-11. Application for license. Each application for an initial license or annual renewal must set forth the applicant's business name, phone number, the name of the manager or owner, the principal location where nursery stock will be sold, the address or location of additional sales locations, the mailing address, the location of the growing area, the number of acres [hectares] in the growing area, the number and type of plant species being grown, and a map of the growing area. The application must also include the names and addresses of the nurseries of the sources of their stock. The applicant must certify that only officially inspected and certified nursery stock will be offered for sale.

History: Effective January 1, 1988.
General Authority: NDCC 4-21.1-02
Law Implemented: NDCC 4-21.1-06

FEBRUARY 1988

7-08-01-02. Definitions. In this chapter, unless the context or subject matter otherwise provides:

1. "Adequate fence" means legal fence as defined in North Dakota Century Code section 47-26-01.
2. "Adjacent lands" means lands bordering the wetland.
3. "County assessment team" means a local United States department of agriculture soil conservation service representative of a local soil conservation district, a representative of the county water resources board, and a district representative of the North Dakota game and fish department.
4. "Drainage" means vulnerable to destruction through artificial or natural process.
5. "Participant" means landowner participating in the program.
6. "Program" means the North Dakota state waterbank program.
7. "State assessment team" means one representative from the North Dakota department of agriculture, one representative from the North Dakota game and fish department, one representative from the North Dakota state engineer's staff, and one representative from the United States department of agriculture's soil conservation service.

History: Effective August 1, 1987; amended effective February 1, 1988.

General Authority: NDCC 61-31-01

Law Implemented: NDCC 61-31-01

7-08-01-03. Cooperative agreement.

1. The commissioner shall assemble a state assessment team and have a cooperative agreement signed by the various agencies so that they may assist the commissioner in fulfilling the objectives of the program. The state assessment team shall, as directed by the commissioner, make recommendations to the commissioner regarding the areas submitted for participation. The state assessment team shall develop program management guidelines to be approved by the commissioner which must include technical and management practices and rates of payment and a standardized priority system for evaluating applications.
2. The commissioner shall assemble the county assessment teams and have a cooperative agreement signed with the various agencies so that they may assist the commissioner and the state assessment team in fulfilling the objectives of the program. The county assessment teams shall, as directed by the commissioner, help prepare the application, evaluate the acreage [hectarage] offered, indicate the order of priority for the county applications, and forward the county applications to the commissioner's office with appropriate comments.

History: Effective August 1, 1987; amended effective February 1, 1988.

General Authority: NDCC 61-31-01

Law Implemented: NDCC 61-31-03, 61-31-05, 61-31-08, 61-31-10

7-08-01-04. Procedure for participation in the program.

1. Applications for participation in the program are to be submitted to the local United States department of agriculture's soil conservation service representative who will date and review the applications for compliance with approved application procedures and forward the applications to the county assessment team.
2. The county assessment team shall, as expeditiously as climatic conditions allow, investigate the wetlands delineated and any offered adjacent land delineated in the application.
3. The county assessment team shall:
 - a. Determine the type of wetland.
 - b. Determine whether it is feasible and practical to drain the wetland and if sedimentation problems exist.
 - c. Rate the recreational and other public values of the wetland.

- d. Establish a wetland conservation and development plan for the area if it is desired by the participant.
4. Twice a year, prior to February fifteenth or September fifteenth of each year, the county assessment team shall submit a written report to the commissioner which lists the priority of the applications in numerical order utilizing a standardized priority system prepared by the state assessment team and approved by the commissioner.
5. Within ten days after the receipt of the county assessment team's findings, conclusions, and recommendations, the commissioner shall submit applications to the state assessment team which will review and list in priority all of the applications submitted by the county assessment teams. The state assessment team may change the order of priority established by the county assessment team.
6. Twice a year, prior to March first or October first of each year, the state assessment team shall submit a written report of its findings, conclusions, and recommendations to the commissioner who will make the final determination of applications to be funded according to the commissioner's evaluation of the recommendations and available waterbank funds.
7. Within thirty days after receipt of the state assessment team's findings, conclusions, and recommendations, the commissioner shall forward a signed contract to the successful applicants. Copies will also be sent to the local soil conservation district, the North Dakota game and fish department, the state water commission, and the county water resource board. A ~~form~~ letter of nonacceptance will be mailed to unsuccessful applicants. Unsuccessful applications will be returned to the local soil conservation district office. These may then be resubmitted to the commissioner along with new applications prior to the next application deadline. Personal contact will be made with each successful applicant by a representative appointed by the commissioner.
8. Renewal of agreements can take place after a written proposal to do so is received from the participant prior to termination of the contract. Such renewal will be subject to redetermination of payment rates.
9. The acreage designated for participation must be documented on an agricultural stabilization and conservation service farm photo, described by linear measurements, and attached to the application or contract, or both.

History: Effective August 1, 1987; amended effective February 1, 1988.

General Authority: NDCC 61-31-01

Law Implemented: NDCC 61-31-03, 61-31-05

7-08-01-05. Reassessment procedure.

1. If a landowner an applicant has reasonable grounds to believe his application was unfairly denied participation in the program, he may request a reassessment of his application. The request must be made in writing with to the commissioner within ten days after receipt of a nonacceptance notice. The reasons why the commissioner's determination should be reversed must be stated in writing.
2. If, upon reevaluation of the state and county assessment team's data, the commissioner determines that the claim has merit, the commissioner shall request the state assessment team to reassess the application in question. The commissioner may, upon reassessment, change the original determination if in the commissioner's opinion the claim has merit.

History: Effective August 1, 1987; amended effective February 1, 1988.

General Authority: NDCC 61-31-01

Law Implemented: NDCC 61-31-03, 61-31-05

7-08-01-06. Participation priority. If, because of a shortfall in funds, all the eligible applicants seeking participation cannot be included in the program, priority will be based on the date the application is received and the state assessment team's report. If all eligible applicants having the same assessment rating cannot be included in the program, the priority will be based on earliest date of application.

History: Effective August 1, 1987; amended effective February 1, 1988.

General Authority: NDCC 61-31-01

Law Implemented: NDCC 61-31-03, 61-31-05

7-08-01-07. Rate and date of payment.

1. The base rate of payment for participation in the program shall be comparable to the rate used in the federal waterbank program.
2. A base rate shall be established for effecting a wetland conservation and development plan for adjacent lands.
3. The base rate shall be increased for allowing walking public access to the program land for purposes specified in North Dakota Century Code section 61-31-06.
4. Payments shall be made in accordance with the contract agreement between the commissioner and the participant and in accordance with the management and rate of payment guidelines adopted by the state assessment team.

History: Effective August 1, 1987; amended effective February 1, 1988.
General Authority: NDCC 61-31-01
Law Implemented: NDCC 61-31-03, 61-31-05

7-08-01-08. Acreage limitations and designations.

1. Total acreage [hectarage] of adjacent land must be at least equal to qualifying wetland acreage [hectarage] included in the application but may not exceed four times the acreage [hectarage] of the wetlands. Wetlands previously drained may be offered if the participant will agree to restore such wetlands to levels which will qualify them under North Dakota Century Code section 6-31-03.
2. Total acreage [hectarage] allowed for a participant in the program must be at least ten acres [4.05 hectares] and not more than one hundred sixty acres [64.75 hectares] unless otherwise approved by the commissioner ~~with~~ upon consultation with the state assessment team.
3. The acreage [hectarage] designated for participation must be described by metes and bounds or other legal description or method specifically delineating the acreage [hectarage] to be included in the program.
4. Acreage [hectarage] selected for the program must have signs posted to indicate participation in the program and whether ~~and~~, where, and for what purpose walking public access is allowed on that acreage [hectarage]. The signs must be posted by the participant. The commissioner shall make signs available to the participant. Signs must be paid for from program funds.

History: Effective August 1, 1987; amended effective February 1, 1988.
General Authority: NDCC 61-31-01
Law Implemented: NDCC 61-31-03, 61-31-05

7-08-01-09. The waterbank agreement. The waterbank agreement must include the following:

1. The number of years of participation.
2. The present rate and conditions that vary the rate of payment.
3. The incentive payments, if applicable.
4. Duties of the parties to the waterbank agreement as prescribed in North Dakota Century Code sections 61-31-04 and 61-31-05.

5. Signatures of the commissioner, the landowner of the designated area, and the tenant or operator of the land, if the ~~tenant or~~ operator is not the landowner.
6. Whether or not the participant will allow the land to be open for emergency haying or grazing and conditions applicable to the allowance of emergency haying or grazing.
7. A clause permitting access to the program lands for inspection by a representative of the commissioner.
8. A copy of the waterbank program rules and the management guidelines.
9. A statement that the participant agrees to manage wetland acreage and adjacent land in accordance with the waterbank agreement and management guidelines adopted by the state assessment team.

History: Effective August 1, 1987; amended effective February 1, 1988.

General Authority: NDCC 61-31-01

Law Implemented: NDCC 61-31-03, 61-31-04, 61-31-05

7-08-01-10. Drought emergency.

1. If the governor or the United States department of agriculture declares a drought emergency, the grass cover on lands included in the program may be released to a qualified participant for haying or grazing with the authorization of and under the terms prescribed by the commissioner as provided in subsection 4 of North Dakota Century Code section 61-31-05.
 - a. A written request to open program lands for haying or grazing must be submitted to the commissioner by the participant.
 - b. The release date must be determined by the commissioner of agriculture with the approval of the state game and fish commissioner. Under no circumstances shall emergency haying or grazing be allowed prior to July fifth.
 - c. Notice of approval of the request to hay or graze a waterbank tract and the conditions to do so must be mailed to the participant.
 - d. Conditions shall include, but are not limited to, the following: date on which entry can be made on the land and date by which all hay, machinery, or livestock must be removed from the tract; the amount and date by which, or how payment is to be submitted to the commissioner's office; the date on which the tract will be open to haying or grazing, or both. The payment for hay or grass may be

deducted from the next waterbank payment, provided it is not the last year of the contract period.

2. In the event the participant does not utilize this option to hay or graze in a drought emergency, or does not qualify for emergency haying or grazing, the commissioner may conduct a lottery, subject to the approval of the participant, to award haying or grazing privileges to qualified applicants using the following procedure:
 - a. The commissioner shall give published notice that program land will be open to grazing or haying at dates established with the approval of the state game and fish commissioner.
 - b. The commissioner shall publish notice that written applications to participate in the lottery ~~will~~ must be received by the commissioner's office ~~for~~ within five days after the date of final notice.
 - c. Notice must run for three consecutive days in a daily newspaper of general circulation in the county where the majority of the program land is situated and for one day in the official county newspaper, if the official newspaper is a weekly. Notice must include the participant's name and address, the legal description of the program land being open for haying or grazing, the price established by the commissioner on a per-acre basis for the haying or grazing, and the date by which hay, machinery, or livestock must be removed from the program land.
 - d. Seven days after the date of final notice, the commissioner shall conduct a lottery among the qualified applicants and award haying or grazing rights.
 - e. Notice of award of rights and conditions for agricultural use of the program land must be mailed to the successful qualified applicants.
 - f. Conditions for agricultural use pursuant to the lottery must include whether the land may be hayed or grazed, the date on which entry can be made on the program land, the date by which all hay, machinery, or equipment must be removed from the program land, and the amount and date by which payment is to be remitted to the commissioner's office.
 - g. All expenses incurred by the commissioner's office in implementing the lottery will be reimbursed from the gross receipts of the lottery.

h. The net receipts from the lottery will be used for the program.

History: Effective August 1, 1987; amended effective February 1, 1988.

General Authority: NDCC 61-31-01

Law Implemented: NDCC 61-31-05

7-08-01-11. Violations.

1. It is a violation of the waterbank agreement if the participant does not fulfill each and every term of the waterbank agreement established between the participant and the commissioner, including the management guidelines adopted by the state assessment team which are incorporated by reference into the waterbank agreement.
2. If the commissioner determines a violation of the waterbank agreement has occurred, the commissioner shall notify the participant by registered or certified mail at the participant's post-office address of record. The notice must specify the nature of the violation and that the affected participant may, within fifteen days of the date the notice is mailed, demand, in writing, a hearing on the matter. Upon receipt of a demand for hearing, the commissioner shall set a date for the hearing not less than ten days after the demand is received.
3. The penalties for violations determined as a result of hearing or for violations where the affected participant does not demand a hearing must be imposed in accordance with subsection 5 of North Dakota Century Code section 61-31-04.

History: Effective August 1, 1987; amended effective February 1, 1988.

General Authority: NDCC 61-31-01

Law Implemented: NDCC 61-31-04

TITLE 13

Banking and Financial Institutions, Department of

FEBRUARY 1988

STAFF COMMENT: Chapter 13-02-10 contains all new material but is not underscored so as to improve readability.

CHAPTER 13-02-10
INVESTMENTS

Section

13-02-10-01

Authorization

13-02-10-02

Effective Date of Authority to Invest

13-02-10-01. Authorization. The state banking board authorizes state banks to invest in investment securities or instruments in accordance with investment authorizations issued for national banks by the comptroller of the currency, subject to the same limitations or restrictions, if any.

History: Effective February 1, 1988.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-03-47.3

13-02-10-02. Effective date of authority to invest. The authority for state banks to invest in investment securities or instruments shall be the date the investments are effective for national banks unless the state banking board shall otherwise direct within ninety days of the state banking board receiving notification of proposed adjustments.

History: Effective February 1, 1988.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-03-47.3

MARCH 1988

STAFF COMMENT: Chapter 13-03-13 contains all new material but is not underscored so as to improve readability.

CHAPTER 13-03-13 INVESTMENTS

Section

13-03-13-01	Authorization
13-03-13-02	Investments Restricted
13-03-13-03	Effective Date of Authority to Invest

13-03-13-01. Authorization. The state credit union board authorizes state credit unions to invest in investment securities or instruments offered by companies registered under the Investment Companies Act of 1940 in accordance with investment authorizations issued for federal credit unions by the national credit union administration, subject to the same limitations or restrictions, if any.

History: Effective March 1, 1988.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-13-02. Investments restricted. Total investments authorized under chapter 13-03-13 is limited to not more than ten percent of assets. Adjustments must be made on the last day of each quarter to the lower of cost or market. Notwithstanding federal regulations, those mutual funds offering "puts" and "calls" are eligible for purchase by state credit unions.

History: Effective March 1, 1988.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-13-03. Effective date of authority to invest. The authority for state credit unions to invest in investment securities or instruments shall be the date the investments are effective for federal credit unions unless the state credit union board shall otherwise direct within ninety days of the state credit union board receiving notification of proposed adjustments.

History: Effective March 1, 1988.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

TITLE 18.5
Credit Review Board

JANUARY 1988

18.5-01-01-01. History.

1. The provisions of North Dakota Century Code chapter 6-09.10 were established in 1985, setting up a credit review board to deal with the matter of ever increasing farm foreclosures. The board was given authority to negotiate with lenders on behalf of farmers and to provide interest subsidies to eligible farmers for eligible purchases, refinancing, or redemptions of the farmer's home-quarter.

In 1987, chapter 6-09.10 was amended to consolidate the negotiations undertaken by the board and the department of agriculture's farm credit counseling program. North Dakota Century Code sections 4-01-19.2 and 4-01-19.3 were repealed.

2. In 1987, sections 6-09.10-08.1 through 6-09.10-08.6 were added to North Dakota Century Code chapter 6-09.10 to provide further assistance to financially distressed farmers and small businesses in the form of legal and tax assistance. Two hundred thousand dollars were appropriated to the board to provide such assistance under the administration and supervision of the commissioner of agriculture and the board.

History: Effective January 1, 1988.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

18.5-01-01-02. Coordination of farm assistance programs. The credit review board is charged with responsibility in providing assistance to financially distressed farmers and small businesses pursuant to the provisions of North Dakota Century Code chapter 6-09.10. The responsibility of coordination, supervision, and administration is shared with the commissioner.

1. The responsibilities and duties under North Dakota Century Code chapter 6-09.10 belonging solely to the board are as follows:
 - a. Adopting written policies governing the negotiators and staff hired by the commissioner of agriculture pursuant to North Dakota Century Code chapter 6-09.10.
 - b. Approving interest rate buydowns as authorized by North Dakota Century Code sections 6-09.10-05, 6-09.10-07, and 6-09.10-08.
 - c. Charging reasonable fees to farmers for any assistance provided pursuant to North Dakota Century Code chapter 6-09.10.
 - d. Making all decisions on deferral or waiver of payment for assistance provided under the provisions of North Dakota Century Code chapter 6-09.10.
 - e. Adopting rules implementing any of the provisions of North Dakota Century Code chapter 6-09.10.
2. The responsibilities and duties belonging solely to the commissioner under North Dakota Century Code chapter 6-09.10 are as follows:
 - a. Establishing and administering the program.
 - b. Appointing the administrator of the program.
 - c. Hiring staff and negotiators to mediate between eligible farmers and their creditors.
3. The commissioner and the board shall have joint responsibility and duty under North Dakota Century Code chapter 6-09.10 as follows:
 - a. Implementing and administering legal and tax assistance to eligible farmers and small businesses as authorized by North Dakota Century Code sections 6-09.10-08.1 through 6-09.10-08.5.
 - b. Selecting appropriate cases for assistance to be made pursuant to North Dakota Century Code sections 6-09.10-08.1 through 6-09.10-08.5 among eligible farmers and small business persons.
 - c. Administering payment for assistance to any farmer or small business who receives assistance under North Dakota Century Code sections 6-09.10-08.1 through 6-09.10-08.5.

History: Effective January 1, 1988.

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

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

18.5-01-01-03. Board members. There are three members of the board. One member shall serve as the chairman, one as the treasurer, and one as the member at large in charge of personnel.

History: Effective January 1, 1988.

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

Law Implemented: NDCC 28-32-02.1

18.5-01-01-04. Meetings. The board shall meet at the call of the chairman.

History: Effective January 1, 1988.

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

Law Implemented: NDCC 28-32-02.1

18.5-01-01-05. Inquiries.

1. Any inquiries concerning assistance to be provided by the farm credit counseling program through its negotiators should be addressed to:

Administrator
Farm Credit Counseling Program
Department of Agriculture
State Capitol
Bismarck, North Dakota 58505

2. Any inquiries concerning the board or laws administered by the board should be addressed to:

Administrative Assistant
Credit Review Board
State Capitol
Bismarck, North Dakota 58505

3. Any inquiries concerning legal or tax assistance to be provided under the supervision and administration of the commissioner and the board should be addressed to the same person as in subsection 2.

History: Effective January 1, 1988.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

18.5-01-01-06. Applicability of chapter 28-32. Both the credit review board and the department of agriculture are administrative agencies for purposes of North Dakota Century Code chapter 28-32. The farm credit counseling program is an administrative agency to the extent it exercises any authority as a subordinate of the department of agriculture which is subject to chapter 28-32. However, the administrator of the program and its negotiators have been hired as independent contractors of the department hired by the commissioner to perform functions and duties as required by North Dakota Century Code chapter 6-09.10. All rules adopted by the board are adopted pursuant to chapter 28-32, but the board and the program are not acting as an administrative agency for the purposes of complaint procedures pursuant to North Dakota Century Code sections 28-32-05 through 28-32-21.1.

History: Effective January 1, 1988.

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

Law Implemented: NDCC 28-32-02.1

18.5-02-01-00.1. Definitions. In title 18.5, unless the context or subject matter otherwise requires:

1. "Administrator" means the administrator of the farm credit counseling program, appointed by the commissioner to administer the program.
2. "Commissioner" means the commissioner of the state department of agriculture.
3. "Negotiator" means a person hired by the commissioner to do the work as directed by the administrator to implement the program.
4. "Program" means the farm credit counseling program established by the commissioner to disseminate information to farmers concerning farm credit problems, to provide advice and counseling regarding farm credit problems, and to provide negotiators to negotiate with lenders on behalf of the farmer.
5. "Staff" means a person or those persons hired by the commissioner, not negotiators, who work directly under the supervision of the administrator to assist in administering the program or to assist the credit review board in its responsibilities and duties.

History: Effective January 1, 1988.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-03, 6-09.10-04

18.5-02-01-01. Eligibility for interest subsidy.

1. Applicants for assistance in the form of an interest subsidy provided by the credit review board pursuant to North Dakota Century Code sections 6-09.10-05, 6-09.10-07, and 6-09.10-08 shall submit or have a negotiator submit on their behalf:
 - a. A signed written petition requiring assistance;
 - b. A completed application form;
 - c. Financial statements as required by the board; and
 - d. ~~Proof of actual or threatened foreclosure, and~~
 - e. Any other information required by the board to determine eligibility or necessary to provide assistance an interest subsidy.
2. An applicant for assistance an interest subsidy provided by the credit review board must be a farmer as defined in subsection 3 of North Dakota Century Code section 6-09.10-01 and otherwise meet the requirements of North Dakota Century Code chapter 6-09.10 and rules adopted pursuant to it.
3. A person shall be considered to have applied for assistance by the credit review board and shall be considered for eligibility as of the date of the postmark on that person's written application form or petition received by the credit review board, or its agents, providing the application form or petition was properly addressed and deposited in the mail with postage or cost of transmission provided, whether or not such application form or petition meets the precise requirements of the board's desired format. Nevertheless, the board shall have the right to require additional information as necessary.
4. Any person whose right of redemption has expired by the filing of a sheriff's deed prior to submitting an application form or petition is ineligible for assistance in the form of an interest subsidy provided under the provisions of North Dakota Century Code chapter 6-09.10.

History: Effective September 17, 1985; amended effective January 1, 1988.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-01, 6-09.10-03, 6-09.10-04

18.5-02-01-01.5. Eligibility for assistance of a negotiator. The board may require that an applicant, for assistance of a negotiator, make written application on such a form as required by the board. An

applicant for the assistance of a negotiator must be a farmer as defined in subsection 3 of North Dakota Century Code section 6-09.10-01 and rules adopted pursuant to it.

History: Effective January 1, 1988.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-03, 6-09.10-04

18.5-02-01-02. Application process for interest subsidy. The credit review board will process applications for an interest subsidy as follows:

1. The board will, within thirty days of receipt of a completed application, advise the applicant, in writing, as to eligibility or ineligibility, including a statement as to the reasons for ineligibility.
2. If the information submitted by the applicant is inadequate for further processing, the board may shall, as necessary, advise the applicant that credit counseling through the department of agriculture's farm credit counseling program can assist the applicant in preparation of the application.
3. Any applicant aggrieved by a denial of assistance an interest subsidy by the board may appear in person before the board to present facts or arguments as to why assistance should be provided.

History: Effective September 17, 1985; amended effective January 1, 1988.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-03, 6-09.10-04

18.5-02-01-03. Negotiations.

1. The credit review board administrator shall assign a negotiator to each person upon acceptance of the application or request and the determination that the person is eligible for assistance. Where necessary to conserve resources, the board administrator may waive the assignment of a negotiator where a credit counselor, attorney, or other another person can fulfill that role. In all other cases, the negotiator will be assigned to determine the facts and position of the parties involved.
2. The role of the negotiator is to represent the board farmer in the workout arrangement of obtaining a settlement that will allow the farmer to reside in the farm residence and allow the farmer to continue to produce agriculture commodities, as well as to provide advice and counseling regarding farm credit

problems and to disseminate information to farmers concerning farm credit problems. If the negotiator is unable to mediate a settlement in the negotiation of the farmer's debt or other resolution of the farmer's farm credit problems, the negotiator may ~~at the direction of~~, upon written application by the farmer to the board, work with the lender and the farmer to negotiate a purchase, repurchase, refinancing, or redemption of the farmer's home-quarter.

3. The negotiator is an authorized agent of the program and the board who shall report to and be responsible to the administrator and the board in the negotiation process. The negotiator shall only enter into financial negotiations with a lender or its agents on behalf of the farmer. At the conclusion of negotiations, the negotiator shall report to the administrator and the board the outcome of the negotiations and any settlement that may have been accomplished.
4. Because each applicant's situation is fact specific, the negotiator shall have broad discretion to work out a financial settlement as appropriate, and as approved by the lender and the farmer.
5. ~~The~~ If foreclosure or other legal issues are involved, the negotiator shall clearly disclose to the farmer that ~~foreclosure is a legal issue~~ there are legal issues involved, that legal counsel is both necessary and advisable, and that the negotiator will not function in the capacity of an attorney nor be responsible for legal issues, defenses, or counterclaims.

History: Effective September 17, 1985; amended effective January 1, 1988.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-03, 6-09.10-04, 6-09.10-05

18.5-02-01-04. Interest subsidies. The following factors and criteria shall be considered by the credit review board in making a determination as to whether interest subsidies shall be provided pursuant to the provisions of North Dakota Century Code chapter 6-09.10:

1. Financial ability to make all payments and meet all financial responsibilities with regard to the proposed loan.
2. The commercial reasonability of the lender's actual rate of interest on the proposed loan.
3. The applicant's desire to stay in the area where the land, which is the subject of the loan, is located, due to community ties, family, and other related reasons.

4. The terms and conditions of the loan, including the amortization schedule and terms of repayment.
5. The lack of other available assets, financing, or resources for financing a home in the area or for refinancing, repurchase, or redemption of the home-quarter.
6. The relationship of the amount of the principal of the loan to the appraised value of the home-quarter as determined by the board.
7. Whether the farmer has an interest in returning to farming and continuing to produce agriculture commodities.
8. The security for the loan and the security for the interest subsidy.

The principal upon which an interest subsidy is approved by the board may not exceed the appraised value of the home-quarter as determined by the board. No interest may be paid by the farmer on any interest rates subsidized by the ~~credit review~~ board for loans made pursuant to the provisions of North Dakota Century Code chapter 6-09.10.

History: Effective September 17, 1985; amended effective January 1, 1988.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-06, 6-09.10-07

~~18.5-02-01-05. Danger of immediate foreclosure defined. A farmer is in danger of immediate foreclosure pursuant to the provisions of North Dakota Century Code chapter 6-09.10 if, based on the information supplied by the farmer, other information obtained by the credit review board, and determinations made by the credit review board, the credit review board believes the farmer is in danger of immediate foreclosure and that legal action will be taken against the borrower.~~

~~History: Effective September 17, 1985.~~

~~General Authority: NDCC 6-09.10-09~~

~~Law Implemented: NDCC 6-09.10-03, 6-09.10-04~~

Repealed effective January 1, 1988.

18.5-02-01-06. Written policies. The board shall adopt written policies governing the results sought to be achieved by the board for the negotiators and staff hired by the commissioner to carry out the provisions of North Dakota Century Code chapter 6-09.10, this chapter, and the program. The administrator shall implement the written policies of the board to achieve the results desired by the board as set forth in its written policies.

History: Effective January 1, 1988.
General Authority: NDCC 6-09.10-09
Law Implemented: NDCC 6-09.10-03

STAFF COMMENT: Article 18.5-03 contains all new material but is not underscored so as to improve readability.

ARTICLE 18.5-03

LEGAL AND TAX ASSISTANCE

Chapter
18.5-03-01 General Provisions

CHAPTER 18.5-03-01 GENERAL PROVISIONS

Section	
18.5-03-01-01	Types of Assistance
18.5-03-01-02	Coordinator
18.5-03-01-03	Cooperation with Coordinator
18.5-03-01-04	Consultation with Attorneys
18.5-03-01-05	Written Payment Policy

18.5-03-01-01. Types of assistance.

1. The board and the commissioner may provide legal and tax assistance and services to eligible farmers and small businesses, directly, in the form of contracting, to provide for representation, information and advice, research or consulting services, and paying for such services, or indirectly, in the form of contracting to provide for information and advice, research services, or consulting services, and paying for such services, to those persons who represent, give advice to, or counsel the farmer or small business.
2. The board and the commissioner may spend appropriated moneys, pursuant to North Dakota Century Code chapter 6-09.10, both for administration and provision of legal and tax assistance as is determined by them to address most effectively the needs of farmers experiencing farm credit and farm tax problems and small business persons whose business is experiencing legal and tax problems. The board and the commissioner may establish a priority system for spending such moneys.

History: Effective January 1, 1988.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-08.1, 6-09.10-08.2

18.5-03-01-02. Coordinator. The board and the commissioner shall designate a coordinator for the legal and tax assistance program who is responsible for the day-to-day supervision and coordination of the assistance programs contracted for by them. The coordinator shall act only upon direction from the board and the commissioner to implement the provisions of North Dakota Century Code sections 6-09.10-08.1 through 6-09.10-08.5. The board and the commissioner may adopt written policy procedures to aid the coordinator in administrative and supervisory activities.

History: Effective January 1, 1988.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-08.1, 6-09.10-08.4, 6-09.10-08.5

18.5-03-01-03. Cooperation with coordinator. Any contractor providing legal and tax assistance pursuant to the provisions of North Dakota Century Code sections 6-09.10-08.1 through 6-09.10-08.5 shall cooperate with the coordinator by providing to the coordinator nonconfidential information concerning the results of research and other pertinent information, useful to farmers and small businesses as a whole in North Dakota. The coordinator shall share such research and information with the North Dakota school of law and with the North Dakota state university extension service, as well as other groups and associations with a demonstrated interest in farm and small business problems, so that such research and information may be widely disseminated throughout the state.

History: Effective January 1, 1988.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-08.1, 6-09.10-08.2, 6-09.10-08.5

18.5-03-01-04. Consultation with attorneys. The board and the commissioner may consult with a panel of attorneys, including attorneys in private practice, before funding or participating in a lawsuit that has substantial impact on farmers or small businesses as a whole in North Dakota.

History: Effective January 1, 1988.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-08.1, 6-09.10-08.2

18.5-03-01-05. Written payment policy. The board shall adopt a written policy, to be implemented by the coordinator, for payment of assistance pursuant to North Dakota Century Code section 6-09.10-08.4. The policy must also deal with adequate recordkeeping of such payment.

History: Effective January 1, 1988.
General Authority: NDCC 6-09.10-09
Law Implemented: NDCC 6-09.10-08.4

TITLE 28
Engineers and Land Surveyors,
Board of Registration for Professional

JANUARY 1988

28-01-01-01. Organization of board of registration for professional engineers and land surveyors.

1. **History and function.** The 1943 legislative assembly first provided for registration of professional engineers by a law codified as North Dakota Century Code chapter 43-19. The 1957 legislative assembly first provided for registration of land surveyors by a law codified as North Dakota Century Code chapter 43-24. In 1967 the legislative assembly repealed both of these chapters and replaced them with one chapter regulating professional engineers and land surveyors under the board of registration for professional engineers and land surveyors. The chapter is codified as North Dakota Century Code chapter 43-19.1. The function of the board is to regulate the practice of engineering and land surveying by registering qualified engineers and land surveyors.
2. **Board membership.** The board is appointed by the governor and consists of four professional engineer members and one professional land surveyor member. Each professional engineer member must be a registered professional engineer whose name has been submitted to the governor by the North Dakota society for professional engineers for appointment. The professional land surveyor member must be a registered professional land surveyor whose name has been submitted to the governor by the North Dakota society of professional land surveyors for appointment. Members of the board serve five-year terms, and one term expires each year.
3. **Executive secretary.** The executive secretary is appointed by the board and is responsible for administration of the board's activities.

4. **Inquiries.** Inquiries regarding the board may be addressed to the executive secretary:

Mr. Laverne L. Zink
North Dakota State Board of Registration for
Professional Engineers and Land Surveyors
P.O. Box 1357
Bismarck, North Dakota 58502

History: Amended effective January 1, 1980; February 1, 1984; November 1, 1985; January 1, 1988.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

CHAPTER 28-01-02

BOARD BYLAWS AND ADMINISTRATION

[Superseded by Chapter 28-01-02.1]

STAFF COMMENT: Chapter 28-01-02.1 contains all new material but is not underscored so as to improve readability.

CHAPTER 28-01-02.1

BOARD BYLAWS AND ADMINISTRATION

Section

28-01-02.1-01	Meetings
28-01-02.1-02	Order of Business - Rules of Procedure
28-01-02.1-03	Board Quorum
28-01-02.1-04	Officers
28-01-02.1-05	Forms - Records - Roster - Reports
28-01-02.1-06	Statement of Purpose of Rules - Amendments
28-01-02.1-07	Gender and Definitions

28-01-02.1-01. Meetings. The board shall hold meetings at least twice each year, on the first Friday in March and the third Friday in September. The chairman may call special meetings when the chairman deems such meetings necessary. The executive secretary shall notify all members at least one calendar week in advance of a meeting, and shall give public notice as required by law. The date, time, and place of each meeting must be mutually agreed upon by a quorum of the board. All meetings of the board, whether regular meetings or special meetings, must be open public meetings.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-07

28-01-02.1-02. Order of business - Rules of procedure. The order of business must be:

1. Roll call.
2. Minutes of last meeting; approval.
3. Agenda.
4. Financial report; approval - roll call vote.
5. Appearances; guest, applicants, complainants, defendants.
6. Unfinished business.
7. Applications.
8. New business.
9. Status report of complaints and investigations.
10. Adjournment.

Robert's Rules of Order must govern procedure of the board except as otherwise provided by title 28 or state statute.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-07

28-01-02.1-03. Board quorum. A quorum of the board is required to transact business.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-07

28-01-02.1-04. Officers.

1. The board shall hold an election at the first meeting after July first of each year and elect a chairman, vice chairman, and secretary.
2. Each officer will be elected for one year and may be reelected.
3. The chairman:
 - a. Shall be the executive head of the board.
 - b. Shall preside at all meetings when present.

- c. Shall call meetings of the board when he deems such meetings necessary.
4. The vice chairman shall in the absence or incapacity of the chairman exercise the duties and shall possess all the powers of the chairman.
5. The secretary shall sign all official documents prepared by the board and shall sign all registration certificates.
6. The executive secretary shall perform all duties as may be prescribed by the board.
7. The secretary or executive secretary shall give to the state a surety bond in an amount determined by the board.
8. The office of the board may be established at a place designated by the board.
9. The board shall establish, appoint, and create ad hoc or standing committees to study, research, and evaluate such matters as assigned. For each committee a chairman must be designated.
10. Board officers and members serve without compensation except for vouchered per diem when engaged in state business approved by the board and for vouchered subsistence, lodging, and travel expenses at the rates established for any other state employee.
11. The executive secretary must be reimbursed vouchered expenses for approved travel and subsistence at state rates.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-03

28-01-02.1-05. Forms - Records - Roster - Reports.

1. **Forms.** All applications and requests for which the board has prescribed a form must be presented on these forms as prescribed. Copies of forms in use and instructions for their completion are available from the board office.
2. **Records.**
 - a. The open records law requires that most records, papers, and reports of the board are public in nature and may be obtained through the executive secretary upon request and payment of costs of reproduction, handling, and mailing.

- b. The board shall keep a record of all its proceedings, including its action on each application coming before the board.
 - c. The board shall keep a record of all applications and requests received.
 - d. The board shall keep a record of all certificates issued.
 - e. The board shall keep a record of all complaints received and of any actions taken on those complaints.
3. **Roster.** The closing date for all registrants to be included in the roster for any year is March first. The roster must contain, among other things, the names of all registered professional engineers and registered land surveyors showing the registrant's address. Copies of the roster must be made available and mailed upon request at no cost to each person holding a current registration and mailed to or made available to all county and city auditors and clerks of district courts. Copies must be placed on file with the secretary of state and with the libraries in accordance with the state repositories laws. Copies may be sold to the public at a cost not less than the cost of publication and postage.
 4. **Annual reports.** An annual report, an annual audit report, and such other summaries as required must be filed with the appropriate state agencies as required, such as the office of the governor, state auditor, and secretary of state.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-09, 43-19.1-10, 43-19.1-11

28-01-02.1-06. Statement of purpose of rules - Amendments.

1. **Purpose of rules.** The purpose of these rules is to ensure proper, equitable, and uniform performance of the duties of the board of registration by regulation of its members, personnel, meetings, records, examinations, and the conduct thereof.
2. **Amendment of rules.** These rules may be amended at any regular meeting of the board by a majority vote of the board membership.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-08

28-01-02.1-07. Gender and definitions.

1. **Gender.** This title is to be read and interpreted in a nongender context without regard to race, creed, or sex.
2. **Definitions.** The terms used throughout this title have the same meaning as in North Dakota Century Code chapter 43-19.1, except:
 - a. "Accreditation board for engineering and technology accredited curriculum" means those academic programs offered by institutions of higher learning which the national accreditation board for engineering and technology (ABET) certify to have met the criteria and qualifications required to receive the designations as accredited programs in the education, training, and preparation of the graduates from such programs; engineering curriculum must have the accreditation of the engineering accreditation commission (EAC) within the accreditation board for engineering and technology and land surveying curriculum must have either engineering accreditation commission or technology accreditation commission (TAC) of the accreditation board for engineering and technology to be acceptable to the board.
 - b. "Application" means the act of furnishing data, documents, and such information under oath as may be required by the board and on forms prescribed by the board.
 - c. "Code of ethics" means that set of rules prescribed by the board and adopted herein which govern the professional conduct of all registrants.
 - d. "Examination" means that series of tests prescribed by the board which are developed to ascertain the level of proficiency in the fundamentals and in the practices of the professions regulated by the board.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-08

ARTICLE 28-02

ENGINEER AND LAND SURVEYOR LICENSURE

[Superseded by Article 28-02.1]

STAFF COMMENT: Article 28-02.1 contains all new material but is not underscored so as to improve readability.

ARTICLE 28-02.1

ENGINEER AND LAND SURVEYOR REGISTRATION

Chapter	
28-02.1-01	Applications
28-02.1-02	Processing Applications
28-02.1-03	Types of Registration
28-02.1-04	General Requirements
28-02.1-05	Qualifications and Requirements for Engineers
28-02.1-06	Qualifications and Requirements for Land Surveyors
28-02.1-07	Certificates of Authority - Partnerships - Corporations
28-02.1-08	Certificates and Seals
28-02.1-09	Expirations - Renewals - Reinstatements
28-02.1-10	Examinations and Fees

CHAPTER 28-02.1-01 APPLICATIONS

Section	
28-02.1-01-01	Applications - Kinds of Applications
28-02.1-01-02	Completing Applications
28-02.1-01-03	Applications From Nonresidents
28-02.1-01-04	Applications From Applicants With Degrees From Foreign Schools
28-02.1-01-05	Disposal of Applications
28-02.1-01-06	Reconsideration of Applications
28-02.1-01-07	Retention of Records of Applications

28-02.1-01-01. Applications - Kinds of applications. Applications may be submitted to the board for registration as a:

1. Engineer-in-training.
2. Land surveyor-in-training.
3. Professional engineer.
 - a. Examination.
 - b. Endorsement.
4. Registered land surveyor.
 - a. Examination.
 - b. Endorsement.

5. Professional engineer temporary permitholder.
6. Business with a certificate of authority to practice engineering or land surveying.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-08

28-02.1-01-02. Completing applications.

1. All data and information requested on the board's application forms must be furnished accurately and completely.
2. When space provided on forms is inadequate, use supplementary sheets provided by this board (or if not provided, sheets of a good grade of white paper, eight and one-half by eleven inches [215.90 by 279.40 millimeters] are to be used).
3. All applications made to this board must be subscribed and sworn to on the forms used by the applicant before a notary public or other persons qualified to administer oaths.
4. In order to allow sufficient time for processing and for securing examinations, all applications which may require examinations must be filed with this board at least forty-five days before the date set for the appropriate examinations.
5. Withholding information or providing statements which are untrue or misrepresent the facts may be cause for denial of an application.
6. It is the responsibility of the applicant to supply correct addresses of all references and to be sure that the references are supplied as requested. If a reference fails to respond, this will delay the processing of an application either until a reply is obtained or another reference is given.
7. In relating experience, the applicant must account for all employment or work experience for the period of time which has elapsed since the beginning of the employment record. If not employed, or employed in other kinds of work, this should be indicated in the experience record.
8. Applications for registration properly executed and issued with verification by the national council of engineering examiners (NCEE) will be accepted in lieu of the same information that is required on the form prescribed and furnished by this board.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-12

28-02.1-01-03. Applications from nonresidents.

1. A person who is a resident of this state, for purposes of registration or certification, is defined as one who lives and is employed in the geographical boundaries of the state or is associated with a company which has a location in this state.
2. One who is a graduate of an accredited engineering or land surveying curriculum may apply in this state for original registration or certification.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-08

28-02.1-01-04. Applications from applicants with degrees from foreign schools.

1. All foreign language documentation submitted with the completed application must be accompanied with translations certified to be accurate by a competent authority.
2. All applicants shall furnish evidence of experience which can be verified.
3. All applicants seeking registration must be prepared to write examinations which are administered in the English language.
4. National council of engineering examiners' recommendations on foreign engineering curricula must generally serve as a board's guide for evaluation.
5. Those applicants who for political or other valid reasons are unable to obtain transcripts of their college shall be required to complete a supplementary application form as approved by the board or the national council of engineering examiners.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-13

28-02.1-01-05. Disposal of applications. Applications may be approved; deferred for further information, more experience, acceptable references, or other reasons; or may be denied.

1. **Approved applications.** When an application is approved by the board members showing that the applicant has met all the requirements for registration or certification required by the statutes of this state, the applicant must be granted registration or certification with notification by the executive secretary of the board.
2. **Deferred applications.** Applications deferred for any reason are retained on file pending later disposal when proper remedy as requested is presented.
3. **Denied applications.** When an application is denied, it is kept on file for one year and then destroyed. Applications may be denied (all and any approval thereof) when in the board's judgment: (a) reinstatement is requested after revocation and there is insufficient rehabilitation; or (b) an application has been denied for cause in other jurisdictions.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-25

28-02.1-01-06. Reconsideration of applications. Reconsideration may be requested of an application which has been denied when the request is based on additional information or reconsideration, or both. Request must be made within one year after the decision was made to reject the original application.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-08, 43-19.1-14, 43-19.1-17

28-02.1-01-07. Retention of records of applications.

1. All applications, approved or deferred, will be retained in permanent files maintained by the board.
2. All applications for which required information has not been furnished for one year or more after the last entry in the applicant's file must be deemed to be an incomplete application. Incomplete applications may be destroyed.
3. Information may be extracted from approved applications to prepare the required publication of the roster. Such information may be stored on computer storage disks. From time to time information may be added to the records as it is supplied to the board. Added information may include address

changes, notices of disciplinary actions, suspensions, lapses, or reinstatements.

4. At all times, upon proof of identity, an applicant's file is available for review. In no case may original documents be altered, removed, or returned. Application records once submitted become the property of the board.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-10

CHAPTER 28-02.1-02 PROCESSING APPLICATIONS

Section

28-02.1-02-01

Processing of Applications

28-02.1-02-01. Processing of applications.

1. Application forms for registration as a professional engineer or land surveyor may be obtained from the office of the secretary of the board of registration for professional engineers and land surveyors.
2. Applications must be received in the board office at least forty-five days before the scheduled date for any professional engineer or land surveyor examination.
3. All information received from references named by the applicant must be obtained by the board office. No member of the board may be named as a reference.
4. No applicant may be admitted to the examination until the applicant's application has been received, processed, and approved by the board.
5. An applicant may not confer with any member of the board while it is in session about the applicant's case while it is before the board. This, however, does not apply to any special committee which the board appoints nor to the secretary of the board.
6. Applicants whose applications have been approved, but who fail to appear for examination four consecutive times, must be deemed to have withdrawn their applications.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-08, 43-19.1-12

**CHAPTER 28-02.1-03
TYPES OF REGISTRATION**

Section
28-02.1-03-01 Types of Registration

28-02.1-03-01. Types of registration. Engineers and land surveyors may become registered professional practitioners by examination, endorsement, or by temporary permit.

1. **Registration by examination.** Registration by examination is generally a two-step process for those applicants who have met the general qualification requirements; who have met certain education requirements or who have the experience deemed to be satisfactory and acceptable to the board, or both; and, who have successfully passed the examinations prescribed by the board.
 - a. The board has the written examination prepared by the national council of engineering examiners as its standard of examinations and qualifications.
 - b. The board may require one or more questions in examinations measuring familiarity with the code of ethics. Similarly, in furtherance of the board's determination of rehabilitation, an examination on the code of ethics may be required.
2. **Registration by endorsement.** Registration by endorsement is for engineers or land surveyors who hold a current registration in another state who do comply or have complied with the minimum requirements and qualifications required of a resident of North Dakota at the time of their registration.
3. **Temporary permit - Temporary registration.** A temporary permit must be issued on the basis of one project and may not exceed one year. Educational and experience requirements must comply with North Dakota law. The applicant must be legally qualified to practice in the state or country of residence and must have current registration. A temporary permit must be approved prior to submission of plans and specifications for the execution of a project. Temporary permits for land surveyors are not authorized by North Dakota law.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-08, 43-19.1-12.1, 43-19.1-13,
43-19.1-14, 43-19.1-29

**CHAPTER 28-02.1-04
GENERAL REQUIREMENTS**

Section	
28-02.1-04-01	General Requirements
28-02.1-04-02	Experience

28-02.1-04-01. General requirements. All applicants must:

1. Complete their applications on forms furnished by the board.
2. Complete the application under oath (an affidavit is required).
3. Furnish references as required but may not include board members as references.
4. In the case of student applicants for the fundamentals of engineering (EIT) and for the fundamentals of land surveying (LSIT), certification by the dean of the college or the dean's appropriate designee agreed upon by the board may be used in lieu of references.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-12

28-02.1-04-02. Experience. The following describes what the board considers acceptable experience. The applicant must provide proof that the experience meets these requirements.

1. The experience must be gained following graduation or training when credit is to be granted on academic achievement.
2. The experience gained through military service must be substantially equivalent in character to civilian experience in similar fields or disciplines. Generally, military experience is not favored by the board unless the applicant served in a military engineering related component of the armed services.
3. Experience must be gained under the supervision of a registered professional.
4. Experience must be substantially related to the registration or discipline applied for. Dual registration must fulfill experience requirements for each application without duplicate credits for time of gaining experience.

5. Generally, the board will require responsible charge and design components for an applicant in fulfilling experience requirements if the applicant is seeking professional engineering registration.
6. An engineering or land surveying applicant may be granted one year's experience for each postgraduate degree following a baccalaureate degree in the field of practice.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-14, 43-19.1-15, 43-19.1-16, 43-19.1-17

CHAPTER 28-02.1-05 QUALIFICATIONS AND REQUIREMENTS FOR ENGINEERS

Section

- | | |
|---------------|--|
| 28-02.1-05-01 | Qualifications and Requirements -
Engineers-in-Training |
| 28-02.1-05-02 | Qualifications and Requirements -
Professional Engineer |

28-02.1-05-01. Qualifications and requirements - Engineers-in-training. Engineer-in-training applicants must satisfy the following requirements:

1. A graduate of a four-year or more accreditation board for engineering and technology accredited engineering curriculum may be approved to write the fundamentals of engineering (EIT) examination. Senior year students within one year of graduation may be approved to write the fundamentals of engineering exam.
2. A graduate of a four-year non-accreditation board for engineering and technology accredited engineering curriculum and four additional years of acceptable experience may be approved to write the fundamentals of engineering (EIT) examination.
3. All other applicants not qualifying under subsections 1 and 2 must acquire ten years of acceptable engineering experience before they may be approved to write the fundamentals of engineering (EIT) examination.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-14, 43-19.1-15

28-02.1-05-02. Qualifications and requirements - Professional engineer. Applicants with variant educational backgrounds will have different examination and experience requirements. These requirements must be acquired sequentially as listed in the following categories:

1. Graduates from a four-year or more accreditation board for engineering and technology accredited engineering curricula must satisfy the following requirements:
 - a. An eight-hour examination in engineering fundamentals. (Engineer-in-training certificate)
 - b. A minimum of four years of acceptable experience in engineering subsequent to graduation and prior to writing the principles and practice of engineering (PE) examination.
 - c. An eight-hour examination in the principles and practice of engineering (PE).
2. Graduates from nonaccredited engineering curricula must satisfy the following requirements:
 - a. An eight-hour examination in engineering fundamentals. (Engineer-in-training certificate)
 - b. A minimum of eight years' experience in engineering work of a character satisfactory to the board subsequent to graduation and prior to writing the principles and practices (PE) examination.
 - c. An eight-hour examination in the principles and practice of engineering (PE).
3. All other applicants not qualifying under subsections 1 and 2 must satisfy the following requirements:
 - a. An eight-hour examination in engineering fundamentals. (Engineer-in-training certificate)
 - b. A minimum of twenty years of acceptable practice in engineering work, the last ten years of which has been in responsible charge of engineering work of a character satisfactory to the board.
 - c. An eight-hour examination in the principles and practice of engineering (PE).
4. Teacher of engineering.
 - a. An eight-hour examination in engineering fundamentals is required. (Engineer-in-training certificate)

- b. The individual must have taught, in an engineering school of recognized standing, a minimum of four years and must have a minimum of two years of practical engineering experience satisfactory to the board.
- c. An eight-hour examination in the principles and practice of engineering (PE) is required.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-14

**CHAPTER 28-02.1-06
QUALIFICATIONS AND REQUIREMENTS
FOR LAND SURVEYORS**

Section

- 28-02.1-06-01 Qualifications and Requirements - Land Surveyors-in-Training
- 28-02.1-06-02 Qualifications and Requirements - Registered Land Surveyor

28-02.1-06-01. Qualifications and requirements - Land surveyors-in-training. Land surveyors-in-training applicants must meet the following requirements:

- 1. A graduate of a four-year or more accreditation board for engineering and technology accredited land surveying or engineering curriculum approved by the board may be approved to write the fundamentals of land surveying (LSIT) examination. Senior year students within one year of graduation may be approved to write the fundamentals of land surveying (LSIT) examination.
- 2. A graduate of a non-accreditation board for engineering and technology accredited curriculum in land surveying or engineering approved by the board and with two or more years of acceptable land surveying experience may be approved to write the fundamentals of land surveying (LSIT) examination.
- 3. a. All other applicants not qualifying under subsections 1 and 2 must have four or more years of acceptable land surveying experience before they may be approved to write the fundamentals of land surveying (LSIT) examination.
- b. Nongraduates of any land surveying or engineering curriculum approved by the board may be granted up to two years credit toward their experience requirements.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-16.1

28-02.1-06-02. Qualifications and requirements - Registered land surveyor. Applicants with variant educational backgrounds have different examination and experience requirements. These requirements must be acquired sequentially as listed in the following categories:

1. A graduate of a four-year or more accreditation board for engineering and technology accredited land surveying or engineering curriculum approved by the board:
 - a. An eight-hour examination in fundamentals of land surveying (LSIT certificate).
 - b. A minimum of four years of experience in land surveying work of a character satisfactory to the board, and indicating that the applicant is competent to practice land surveying.
 - c. A four-hour examination in the principles and practices of land surveying (LS).
 - d. A take-home orientation examination (four-hour equivalent), pertaining to land surveying laws, procedures, and practices in North Dakota.
2. A graduate from a non-accreditation board for engineering and technology accredited curriculum in land surveying or engineering approved by the board:
 - a. An eight-hour examination in fundamentals of land surveying (LSIT certificate).
 - b. A minimum of six years' experience in land surveying work of a character satisfactory to the board, and indicating that the applicant is competent to practice land surveying.
 - c. A four-hour examination in the principles and practices of land surveying (LS).
 - d. A take-home orientation examination (four-hour equivalent) pertaining to land surveying laws, procedures, and practices in North Dakota.
3. All other applicants not qualifying under subsections 1 and 2:
 - a. An eight-hour examination in the fundamentals of land surveying (LSIT certificate).

- b. A minimum of eight years of experience in land surveying of a character satisfactory to the board indicating that the applicant is competent to practice land surveying. Nongraduates of any land surveying or engineering curriculum approved by the board may be granted up to two years credit toward their experience requirements.
- c. A four-hour examination in the principles and practices of land surveying (LS).
- d. A take-home orientation examination (four-hour equivalent) pertaining to land surveying laws, procedures, and practices in North Dakota.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-16, 43-19.1-16.1

**CHAPTER 28-02.1-07
CERTIFICATES OF AUTHORITY -
PARTNERSHIPS - CORPORATIONS**

Section

28-02.1-07-01 Applications

28-02.1-07-02 Issuance of Certificate of Authority

28-02.1-07-01. Applications. Forms for making application to the board are available from the board and require:

- 1. To be completed in duplicate.
- 2. To set forth the corporate officers and directors or the business partners by name and address.
- 3. To list the names and addresses of all employees who are duly registered to practice professional engineering or land surveying in North Dakota.
- 4. To set forth the registered agent for the business entity.
- 5. To set forth who will be in responsible charge of any engineering or land surveying in this state.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-27

28-02.1-07-02. Issuance of certificate of authority. Certificates of authority issued by the board are not transferable and require the holder to:

1. Advise the board within thirty days of any change of officers, directors, partners, business addresses, registered agents, or of any disciplinary actions which impairs the registration and right to practice of any of the persons or officers of record in North Dakota.
2. Renew and update annually the names and addresses of the registered agent, officers, directors, or partners, and practicing engineers or land surveyors registered in North Dakota.
3. Keep and maintain its annual filing requirements with the secretary of state's office current.
4. Practice and performance of engineering or land surveying in this state subject to the same disciplinary actions of suspension or revocation for cause by the board of any individual registrant.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-27

CHAPTER 28-02.1-08 CERTIFICATES AND SEALS

Section

28-02.1-08-01	Certificates
28-02.1-08-02	Seals

28-02.1-08-01. Certificates.

1. Certificates of registration issued by the board should be displayed by the registrant in a prominent place in the registrant's office or principal place of business.
2. In case a certificate is lost or destroyed, a duplicate certificate will be issued upon request. The charge for a duplicate certificate shall be as determined by the board.
3. Certificates of authorization are signed by the chairman and secretary and are issued on an annual basis.
4. The board may request an applicant to participate in a presentation ceremony. Applicants are not required to participate in ceremonies to receive their certificate.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-20, 43-19.1-27

28-02.1-08-02. Seals.

1. The board has adopted standard seals or stamps similar to those illustrated in the appendix to this chapter for use by registered professional engineers and land surveyors as prescribed by law.
2. Seals may be of rubber stamp or metal impression type and are ordered through the secretary of the board on forms supplied for this purpose.
3. All seals and stamps must be validated by the signature of the holder of the seal.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-21

**CHAPTER 28-02.1-09
EXPIRATIONS - RENEWALS - REINSTATEMENTS**

Section	
28-02.1-09-01	Expirations of Certificates of Registration
28-02.1-09-02	Renewals
28-02.1-09-03	Reinstatements

28-02.1-09-01. Expirations of certificates of registration.

1. The certificate of registration issued to land surveyors-in-training are nonexpiring.
2. The certificates of registration issued to engineers-in-training are nonexpiring for a period of twelve years and carry no provision for renewal.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-15, 43-19.1-16.1

28-02.1-09-02. Renewals. Registration and certificates of authorization may be renewed as follows:

1. Each year the board shall mail renewal notices prior to December first to the last address of record for each registration and certificate holder advising of the amount of the renewal fee and the pending expiration date.
2. Renewal fees received will be acknowledged by returning to the registrant a wallet card bearing his name and registration number or a new certificate of authorization duly signed; each acknowledging renewal to the next date of expiration.
3. Receipt of renewals prior to March thirty-first will ensure the registrant his name and address be published in the next roster.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-22

28-02.1-09-03. Reinstatements.

1. A registrant or a holder of a certificate of authorization who has allowed his registration or authorization to lapse for more than one year, but less than five years, may become reinstated by paying of current year renewal fee plus one year back renewal fee.
2. Registrations and certificates which have lapsed five years or more require reapplication updating all the required information of the applicant as if an original application. The board may require reexamination of registrants for all or a portion of the examination qualification requirements.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-22

**CHAPTER 28-02.1-10
EXAMINATIONS AND FEES**

Section

28-02.1-10-01 Examinations
28-02.1-10-02 Fees

28-02.1-10-01. Examinations.

1. The engineering and land surveying examinations must be held in April and October each year, with the time, date, and place set by the board.
2. Orientation examinations (a take-home test) for land surveyors requires a score of eighty or greater to pass the examination.
3. An applicant failing to pass a professional examination may take the next scheduled examination after six months by payment of the examination fee provided the applicant achieved a score of at least fifty.
4. The board may require one or more questions in examinations measuring familiarity with the code of ethics. Similarly, in furtherance of the board's determination of rehabilitation, an examination on the code of ethics may be required.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-19

28-02.1-10-02. Fees. Effective July 1, 1987, the following fees are required:

Registration Fees

Professional engineer	\$ 50.00
Land surveyor	\$ 50.00
Engineer-in-training	\$ 35.00
Land surveyor-in-training	\$ 35.00
Partnership or corporation	\$100.00
Temporary permit	\$ 50.00

Renewal Fees

Professional engineer	\$ 27.50
Land surveyor	\$ 27.50
Professional engineer and land surveyor	\$ 52.00
Partnership or corporation	\$100.00

History: Effective January 1, 1988.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-18, 43-19.1-27

ARTICLE 28-03

RULES OF PROFESSIONAL CONDUCT

[Superseded by Article 28-03.1]

STAFF COMMENT: Article 28-03.1 contains all new material but is not underscored so as to improve readability.

ARTICLE 28-03.1

RULES OF PROFESSIONAL CONDUCT

Chapter
28-03.1-01 Code of Ethics

**CHAPTER 28-03.1-01
CODE OF ETHICS**

Section
28-03.1-01-01 General Statement

28-03.1-01-02	Action by Another Jurisdiction
28-03.1-01-03	Standards of Integrity
28-03.1-01-04	Protection of Public
28-03.1-01-05	Advertising
28-03.1-01-06	Aid Public Understanding
28-03.1-01-07	Opinion on Engineering Subject
28-03.1-01-08	Qualification for Work Projects
28-03.1-01-09	Disclosure of Confidential Information
28-03.1-01-10	Disclosure of Conflict of Interest
28-03.1-01-11	Compensation From Other Parties
28-03.1-01-12	Solicitation of Work
28-03.1-01-13	Criticism of Others
28-03.1-01-14	Professional Associations
28-03.1-01-15	Proprietary Interests of Others
28-03.1-01-16	Professional Cooperation

28-03.1-01-01. General statement. In order to establish and maintain a high standard of integrity, skills, and practice in the profession of engineering and land surveying, the code of ethics contained in this chapter is binding upon every person holding a certificate of registration as a professional engineer or land surveyor, and upon all agents, employees, officers, or partners.

This chapter is specifically designed to further safeguard the life, health, property, and public welfare of the citizens of North Dakota, and must be construed to be a reasonable exercise of the police power vested in the board of registration for professional engineers and land surveyors by virtue of North Dakota Century Code chapter 43-19.1, and as such the board can establish conduct, policy, and practices to be adopted.

Throughout article 28-03.1, the term "his" is used to designate a person in a nongender context. These rules are to be read and interpreted without regard to race, creed, or sex.

The engineer or land surveyor who holds a certificate of registration from the board is charged with having knowledge of the existence of this chapter for professional conduct as an engineer or land surveyor, and also must be deemed to be familiar with the provisions and to understand them. Such knowledge shall encompass the understanding that the practice of engineering and land surveying is a privilege as opposed to a right, and the engineer or land surveyor must be forthright and candid in statements or written responses to the board or its representatives on matters pertaining to professional conduct.

All reference in this chapter to engineers and the profession of engineering must be deemed to include land surveyors and the practice of land surveying.

The engineer or land surveyor must be guided in all professional relations by the highest standards of integrity, and shall act in

professional matters for each client or employer as a faithful agent or trustee.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-24

28-03.1-01-02. Action by another jurisdiction. Conviction of a felony without restoration of civil rights, or the revocation or suspension of a professional engineer's or land surveyor's license by another jurisdiction if for a cause which in this state would constitute a violation of North Dakota Century Code chapter 43-19.1, or of this title, is grounds for a charge of violation of this chapter.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-25

28-03.1-01-03. Standards of integrity. The engineer or land surveyor will be guided in all one's professional relations by the highest standards of integrity, and will act in professional matters for each client or employer as a faithful agent or trustee. The engineer or land surveyor:

1. Will give accurate estimates, reports, statements, and testimony.
2. Will advise one's client or employer when the engineer or land surveyor believes a project will not be successful.
3. Will not accept outside employment to the detriment of the engineer's or land surveyor's regular work or interest, or without the consent of the engineer's or land surveyor's employer.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-24

28-03.1-01-04. Protection of public. The engineer or land surveyor shall steadfastly protect the safety, health, and welfare of the public in the performance of professional duties. If the engineer's or land surveyor's judgment is overruled by nontechnical authority, the engineer or land surveyor will clearly point out the consequences, and the engineer or land surveyor will notify the proper authority of any observed conditions which endanger public safety and health. The engineer or land surveyor:

1. Will regard one's duty to the public welfare as paramount.

2. Shall seek opportunities to be of constructive service in civic affairs and work for the advancement of the safety, health, and well-being of the engineer's or land surveyor's community.
3. Will not complete, sign, or seal plans or specifications that are not of a design safe to the public health and welfare and in conformity with accepted standards. If the client or employer insists on such unprofessional conduct, the engineer or land surveyor shall notify the proper authorities and withdraw from further service on the project.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-24

28-03.1-01-05. Advertising. The engineer or land surveyor, or both, may not make, publish, or cause to be made or published, any representation or statement concerning his professional qualifications or those of his partners, associates, firm, or organization which is in any way misleading, tends to mislead the recipient thereof, or the public, concerning his engineering or land surveying, or both, education, experience, specializations, or other engineering or land surveying, or both, qualifications.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-24

28-03.1-01-06. Aid public understanding. The engineer or land surveyor will endeavor to extend public knowledge and appreciation of engineering or land surveying and its achievements and to protect the profession from misrepresentation and misunderstanding.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-24

28-03.1-01-07. Opinion on engineering subject. The engineer or land surveyor will express an opinion on an engineering subject only when founded on adequate knowledge. The engineer will insist on the use of facts in reference to an engineering project on a group discussion, public forum, or publication of articles.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-24

28-03.1-01-08. Qualification for work projects. The engineer or land surveyor will undertake assignments for which the engineer or land surveyor will be responsible only when qualified by training or experience. The engineer or land surveyor will engage, or advise engaging, experts and specialists whenever the client's or employer's interests are best served by such service.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-24

28-03.1-01-09. Disclosure of confidential information. The engineer or land surveyor will not disclose confidential information concerning the business affairs or technical processes of any present or former client or employer without the client's or employer's consent. While in the employ of others, the engineer or land surveyor will not enter promotional efforts or negotiations for work or make arrangements for other employment as a principal or to practice in connection with a specific project for which the engineer or land surveyor has gained particular and specialized knowledge without the consent of all interested parties.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-24

28-03.1-01-10. Disclosure of conflict of interest. The engineer or land surveyor will endeavor to avoid a conflict of interest with one's employer or client, but when unavoidable, the engineer or land surveyor shall fully disclose the circumstances to the employer or client. The engineer or land surveyor will inform the client or employer of any business connections, interest, or circumstances which may be deemed as influencing one's judgment or the quality of one's services to the client or employer. When in public service as a member, advisor, or employee of a governmental body or department, an engineer may not participate in considerations or actions with respect to services provided by the engineer or the engineer's organization. An engineer may not solicit or accept an engineering contract from a governmental body on which a principal or officer of the engineer's organization serves as a member.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-24

28-03.1-01-11. Compensation from other parties. The engineer or land surveyor will not accept compensation, financial or otherwise, from more than one interested party for the same service, or for services pertaining to the same work, unless there is full disclosure to and consent of all interested parties. The engineer or land surveyor:

1. Will not accept financial or other considerations, including free engineering designs, from material or equipment suppliers for specifying their product.
2. Will not accept commissions or allowances, directly or indirectly, from contractors or other parties dealing with the engineer's or land surveyor's clients or employer in connection with work for which the engineer or land surveyor is responsible.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-24

28-03.1-01-12. Solicitation of work. The engineer and land surveyor shall solicit or accept only work on the basis of his qualifications.

1. The engineer and land surveyor may not offer to pay, either directly or indirectly, any commissions, political contribution, or a gift, or other consideration in order to secure work, exclusive of securing salaried position through employment agencies.
2. The engineer and land surveyor shall compete for professional employment on the basis of qualification and competence for proper accomplishment of the work. The engineer and land surveyor may not solicit or submit proposals for professional services containing a false, fraudulent, misleading, deceptive, or unfair statement or claim regarding the cost, quality, or extent of services to be rendered.
3. The engineer and land surveyor may not falsify or permit misrepresentation of his, or his associates', academic or professional qualifications. He may not misrepresent or exaggerate his degree of responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment may not misrepresent pertinent facts concerning employers, employees, associates, joint ventures, or his or their past accomplishments with the intent and purpose of enhancing his qualifications and his work.

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-24

28-03.1-01-13. Criticism of others. If the engineer or land surveyor believes that another engineer or land surveyor is guilty of unethical or illegal practice, the engineer or land surveyor shall present such information to the proper authority for action.

History: Effective January 1, 1988.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-24

28-03.1-01-14. Professional associations. - The engineer or land surveyor will not associate professionally with or allow the use of one's name with engineers or land surveyors who do not conform to ethical practices, or with persons not legally qualified to render the professional services for which the association is intended.

History: Effective January 1, 1988.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-24

28-03.1-01-15. Proprietary interests of others.

1. Whenever possible, the engineer or land surveyor will name the person or persons who may be individually responsible for designs, inventions, writings, or other accomplishments.
2. When an engineer or land surveyor uses designs supplied by a client, the designs remain the property of the client and should not be duplicated by the engineer or land surveyor for others without express permission.
3. Before undertaking work for others in which the engineer or land surveyor may make improvements, plans, design, inventions, or other records which may justify copyrights or patents, the engineer or land surveyor should enter into an agreement regarding the ownership of the improvements, plans, designs, inventions, or other records.
4. Designs, data, records, and notes made by an engineer or land surveyor and referring exclusively to the employer's work are the employer's property.

History: Effective January 1, 1988.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-24

28-03.1-01-16. Professional cooperation. The engineer or land surveyor will cooperate in extending the effectiveness of the profession by interchanging information and experience with other engineers or land surveyors and students, and will endeavor to provide opportunity for the professional development and advancement of engineers or land surveyors under the engineer's or land surveyor's supervision. The engineer or land surveyor:

1. Will encourage one's engineering or land surveying employees' efforts to improve their education.

2. Will encourage one's engineering or land surveying employees to attend and present papers at professional and technical society meetings.
3. Will urge one's engineering or land surveying employees to become registered at the earliest possible date.
4. Will assign a professional engineer or land surveyor duties of a nature to utilize the engineer's or land surveyor's full training and experience, insofar as possible, and delegate lesser functions to subprofessionals or to technicians. The engineer or land surveyor will provide a prospective engineering employee with complete information on working conditions and the employee's proposed status of employment, and after employment will keep the employee informed of any changes in them.

Guidelines setting forth the parameters for the principles of practice must be established from time to time. Reference materials setting forth those parameters of the principles of practice enumerated herein include, but are not limited to, the following:

"Ethical Problems in Engineering" - current edition
Alger Christiansen and Olmsted
John Wiley and Sons

"Opinions of the Board of Ethical Review"
National Society of Professional Engineers

"Guide to Practice"
American Society of Civil Engineers

"Canon of Ethics" - latest version
Engineering Council on Professional Development

Guide for Ethical Conduct of Consulting Engineers
Consulting Engineers Council

History: Effective January 1, 1988.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-24

TITLE 33
Health and Consolidated Laboratories, Department of

JANUARY 1988

33-06-01-01. Reportable diseases. All reportable diseases shall be confidential and not open to inspection. The following diseases are hereby declared to be reportable in this state.

1. Acquired immune deficiency syndrome (A.I.D.S.).
2. Amebiasis.
3. Anthrax.
4. Blastomycosis.
5. Botulism.
6. Brucellosis.
7. Campylobacter enteritis.
8. Chancroid.
9. Chickenpox (varicella).
10. Chlamydial infections.
11. Cholera.
12. Diphtheria.
13. Encephalitis (specify etiology).
14. Foodborne or waterborne outbreaks.
15. Giardiasis.

16. Gonorrhoea.
17. Granuloma inguinale.
18. Hepatitis (specify type).
19. Herpes simplex (genital).
20. Histoplasmosis.
21. Human immunodeficiency virus infection.
22. Influenza.
- ~~22-~~ 23. Legionellosis.
- ~~23-~~ 24. Leprosy.
- ~~24-~~ 25. Leptospirosis.
- ~~25-~~ 26. Lymphogranuloma venereum.
- ~~26-~~ 27. Malaria.
- ~~27-~~ 28. Measles (rubeola).
- ~~28-~~ 29. Meningitis (specify etiology).
- ~~29-~~ 30. Mumps.
- ~~30-~~ 31. Nosocomial infections.
- ~~31-~~ 32. Ornithosis (Psittacosis).
- ~~32-~~ 33. Pertussis.
- ~~33-~~ 34. Plague.
- ~~34-~~ 35. Poliomyelitis.
- ~~35-~~ 36. Rabies.
- ~~36-~~ 37. Reye's syndrome.
- ~~37-~~ 38. Rocky Mountain spotted fever.
- ~~38-~~ 39. Rubella.
- ~~39-~~ 40. Salmonellosis.
- ~~40-~~ 41. Scabies (in institutions).
- ~~41-~~ 42. Shigellosis.

~~42-~~ 43. Syphilis.

~~43-~~ 44. Tetanus.

~~44-~~ 45. Toxic-shock syndrome.

~~45-~~ 46. Trichinosis.

~~46-~~ 47. Tuberculosis.

~~47-~~ 48. Tularemia.

~~48-~~ 49. Typhoid fever.

History: Amended effective May 1, 1984; December 1, 1986; January 1, 1988.

General Authority: NDCC 23-07-01

Law Implemented: NDCC 23-07-01

FEBRUARY 1988

STAFF COMMENT: Article 33-30 contains all new material but is not underscored so as to improve readability.

ARTICLE 33-30

ENVIRONMENTAL HEALTH PRACTITIONER LICENSURE

Chapter	
33-30-01	Board of Environmental Health Practitioner Licensure
33-30-02	Initial Licensure and Renewals
33-30-03	Continuing Education
33-30-04	Code of Ethics
33-30-05	Grievances
33-30-06	Information Changes

CHAPTER 33-30-01
BOARD OF ENVIRONMENTAL HEALTH
PRACTITIONER LICENSURE

Section	
33-30-01-01	Organization of the Board of Environmental Health Practitioner Licensure

33-30-01-01. Organization of the board of environmental health practitioner licensure.

1. **History and function.** The 1985 legislative assembly passed legislation to license environmental health practitioners, codified as North Dakota Century Code chapter 43-43. This chapter authorized the secretary of state to carry out all functions necessary to licensure and to utilize the services of an advisory board as needed. The 1987 legislative assembly transferred this licensing function from the office of the secretary of state to the state health officer. The board's responsibility is advisory only. All statutory power is vested with the state health officer.
2. **Board membership.** The board consists of six members - the state health officer or an appointed agent; the director of the consolidated laboratories branch of the department of health and consolidated laboratories or an appointed agent; the commissioner of the North Dakota department of agriculture or an appointed agent; the president of the North Dakota environmental health association or an appointed agent; one member from a district or a local health unit who is a licensed environmental health practitioner; and one consumer. The environmental health practitioner and consumer must be appointed by the state health officer.
3. **Officers.** The state health officer shall serve as chairperson. The state health officer may appoint an executive secretary as necessary.
4. **Inquiries.** Inquiries may be addressed to:

State Health Officer
 Capitol Building
 Bismarck, North Dakota 58505

History: Effective February 1, 1988.

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-04

CHAPTER 33-30-02 INITIAL LICENSURE AND RENEWALS

Section	
33-30-02-01	Licensure Application
33-30-02-02	Licensure Renewal
33-30-02-03	Fees
33-30-02-04	Qualifications and Requirements for Licensure
33-30-02-05	Reciprocity
33-30-02-06	Requirement for Licensure

33-30-02-01. Licensure application. An application for a license to practice environmental health must be made to the state health officer on forms provided by the officer upon request. The application must contain such information as may be reasonably required.

1. Each application for a license must be accompanied by:
 - a. A prescribed fee.
 - b. A transcript verifying completion of college degree.
2. All applications must be signed by the applicant.
3. The state health officer may request such additional information or clarification of information provided in the application as the health officer deems reasonably necessary.
4. If the state health officer so directs, an applicant shall personally appear before the board concerning the application.

History: Effective February 1, 1988.

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-04

33-30-02-02. Licensure renewal. Licenses are renewable biennially on January first of each biennium. They must be renewed on forms provided by the state health officer. The renewal forms must be accompanied by the renewal fee and proof of meeting the continuing education requirements. Any license not renewed within two years of its expiration may not be renewed, and it may not be restored, reissued, or reinstated. A person whose license has expired may reapply for a new

license if such person meets the requirements of North Dakota Century Code chapter 43-43 and this article.

History: Effective February 1, 1988.

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-04

33-30-02-03. Fees. The following fees must be paid in connection with environmental health practitioner applications, renewals, and penalties:

1. Application fee for an environmental health practitioner license \$50.00
2. Renewal fee for an environmental health practitioner license 15.00
3. Late renewal penalty fee per month 2.00

4. Duplicate or changed license fee 10.00

Licensure and renewal fees for a partial licensure period must be assessed on a prorated basis.

History: Effective February 1, 1988.

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-04

33-30-02-04. Qualifications and requirements for licensure.

1. Any applicant must be licensed as an environmental health practitioner who meets these requirements: a baccalaureate degree in an accredited environmental health curriculum or a baccalaureate degree in the physical, chemical, or biological sciences, including at least thirty semester or forty-five quarter credits in the physical, chemical, or biological sciences.
2. A person who has a degree beyond baccalaureate in the physical, chemical, or biological sciences in an accredited curriculum must be considered immediately eligible for licensure.

History: Effective February 1, 1988.

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-04

33-30-02-05. Reciprocity. A person may be licensed to practice environmental health in North Dakota if such person presents an application, application fee, and proof of licensure in another state or county whose requirements for licensure equal those of North Dakota.

History: Effective February 1, 1988.

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-04

33-30-02-06. Requirement for licensure. Any person engaged in the practice of environmental health in the state shall be required to be licensed.

History: Effective February 1, 1988.

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-04

**CHAPTER 33-30-03
CONTINUING EDUCATION**

Section
33-30-03-01 Continuing Education

33-30-03-01. Continuing education.

1. To renew a license a person must present proof of having attained at least 1.5 continuing education units of continuing education in the field of environmental health. Continuing education for licensure renewal must be completed in the biennium preceding the biennium for which licensure is sought. Under extraordinary circumstances the state health officer may consider a request for continuing education units obtained in the current biennium.

2. A curriculum review committee, composed of the advisory board members or their agent, shall meet at timely intervals to review applications for curriculum accreditation. Continuing education units must be assigned as one continuing education unit per ten hours of instruction. Curricula must have public health or environmental health orientation. Programs which already carry accreditation by a recognized educational agency or professional organization may be accepted by the committee. The committee, upon advice from the licensure board, may alter or reject accreditation assigned by another agency or organization if such action is necessitated by facts pointing to an erroneous accreditation having been assigned.

History: Effective February 1, 1988.

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-04

**CHAPTER 33-30-04
CODE OF ETHICS**

Section
33-30-04-01 Code of Ethics

33-30-04-01. Code of ethics. Licensees in the state of North Dakota shall subscribe to the national environmental health association's code of ethics in effect as of July 1, 1985. This code is incorporated in the rules by reference.

History: Effective February 1, 1988.

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-04

**CHAPTER 33-30-05
GRIEVANCES**

Section
33-30-05-01 Grievance Procedure

33-30-05-01. Grievance procedure. Grievances must be processed in accordance with North Dakota Century Code chapter 28-32.

History: Effective February 1, 1988.

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-04

**CHAPTER 33-30-06
INFORMATION CHANGES**

Section
33-30-06-01 Address and Home Changes

33-30-06-01. Address and home changes. Any licensee must report a change of address, home, or educational degree to the board. Proof of any educational degree change must also be submitted.

History: Effective February 1, 1988.

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-04

MARCH 1988

33-03-02-04. Humane disposal of nonviable fetus. It shall be the duty of a hospital for abortions performed within a licensed hospital or it shall be the duty of the attending physician for abortions performed outside a licensed hospital to inform the patient or next of kin as to the options open for the disposal of the fetus (Appendix C). This form shall be executed in duplicate and shall be signed by the patient before the abortion is performed. Superseded by section 33-03-02-05.

General Authority: NDCC 23-01-03
Law Implemented: NDCC 14-02-1-09

33-03-02-05. Humane disposal of nonviable fetus. Disposal of a nonviable fetus in a humane fashion shall consist of incineration, burial, or cremation. The licensed physician performing the abortion or the licensed hospital in which an abortion is performed may contract for out-of-state incineration, burial, or cremation of nonviable fetuses. Incinerators within the state of North Dakota used for the disposal of nonviable fetuses must meet the requirement of chapter 33-15-14.

History: Effective March 1, 1988.
General Authority: NDCC 14-02.1-09, 23-01-03
Law Implemented: NDCC 14-02.1-09

JANUARY 1988

47-05-01-01.1. Labeling specifications.

1. **Road octane.** The road octane of a gasoline or gasohol is the mathematical average of the octane as determined by the ASTM Research Method and the octane as determined by the ASTM Motor Method.
 - a. The road octane must appear on the dispenser's front panel in a type not less than one-inch [2.54 centimeters] high.
 - b. Only gasoline or gasohol with a road octane greater than or equal to ninety-two may be labeled "premium".
 - c. Only gasoline or gasohol with a road octane greater than or equal to ninety may be labeled "super".

2. **Alcohol-blended gasolines.**
 - a. All gasoline or gasohol sold or offered for sale containing ethanol, methanol or cosolvent alcohol, or any combination thereof, shall be labeled with the conventional name or names of the alcohol contained in the gasoline or gasohol if the gasoline or gasohol consists of one percent or more by volume of any alcohol or combinations of alcohols. The label must be on any price advertising and the dispenser's front panel in a position that is clear and conspicuous from the driver's position. **These words must be in a type not less than one-inch [2.54 centimeters] high or one-half the size of the product name, whichever is larger, in permanent marking.**

- b. Maximum percentage of methanol and cosolvent alcohol must both be conspicuously displayed or labeled if the product contains three percent or more by volume of methanol.
 - c. No person may sell gasoline or gasohol in any manner, including coloring, which shall deceive, tend to deceive, or has the effect of deceiving the purchaser as to grade or type.
 - d. Suppliers of alcohol-blended gasoline to retail service stations or to other resuppliers must provide to the retailer or other reseller an invoice or delivery ticket indicating to within one percentage point the specific content by volume of any alcohol contained if the gasoline or gasohol consists of one percent or more by volume of any alcohol or combinations of alcohols. This information must be made readily available to the consumer of an alcohol-blended gasoline.
3. Gasoline grade designations. All gasolines or alcohol-blended gasolines sold or offered for sale must bear on the dispenser's front panel and on any price advertising the appropriate leaded or lead free grade designation. This label must be posted in a position that is clear and conspicuous from the driver's position.

History: Effective September 1, 1985; amended effective January 1, 1988.

General Authority: NDCC 19-01-02, 19-10-02, 23-01-03

Law Implemented: NDCC 19-10-01(4), 19-10-03.1, 19-10-04

MARCH 1988

STAFF COMMENT: Chapter 47-03-03 contains all new material but is not underscored so as to improve readability.

**CHAPTER 47-03-03
COMMERCIAL FEED**

Section	
47-03-03-01	Definition and Terms
47-03-03-02	Label Format
47-03-03-03	Brand and Product Names
47-03-03-04	Expression of Guarantees
47-03-03-05	Ingredients
47-03-03-06	Directions for Use and Precautionary Statements
47-03-03-07	Nonprotein Nitrogen
47-03-03-08	Drug and Feed Additives
47-03-03-09	Adulterants
47-03-03-10	Good Manufacturing Practices
47-03-03-11	Permitted Analytical Variations

47-03-03-01. Definition and terms.

1. The names and definitions for commercial feeds shall be the official definition of feed ingredients adopted by the association of American feed control officials, except as the department designates otherwise in specific cases.
2. The terms used in reference to commercial feeds shall be the official feed terms adopted by the association of American feed control officials, except as the department designates otherwise in specific cases.

3. The following commodities are hereby declared exempt from the definition of commercial feed, under the provisions of subsection 2 of North Dakota Century Code section 19-13.1-02: raw meat, hay, straw, stover, silages, cobs, husks, and hulls when unground and when not mixed or intermixed with other materials; provided that these commodities are not adulterated within the meaning of North Dakota Century Code section 19-13.1-07.
4. Individual chemical compounds and substances are hereby declared exempt from the definition of commercial feed under the provisions of subsection 2 of North Dakota Century Code section 19-13.1-02. It has been determined that these products meet the following criteria:
 - a. There is an adopted association of American feed control officials' definition for the product.
 - b. The product is either generally recognized as safe or is not covered by a specific food and drug administration regulation.
 - c. The product is either a natural occurring product of relatively uniform chemical composition or is manufactured to meet the association of American feed control officials' definition of the product.
 - d. The use of the product in the feed industry constitutes a minor portion of its total industrial use.
 - e. Small quantities of additives, which are intended to impart special desirable characteristics shall be permitted.
 - f. There is no need or problem of control of this product.

LIST OF EXEMPTED SUBSTANCES
Loose Salt

History: Effective March 1, 1988.

General Authority: NDCC 19-01-02, 19-13.1-10, 23-01-03

Law Implemented: NDCC 19-13.1-02

47-03-03-02. Label format.

1. Commercial feed, other than customer-formula feed, shall be labeled with the information prescribed in this regulation on the principal display panel of the product and in the following general format.
 - a. Net weight may be stated in metric units in addition to the required avoirdupois units.

- b. Product name and brand name if any.
- c. If a drug is used:
 - (1) The word "medicated" shall appear directly following and below the product name in type size, no smaller than one-half the type size of the product name.
 - (2) The purpose of medication (claim statement).
 - (3) An active drug ingredient statement listing the active drug ingredients by their established name and the amounts in accordance with subsection 4 of section 47-03-03-04.
 - (4) The required directions for use and precautionary statements or reference to their location if the detailed feeding directions and precautionary statements required by sections 47-03-03-06 and 47-03-03-07 appear elsewhere on the label.
- d. The guaranteed analysis of the feed as required under the provisions of subsection 3 of North Dakota Century Code section 19-13.1-04 include the following items, unless exempted in paragraph 9, and in the order listed:
 - (1) Minimum percentage of crude protein.
 - (2) Maximum or minimum percentage of equivalent protein from nonprotein nitrogen as required in subsection 5 of section 47-03-03-04.
 - (3) Minimum percentage of crude fat.
 - (4) Maximum percentage of crude fiber.
 - (5) Minerals, to include, in the following order: (a) minimum and maximum percentages of calcium (Ca), (b) minimum percentages of phosphorus (P), (c) minimum and maximum percentages of salt (NaCl), and (d) other minerals.
 - (6) Vitamins in such terms as specified in subsection 3 of section 47-03-03-04.
 - (7) Total sugars as invert on dried molasses products or products being sold primarily for their sugar content.
 - (8) Viable lactic acid producing microorganisms for use in silages in terms specified in subsection 7 of section 47-03-03-04.

(9) Exemptions.

- (a) Guarantees for minerals are not required when there are no specific label claims and when the commercial feed contains less than six and one-half percent of calcium, phosphorus, sodium, and chloride.
 - (b) Guarantees for vitamins are not required when the commercial feed is neither formulated for nor represented in any manner as a vitamin supplement.
 - (c) Guarantees for crude protein, crude fat, and crude fiber are not required when the commercial feed is intended for purposes other than to furnish these substances or they are of minor significance relating to the primary purpose of the product, such as drug premixes, mineral or vitamin supplements, and molasses.
 - (d) Guarantees for microorganisms are not required when the commercial feed is intended for a purpose other than to furnish these substances or they are of minor significance resisting to the primary purpose of the product, and no specific label claims are made.
- e. Feed ingredients, collective terms for the grouping of feed ingredients, or appropriate statements as provided under the provisions of subsection 4 of North Dakota Century Code section 19-13.1-04.
- (1) The name of each ingredient as defined in the official publication of the association of American feed control officials, common or usual name, or one approved by the department.
 - (2) Collective terms for the grouping of feed ingredients as defined in the official definitions of feed ingredients published in the official publication of the association of American feed control officials in lieu of the individual ingredients; provided that:
 - (a) When a collective term for a group of ingredients is used on the label, individual ingredients within that group may not be listed on the label.
 - (b) The manufacturer shall provide the feed control official, upon request, with a list of individual ingredients, within a defined group,

that are or have been used at manufacturing facilities distributing in or into the state.

- (3) The registrant may affix the statement, "Ingredients as registered with the State" in lieu of the ingredient list on the label. The list of ingredients must be on file with the department. This list must be made available to the feed purchaser upon request.
 - f. Name and principal mailing address of the manufacturer or person responsible for distributing the feed. The principal mailing address must include the street address, city, state, and zip code; however, the street address may be omitted if it is shown in the current city directory or telephone directory.
 - g. The information required in subsections 1 through 5 of North Dakota Century Code section 19-13.1-04 must appear in its entirety on one side of the label or on one side of the container.
2. Customer-formula feed must be accompanied with the information prescribed in this section using labels, invoice, delivery ticket, or other shipping document bearing the following information:
 - a. The name and address of the manufacturer.
 - b. The name and address of the purchaser.
 - c. The date of sale or delivery.
 - d. The customer-formula feed name and brand name if any.
 - e. The product name and net weight (may be stated in metric units in addition to the required avoirdupois) of each registered commercial feed and each other ingredient used in the mixture.
 - f. The direction for use and precautionary statements as required by sections 47-03-03-06 and 47-03-03-07.
 - g. If a drug-containing product is used:
 - (1) The purpose of the medication (claim statement).
 - (2) The established name of each active drug ingredient and the level of each drug used in the final mixture expressed in accordance with subsection 4 of section 47-03-03-04.

History: Effective March 1, 1988.

General Authority: NDCC 19-01-02, 19-13.1-10, 23-01-03
Law Implemented: NDCC 19-13.1-04

47-03-03-03. Brand and product names.

1. The brand or product name must be appropriate for the intended use of the feed and must not be misleading. If the name indicates the feed is made for a specific use, the character of the feed must conform therewith. A mixture labeled "Dairy Feed", for example, must be suitable for that purpose.
2. Commercial, registered brand or trade names are not permitted in guarantees or ingredient listings and only in the product name of feeds produced by or for the firm holding the rights to such a name.
3. The name of a commercial feed may not be derived from one or more ingredients of a mixture to the exclusion of other ingredients and may not be one representing any components of a mixture unless all components are included in the name; provided, that if any ingredient or combination of ingredients is intended to impart a distinctive characteristic to the product which is of significance to the purchaser, the name of that ingredient or combination of ingredients may be used as a part of the brand name or product name if the ingredients or combination of ingredients is quantitatively guaranteed in the guaranteed analysis, and the brand or product name is not otherwise false or misleading.
4. The word "protein" is not permitted in the product name of a feed that contains added nonprotein nitrogen.
5. When the name carries a percentage value, it shall be understood to signify protein or equivalent protein, or both, content only, even though it may not explicitly modify the percentage with the word "protein"; provided, that other percentage values may be permitted if they are followed by the proper description and conform to good labeling practice. Digital numbers may not be used in such a manner as to be misleading or confusing to the customer.
6. Single ingredient feeds must have a product name in accordance with the designated definition of feed ingredients as recognized by the association of American feed control officials unless the department designates otherwise.
7. The word "vitamin", or a contraction thereof, or any word suggesting vitamin can be used only in the name of a feed which is represented to be a vitamin supplement, and which is labeled with the minimum content of each vitamin declared, as specified in subsection 3 of section 47-03-03-04.

8. The term "mineralized" may not be used in the name of a feed except for "TRACE MINERALIZED SALT". When so used, the product must contain significant amounts of trace minerals which are recognized as essential for animal nutrition.
9. The term "meat" and "meat byproducts" shall be qualified to designate the animal from which the meat and meat byproducts is derived unless the meat and meat byproducts are made from cattle, swine, sheep, and goats.

History: Effective March 1, 1988.

General Authority: NDCC 19-01-02, 19-13.1-10, 23-01-03

Law Implemented: NDCC 19-13.1-08

47-03-03-04. Expression of guarantees.

1. The guarantees for crude protein, equivalent protein from nonprotein nitrogen, crude fat, crude fiber, and mineral guarantees (when required) will be in terms of percentage.
2. Commercial feeds containing six and one-half percent or more calcium, phosphorus, sodium, and chloride shall include in the guaranteed analysis the minimum and maximum percentages of calcium (Ca), the minimum percentage of phosphorus (P), and if salt is added, the minimum and maximum percentage of salt (NaCl). Minerals, except salt (NaCl), shall be guaranteed in terms of percentage of the element. When calcium or salt, or both, guarantees are given in the guaranteed analysis such must be stated and conform to the following:
 - a. When the minimum is five percent or less, the maximum may not exceed the minimum by more than one percentage point.
 - b. When the minimum is above five percent, the maximum shall not exceed the minimum by more than twenty percent and in no case may the maximum exceed the minimum by more than five percentage points.
3. Guarantees for minimum vitamin content of commercial feeds must be listed in the order specified and are stated in milligrams per pound unless otherwise specified:
 - a. Vitamin A, other than precursors of vitamin A, in international units per pound.
 - b. Vitamin D-3 in products offered for poultry feeding, in international chick units per pound.
 - c. Vitamin D for other uses, international units per pound.
 - d. Vitamin E, in international units per pound.

- e. Concentrated oils and feed additive premixes containing vitamins A, D, or E, or a combination thereof, may, at the option of the distributor be stated in units per gram instead of units per pound.
 - f. Vitamin B-12, in milligrams or micrograms per pound.
 - g. All other vitamin guarantees shall express the vitamin activity in milligrams per pound in terms of the following: menadione; riboflavine; d-pantothenic acid; thiamine; niacine; vitamin B-6; folic acid, choline, biotin, inositol; p-amino benzoic acid; ascorbic acid; and carotene.
4. Guarantees for drugs must be stated in terms of percent by weight, except:
- a. Antibiotics, present at less than two thousand grams per ton (total) of commercial feed must be stated in grams per ton of commercial feed.
 - b. Antibiotics present at two thousand or more grams per ton (total) of commercial feed, must be stated in grams per pound of commercial feed.
 - c. Labels for commercial feeds containing growth promotion or feed efficiency, or both, levels of antibiotics, which are to be feed continuously as the sole ration, are not required to make quantitative guarantees except as specifically noted in the federal food additive regulations for certain antibiotics, wherein, quantitative guarantees are required regardless of the level or purpose of the antibiotic.
 - d. The term "milligrams per pound" may be used for drugs or antibiotics in those cases where a dosage is given in "milligrams" in the feeding directions.
5. Commercial feeds containing any added nonprotein nitrogen must be labeled as follows:
- a. For ruminants:
 - (1) Complete feeds, supplements, and concentrates containing added nonprotein nitrogen and containing more than five percent protein from natural sources shall be guaranteed as follows:

Crude Protein, minimum, -----%

(This includes not more than -----% equivalent protein from nonprotein nitrogen).

- (2) Mixed feed concentrates and supplements containing less than five percent protein from natural sources may be guaranteed as follows:

Equivalent Crude Protein from Nonprotein Nitrogen, minimum, -----%

- (3) Ingredient sources of nonprotein nitrogen such as urea, di-ammonium phosphate, ammonium polyphosphate solution, ammoniated rice hulls, or other basic nonprotein nitrogen ingredients defined by the association of American feed control officials shall be guaranteed as follows:

Nitrogen, minimum, -----%

Equivalent Crude Protein from Nonprotein Nitrogen, minimum, -----%

b. For nonruminants:

- (1) Complete feeds, supplements, and concentrates containing crude protein from all forms of nonprotein nitrogen, added as such, must be labeled as follows:

Crude protein, minimum, -----%

(This includes not more than -----% equivalent crude protein which is not nutritionally available to (species of animal for which feed is intended).

- (2) Premixes, concentrates, or supplements intended for nonruminants containing more than one and one-quarter percent equivalent crude protein from all forms of nonprotein nitrogen, added as such, must contain adequate directions for use and prominently state: **WARNING:** This feed must be used only in accordance with directions furnished on the label.

6. Mineral phosphatic materials for feeding purposes must be labeled with the guarantee for minimum and maximum percentage of calcium (when present), the minimum percentage of phosphorus, and the maximum percentage of fluorine.
7. Guarantees for microorganisms must be stated in colony forming units per gram (CFU/g), when directions are for using the product in grams, or in colony forming units per pound (CFU/lb) when directions are for using the product in pounds. A parenthetical statement following the guarantee must list each species in order of predominance.

History: Effective March 1, 1988.

General Authority: NDCC 19-01-02, 19-13.1-10, 23-01-03
Law Implemented: NDCC 19-13.1-04

47-03-03-05. Ingredients.

1. The name of each ingredient or collective term for the grouping of ingredients, when required to be listed, shall be the name as defined in the official definitions of feed ingredients as published in the official publication of American feed control officials, the common or usual name, or one approved by the department.
2. The name of each ingredient must be shown in letters or type of the same size.
3. No reference to quality or grade of an ingredient may appear in the ingredient statement of a feed.
4. The term "dehydrated" may precede the name of any product that has been artificially dried.
5. A single ingredient product defined by the association of American feed control officials is not required to have an ingredient statement.
6. Tentative definitions or ingredients may not be used until adopted as official, unless no official definition exists or the ingredient has a common accepted name that requires no definition, (i.e. sugar).
7. When the word "iodized" is used in connection with a feed ingredient, the feed ingredient may contain not less than 0.007% iodine, uniformly distributed.

History: Effective March 1, 1988.

General Authority: NDCC 19-01-02, 19-13.1-10, 23-01-03

Law Implemented: NDCC 19-13.1-03, 19-13.1-08

47-03-03-06. Directions for use and precautionary statements.

1. Directions of use and precautionary statements on the labeling of all commercial feeds and customer-formula feeds containing additives (including drugs, special purpose additives, or nonnutritive additives) must:
 - a. Be adequate to enable safe and effective use for the intended purposes by users with no special knowledge of the purpose and use of such articles; and

- b. Include, but not be limited to, all information described by all applicable regulations under the Federal Food, Drug and Cosmetic Act.
2. Adequate directions for use and precautionary statements are required for feeds containing nonprotein nitrogen as specified in section 47-03-03-07.
3. Adequate directions for use and precautionary statements necessary for safe and effective use are required on commercial feeds distributed to supply particular dietary needs or for supplementing or fortifying the usual diet or ration with any vitamin, mineral, or other dietary nutrient or compound.

History: Effective March 1, 1988.

General Authority: NDCC 19-01-02, 19-13.1-10, 23-01-03

Law Implemented: NDCC 19-13.1-05

47-03-03-07. Nonprotein nitrogen.

1. Urea and other nonprotein products defined in the official publication of the association of American feed control officials are acceptable ingredients only in commercial feeds for ruminant animals as a source of equivalent crude protein. If the commercial feed contains more than 8.75% of equivalent crude protein from all forms of nonprotein nitrogen, added as such, or the equivalent crude protein from all forms of nonprotein nitrogen, added as such, exceeds one-third of the total crude protein, the label must bear adequate directions for the safe use of feeds and a precautionary statement: "CAUTION: USE AS DIRECTED". The directions for use and the caution statement must be in type of such size so placed on the label that they will be read and understood by ordinary persons under customary conditions of purchase and use.
2. Nonprotein nitrogen defined in the official publication of the association of American feed control officials, when so indicated, are acceptable ingredients in commercial feeds distributed to nonruminant animals as a source of nutrients other than equivalent crude protein. The maximum equivalent crude protein from nonprotein sources when used in nonruminant rations may not exceed 1.25% of the total daily ration.
3. On labels such as those for medicated feeds which bear adequate feeding directions or warning statements, or both, the presence of added nonprotein nitrogen shall not require a duplication of the feeding direction or the precautionary statements as long as those statements include sufficient information to ensure the safe and effective use of this product due to the presence of nonprotein nitrogen.

History: Effective March 1, 1988.

General Authority: NDCC 19-01-02, 19-13.1-10, 23-01-03

Law Implemented: NDCC 19-13.1-04

47-03-03-08. Drug and feed additives.

1. Prior to approval of a registration application or approval of a label, or both, for commercial feed which contain additives (including drugs, other special purpose additives, or nonnutritive additives) the distributor may be required to submit evidence to prove the safety and efficacy of the commercial feed when used according to the directions furnished on the label.
2. Satisfactory evidence of safety and efficacy of a commercial feed may be:
 - a. When the commercial feed contains such additives, the use of which conforms to the requirements of the applicable regulation in title 21 of the Code of Federal Regulations or which are "prior sanctioned" or "informal review sanctioned" or "generally recognized as safe" for such use; or
 - b. When the commercial feed is itself a drug and is generally recognized as safe and effective for the labeled use or is marketed subject to an application approved by the food and drug administration under 21 U.S.C. 360(b).
 - c. When one of the purposes for feeding a commercial feed is to impart immunity (that is to act through some immunological process) the constituents imparting immunity have been approved for the purpose through the Federal Virus, Serum and Toxins Act of 1913, administered by the animal and plant health inspection service, United States department of agriculture. The reason for the amendment is because of a problem encountered by feed control officials in developing the basis for evaluation of such products that have a primary purpose to impart immunity. States, in many cases, are unable to make correct judgments on the effectiveness on such products. The committee feels that this will definitely have more uniformity and effectiveness in handling product registrations.

History: Effective March 1, 1988.

General Authority: NDCC 19-01-02, 19-13.1-10, 23-01-03

Law Implemented: NDCC 19-13.1-05

47-03-03-09. Adulterants. For the purpose of subsection 1 of North Dakota Century Code section 19-13.1-07, the terms "poisonous or deleterious substances" include, but are not limited to, the following:

1. Fluorine and any mineral or mineral mixture which is to be used directly for the feeding of domestic animals and in which the fluorine exceeds 0.20% for breeding and dairy cattle; 0.30% for slaughter cattle; 0.30% for sheep; 0.35% for lambs; 0.45% for swine; and 0.60% for poultry.
2. Fluorine-bearing ingredients when used in such amounts that they raise the fluorine content of the total ration (exclusive of roughage) above the following amounts: 0.004% for breeding and dairy cattle; 0.009% for slaughter cattle; 0.006% for sheep; 0.01% for lambs; 0.015% for swine; and 0.03% for poultry.
3. Fluorine-bearing ingredients incorporated in any feed that is fed directly to cattle, sheep, or goats consuming roughage (with or without) limited amounts of grain, that results in a daily fluorine intake in excess of fifty milligrams of fluorine per one hundred pounds [45.36 kilograms] of body weight.
4. Soybean meal, flakes or pellets or other vegetable meals, flakes or pellets which have been extracted with trichlorethylene or other chlorinated solvents.
5. Sulfur dioxide, sulfurous acid, and salts of sulfurous acid when used in or on feeds or feed ingredients which are considered or reported to be a significant source of vitamin B1 (thiamine).

History: Effective March 1, 1988.

General Authority: NDCC 19-01-02, 19-13.1-10, 23-01-03

Law Implemented: NDCC 19-13.1-07

47-03-03-10. Good manufacturing practices. The department adopts the following as current good manufacturing practices:

1. The regulations prescribing good manufacturing practices for type B and type C medicated feeds as published in title 21, Code of Federal Regulations, part 225, sections 225.1-225.115.
2. The regulations prescribing good manufacturing practices for type A medicated articles as published in title 21, Code of Federal Regulations, part 226, sections 226.1-226.115.

History: Effective March 1, 1988.

General Authority: NDCC 19-01-02, 19-13.1-10, 23-01-03

Law Implemented: NDCC 19-13.1-09

47-03-03-11. Permitted analytical variations. For the purpose of enforcing North Dakota Century Code section 19-13.1-07, a feed must be considered adulterated if analysis indicates the feed does not meet the tolerances shown in the table attached to this chapter as an appendix.

History: Effective March 1, 1988.

General Authority: NDCC 19-01-02, 19-13.1-10, 23-01-03

Law Implemented: NDCC 19-13.1-07

ANALYTICAL VARIATIONS (AV) BASED
ON AFFCO CHECK SAMPLE PROGRAM

I. Proximate Analysis

Determination	Method ^a	AV ^{b, c}	Concentration Range
Moisture	7.003, 7.007 10.136	12	3 - 40%
Protein	7.015, 7.021 7.025, 7.033	(20/x+2)	10 - 85%
Fat	7.060, 7.063 7.064	10	3 - 20%
Fiber	7.066, 7.071	(30/x+6)	2 - 30%
Ash	7.009	(45/x+3)	2 - 88%
Pepsin Digest, Protein	7.053	13	
Total Sugar as Invert	7.084	12	24 - 37%
NPN Protein	7.038, 7.040	(80/x+3)	7 - 60%

II. Minerals

Determination	Method	AV%	Concentration Range
Calcium	7.101 7.096	(14/x+6) 10	.5 - 25% 10 - 25%
Phosphorus	7.123, 7.125 Auto Anal.	12 (3/x+8)	10% .5 - 20%
Salt	7.106 7.104	(7/x+5) (15/x+9)	.5 - 14% .5 - 14%
Fluorine	7.114, 7.115	40	
Cobalt	7.096	25	
Iodine	7.119, 7.120 33.147	40	0.01 - .16%
Copper	7.096	20 30	.03 - 1% .03%
Magnesium	7.096	20	.01 - 15%
Iron	7.096	25	.01 - 5%
Manganese	7.096	30	.01 - 17%
Potassium	3.013, 3.044	15	.04 - 8%
Zinc	7.096	20	.002 - 6%
Selenium	3.102	25	

ppm

^a Method References are from 14th Edition, AOAC Official Methods of Analysis
^b X = % Guarantee Example: For a 10% Protein Guarantee AV_x=(20/10+2)=4% of Guarantee or 4.0%. This means the low AV is 4% of 10. Therefore, a sample below 9.6% is not acceptable.
^c The ± signs have been removed from the AV table. The table denotes a true analytical variation and not a tolerance. They apply both above and below the guarantee and are equally correct.

III. Vitamins Determination	Method	AV%	Concentration Range
Vitamin A	43.008	30	1200 - 218,000 IU/lb
Vitamin B ₁₂	43.175	45	
Riboflavin	43.039, 43.209	30	1 - 1500 mg/lb
Niacin	43.048, 43.191	25	3 - 500 mg/lb
Pantothenic Acid	43.200, 33.205	25	4 - 190 mg/lb

IV. Drugs Determination	Method	AV%	Concentration Range
Amprolium	42.011	20	.01 - .014%
Arsanilic Acid	42.033	20	.01 - .05%
Carbodox	42.047	20	.005 - .5%
Ethopabate	42.069	25	.004 - .04%
Furazolidone	42.075	25	.005 - .022%
Melengestrol Acetate	42.088	30	up to .07%
Nicarbazin	42.098	25	.01 - .02%
Nitarsons	42.035	30	.01 - .02%
Phenothiazine	42.135	20	.1 - .5%
Piperazine	42.137	25	.1 - .4%
Pyrantel Tartrate	42.142	25	.01%
Roxarsone	42.035, 42.160	25	.005 - .5%
Sulfamethazine	42.172	20	.01 - .033%
Sulfaquinoxaline	42.179	25	.01 - .025%
Sulfathiazole	Colorimetric	20	.008 - .034%
Thiabendazole	42.192	30	up to 1.5%
Zoalene	42.197	25	.004 - .0125%
Bacitracin	42.223	40	10 - 200g/T
Chlortetracycline	42.236, 42.232	30	10 - 260g/T
Lincomycin	42.258	25	10 - 200g/T
Monensin	42.266, 42.271	30	10 - 200g/T
Neomycin	42.277	45	20 - 250g/T
Oxytetracycline	42.293	30	10 - 300g/T
Penicillin	42.299	35	10 - 200g/T
Streptomycin	42.308	45	10 - 75g/T
Tylosin	42.316	30	10 - 150g/T
Virginiamycin	Plate	40	80g/T

TITLE 37
Highway Department

JANUARY 1988

STAFF COMMENT: Chapter 37-07-01 contains all new material but is not underscored so as to improve readability.

ARTICLE 37-07

MAINTENANCE ROAD SIGNS

Chapter
37-07-01 Specifications and Installation of
Minimum Maintenance Road Signs

CHAPTER 37-07-01
SPECIFICATIONS AND INSTALLATION OF MINIMUM
MAINTENANCE ROAD SIGNS

Section	
37-07-01-01	Minimum Maintenance Road Signs
37-07-01-02	Minimum Maintenance Road Signs - Material
37-07-01-03	Minimum Maintenance Road Signs - Placement
37-07-01-04	Minimum Maintenance Road Signs - Legend

37-07-01-01. Minimum maintenance road signs. Signs used by a political subdivision to designate minimum maintenance roads under North Dakota Century Code sections 24-07-35 through 24-07-37 shall conform to this chapter.

History: Effective January 1, 1988.
General Authority: NDCC 24-07-36

Law Implemented: NDCC 24-07-36

37-07-01-02. Minimum maintenance road signs - Material. Material used for the fabrication of minimum maintenance road signs must be in accordance with the Manual on Uniform Traffic Control Devices adopted by the state highway commissioner under North Dakota Century Code section 39-13-06. The signs must be fabricated using silver-white TYPE III A retroreflective sheeting, as defined in the current edition of the state highway department Standard Specifications for Road and Bridge Construction, where required by section 37-07-01-04, and the sign panel must be constructed of .080 gauge aluminum. The signs may be installed on either steel or wood posts of appropriate size and strength for the support of the sign panel.

History: Effective January 1, 1988.
General Authority: NDCC 24-07-36
Law Implemented: NDCC 24-07-36

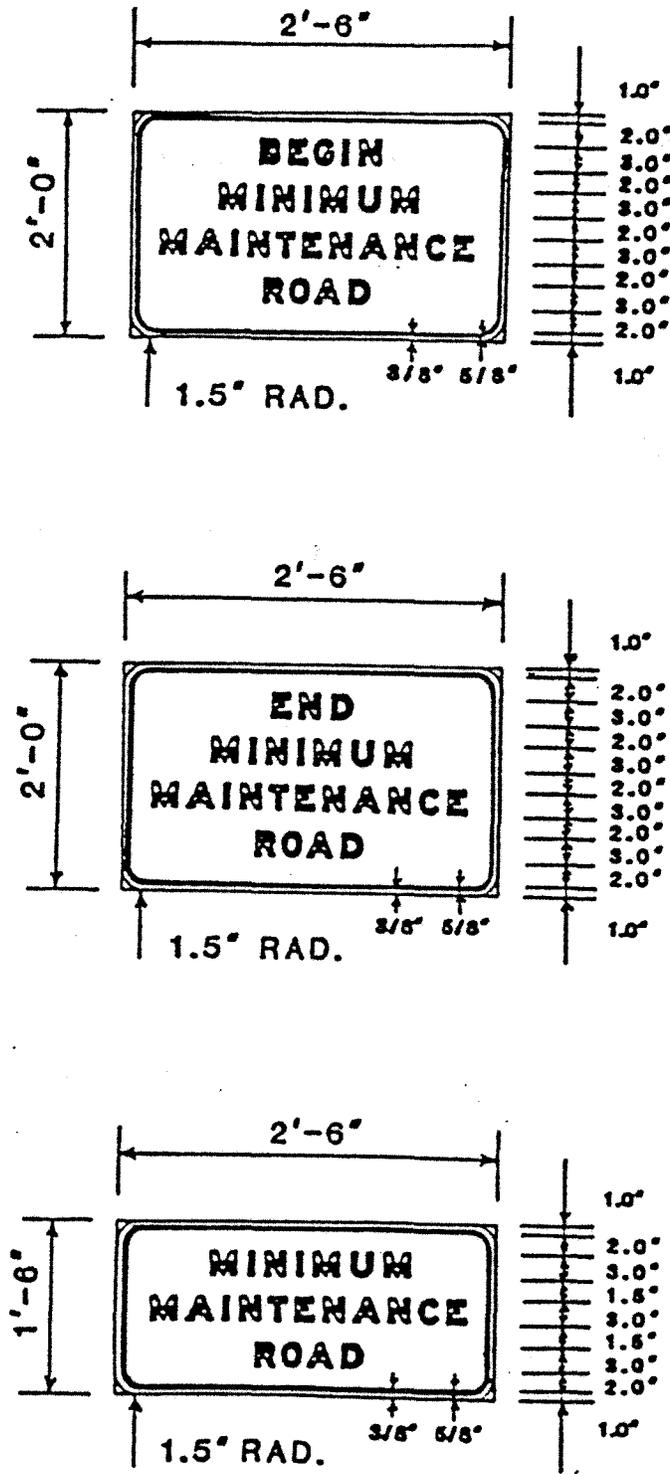
37-07-01-03. Minimum maintenance road signs - Placement. Minimum maintenance road signs installed by political subdivisions must be installed pursuant to the Manual on Uniform Traffic Control Devices adopted by the state highway commissioner under North Dakota Century Code section 39-13-06. The signs must be installed from six to twelve feet [1.82 to 3.66 meters] from the shoulder line of the roadway, and the bottom of the sign panel must be at least five feet [1.52 meters] above the roadway surface.

History: Effective January 1, 1988.
General Authority: NDCC 24-07-36
Law Implemented: NDCC 24-07-36

37-07-01-04. Minimum maintenance road signs - Legend. Minimum maintenance road signs installed by political subdivisions must have a fully reflectorized white background with a black nonreflectorized legend. The legend must use lettering three inches [7.62 centimeters] high, and lettering must be of "Series C" size according to the Traffic Control Devices Handbook published by the state highway department. The size and appearance of minimum maintenance road signs must be in accordance with that shown in figure 1, which is incorporated into this chapter.

History: Effective January 1, 1988.
General Authority: NDCC 24-07-36
Law Implemented: NDCC 24-07-36

Figure 1



White Background

Black Legend

Reflectorized

TITLE 38
Highway Patrol

JANUARY 1988

STAFF COMMENT: Article 38-06 contains all new material but is not underscored so as to improve readability.

ARTICLE 38-06

MOVEMENT OF OVERSIZE AND/OR OVERWEIGHT
VEHICLES AND LOADS

Chapter	
38-06-01	Regulatory Intent
38-06-02	Adoption of Regulations
38-06-03	Permit Fees
38-06-04	Liability of Permit Applicant and Permit Conditions

CHAPTER 38-06-01
REGULATORY INTENT

Section	
38-06-01-01	Regulatory Intent

38-06-01-01. Regulatory intent.

1. Safety regulations adopted herein are intended so that for good cause shown a vehicle or load exceeding legal size or weight, or both, can be moved on the state highway system as authorized by North Dakota Century Code section 39-12-02.

2. These regulations are adopted so as to provide for the safety and welfare of the general public, and to protect the state highway system, including structures, by providing a framework of safe operating practices for motor carriers or persons moving oversize or overweight, or both, vehicles and loads.
3. The North Dakota highway patrol has the authority to impose additional permit conditions for each permit to ensure compliance with the intent of these rules.

History: Effective January 1, 1988.

General Authority: NDCC 39-12-02

Law Implemented: NDCC 39-12-02

CHAPTER 38-06-02 ADOPTION OF REGULATIONS

Section

38-06-02-01	General Rules
38-06-02-02	Flagging, Sign, and Mirror Requirements
38-06-02-03	Escort Requirements
38-06-02-04	Routing of Movements
38-06-02-05	Insurance Requirements
38-06-02-06	Size and Weight Limitations
38-06-02-07	Travel Restrictions

38-06-02-01. General rules.

1. The North Dakota highway patrol may issue single trip permits for the movement of oversize or overweight, or both, vehicles and loads. Unless otherwise exempted by the superintendent, permits will not be issued for loads that can be reasonably made to conform to legal limits.
2. All single trip permits must be in possession of the permittee prior to starting movement.
3. Single trip permits includes self-issuing single trip movement approval forms.

History: Effective January 1, 1988.

General Authority: NDCC 39-12-02

Law Implemented: NDCC 39-12-02

38-06-02-02. Flagging, sign, and mirror requirements.

1. All overdimensional vehicles and loads must have minimum eighteen-inch by eighteen-inch [457.2-millimeters by

457.2-millimeters] red or bright orange flags displayed on the traffic sides front and rear.

2. When the overall length of an overdimensional movement exceeds seventy-five feet [22.86 meters] in length, there must be a minimum eighteen-inch by eighty-four-inch [457.2-millimeters by 2133.6-millimeters] OVERSIZE LOAD sign on the rear. The lettering must be black on yellow background. Letters must be at least ten inches [254 millimeters] high with one and five-eighths-inch [39.37-millimeters] brush stroke. When the movement is overlength only, exceeding seventy-five feet [22.86 meters] in overall length, a LONG LOAD sign that is a minimum twelve inches by sixty inches [304.8 millimeters by 1524 millimeters] in size may be used in lieu of the OVERSIZE LOAD sign. The lettering must be black on yellow background. The letters must be at least eight inches [203.2 millimeters] high with one-inch [25.4-millimeters] brush stroke. The sign must be covered or removed when the movement is not overdimensional.
3. The towing vehicle must have two outside mirrors, one on each side, to reflect a rear view of two hundred feet [60.96 meters] to the driver.

History: Effective January 1, 1988.

General Authority: NDCC 39-12-02

Law Implemented: NDCC 39-12-02

38-06-02-03. Escort requirements.

1. All movements exceeding fourteen feet six inches [4.42 meters] in overall width but not exceeding sixteen feet [4.87 meters] in overall width shall have one pilot car precede the movement at a distance of three hundred to seven hundred feet [91.44 to 213.36 meters] on two-lane highways. On four-lane divided highways there are no pilot car requirements for movements of this size.
2. All movements exceeding sixteen feet [4.88 meters] in overall width shall have one pilot car precede the movement at a distance of three hundred to seven hundred feet [91.44 to 213.36 meters] and shall have one pilot car follow the movement at a distance of three hundred to seven hundred feet [91.44 to 213.36 meters] on two-lane highways. On four-lane divided highways one pilot car shall follow the movement at a distance of three hundred to seven hundred feet [91.44 to 213.36 meters].
3. All movements exceeding one hundred twenty feet [36.57 meters] in overall length shall have one pilot car follow the movement at a distance of three hundred to seven hundred feet [91.44 to 213.36 meters].

4. All movements exceeding eighteen feet [5.49 meters] in overall height shall have one pilot car precede the movement at a distance of three hundred to seven hundred feet [91.44 to 213.36 meters].
5. The highway department chief engineer, bridge engineer, district engineers, or highway patrol may require pilot cars for movements that are overweight.

History: Effective January 1, 1988.

General Authority: NDCC 39-12-02

Law Implemented: NDCC 39-12-02

38-06-02-04. Routing of movements. Permit issuing personnel may designate routes of travel where adequate width or height for safe traffic movement cannot be provided, or when restricted by maps as provided by highway department engineers.

History: Effective January 1, 1988.

General Authority: NDCC 39-12-02

Law Implemented: NDCC 39-12-02

38-06-02-05. Insurance requirements.

1. When towing or hauling oversize mobile home or modular units, the towing vehicle must have minimum insurance coverage of one hundred thousand dollars bodily injury liability for one person, three hundred thousand dollars bodily injury liability for one accident, and fifty thousand dollars property damage liability.
2. When requesting permits for movements exceeding two hundred thousand pounds [90,718 kilograms] gross vehicle weight, or when otherwise required by the highway patrol or highway department engineers, the applicant must provide written verification of liability and property damage insurance coverage.

History: Effective January 1, 1988.

General Authority: NDCC 39-12-02

Law Implemented: NDCC 39-12-02

38-06-02-06. Size and weight limitations.

1. Unless otherwise authorized by the superintendent, single trip permits for overdimensional movements may not exceed fourteen feet six inches [4.42 meters] in overall width, fifteen feet six inches [4.72 meters] in overall height, and one hundred twenty feet [36.58 meters] in overall length.

2. Limitations for single trip permits for overweight movements must be as determined by highway department engineers.

History: Effective January 1, 1988.

General Authority: NDCC 39-12-02

Law Implemented: NDCC 39-12-02

38-06-02-07. Travel restrictions.

1. Single trip permits may not be issued for overdimensional movements between sunset and sunrise unless otherwise authorized by the superintendent.
2. Single trip permits for overwidth exceeding twelve feet [3.66 meters], or overlength exceeding one hundred ten feet [33.53 meters], may not be issued authorizing movements on Saturday after twelve noon, all day Sunday, and on holidays of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.
 - a. When any above-named holiday is on a Sunday, the following Monday is the holiday.
 - b. When any above-named holiday is on a Saturday, the preceding Friday is the holiday.
 - c. No overwidth permit exceeding twelve feet [3.66 meters], or overlength permit exceeding one hundred ten feet [33.53 meters], will be valid from twelve noon the day before the holiday until sunrise the day after the holiday.
3. Single trip permits may not authorize movements when inclement weather prevails, highways are slippery, or when visibility is poor.
4. Single trip permits do not authorize travel on shoulders of road.
5. A single trip permit is required for each movement that is overdimensional or overweight.
6. A minimum distance of one thousand feet [304.80 meters] is required between vehicles in a convoy of two or more vehicles.

History: Effective January 1, 1988.

General Authority: NDCC 39-12-02

Law Implemented: NDCC 39-12-02

CHAPTER 38-06-03 PERMIT FEES

38-06-03-01. Permit fees. The following fees are to be effective January 1, 1988; however, fees may be paid prior to January 1, 1988, for those permitted movements to be made after January 1, 1988.

1. The fee for registered motor vehicles hauling or towing overdimensional or overweight, or both, loads is ten dollars per each single trip permit.
2. The fee for registered motor vehicles that exceed legal size or legal weight, or both, limitations is ten dollars per each single trip permit.
3. The fee for nonregistered self-propelled special mobile equipment that exceeds legal weight limitations is twenty-five dollars per each single trip permit.
4. The fee for nonregistered self-propelled special mobile equipment that exceeds legal size limitations only is ten dollars per each single trip permit.
5. The fee for each identification supplement, identifying a motor vehicle and axle configuration so that self-issuing single trip permits can be used, is ten dollars each.
6. The fee for exceeding the federal gross vehicle weight limitation of eighty thousand pounds [36,287 kilograms] on the interstate highway system is five dollars per each "interstate only" single trip permit.
7. The fee for vehicles hauling overwidth loads of hay bales or haystacks, overwidth self-propelled fertilizer spreaders, and overwidth hay grinders is fifty dollars per year.
8. The fee when movement requires highway department engineer approval is fifteen dollars in addition to permit fee.
9. There is an additional heavyweight fee of seventy dollars per ton for all weight in excess of one hundred five thousand five hundred pounds [47,910 kilograms] gross vehicle weight but not to exceed two hundred thousand pounds [90,718 kilograms] gross vehicle weight. The fee may be prorated on a monthly basis and does not apply on those motor vehicles which are North Dakota titled and registered.
10. There is an additional ton/mile fee on all those movements that exceed two hundred thousand pounds [90,718 kilograms] gross vehicle weight. The following ton/mile fee is assessed upon that portion of gross vehicle weight exceeding the

maximum legal gross weight of one hundred five thousand five hundred pounds [47,910 kilograms].

Gross Vehicle Weight	Ton/Mile Fee	Minimum
200,001 to 210,000	\$.05	\$ 50.00
210,001 to 220,000	.10	50.00
220,001 to 230,000	.15	50.00
230,001 to 240,000	.20	50.00
240,001 to 250,000	.25	50.00
250,001 to 275,000	.50	100.00
275,001 to 300,000	2.00	200.00
300,001 to 325,000	3.00	350.00
325,001 to 350,000	4.00	500.00
350,001 to 400,000	7.00	1,000.00
400,001 to 450,000	10.00	2,000.00
450,001 to 500,000	15.00	3,000.00
500,001 to 550,000	20.00	5,000.00
550,001 to 600,000	30.00	7,500.00
600,001 to 650,000	40.00	10,000.00
650,001 to 700,000	50.00	15,000.00
700,001 to 750,000	75.00	25,000.00
750,001 or more	100.00	Minimum one mile

11. On those movements of extraordinary size or weight that require highway patrol escort there is an escort service fee of thirty cents per mile [kilometer] and thirty dollars per hour.

History: Effective January 1, 1988.

General Authority: NDCC 39-12-02, 39-12-04

Law Implemented: NDCC 39-12-02

CHAPTER 38-06-04 LIABILITY OF PERMIT APPLICANT AND PERMIT CONDITIONS

Section

38-06-04-01 Liability of Permit Applicant
38-06-04-02 Permit Cancellation and Hearing Request

38-06-04-01. Liability of permit applicant.

1. The applicant or permittee, as a condition for obtaining an oversize or overweight, or both, permit, shall assume all responsibility for accidents, damage, or injury to any persons or damage to public or private property caused by the movement of any oversize or overweight, or both, vehicle or load covered by the permit while upon public highways of the state.

2. The applicant or permittee agrees to indemnify and hold harmless the North Dakota highway department, the North Dakota highway patrol, their officers, and employees from any and all claims resulting directly or indirectly from the movement of an oversize or overweight, or both, vehicle or load on any public highway of the state of North Dakota.

History: Effective January 1, 1988.

General Authority: NDCC 39-12-02

Law Implemented: NDCC 39-12-02

38-06-04-02. Permit cancellation and hearing request.

1. The highway patrol has the authority to revoke or cancel permit privileges when the applicant or permittee is in violation of the regulations adopted herein or conditions of the permit.
2. The revocation or cancellation of permit privileges includes the privilege to use the self-issuing single trip permits.
3. When notification is made of the cancellation of permit privileges, the applicant or permittee has ten days to request a hearing with the superintendent.

History: Effective January 1, 1988.

General Authority: NDCC 39-12-02

Law Implemented: NDCC 39-12-02

TITLE 40
Historical Board

DECEMBER 1987

STAFF COMMENT: Chapter 40-01-02 contains all new material but is not underscored so as to improve readability.

CHAPTER 40-01-02
ESTABLISHMENT OF MEMBERSHIP IN THE
STATE HISTORICAL SOCIETY OF NORTH DAKOTA

Section	
40-01-02-01	Classes of Membership Established
40-01-02-02	Qualifications for Membership in the Various Classes Defined
40-01-02-03	Benefits of Various Classes of Membership Outlined

40-01-02-01. Classes of membership established.

1. There shall be the following classes of membership in the state historical society of North Dakota:
 - a. Basic.
 - b. Family.
 - c. Honorary.
2. Membership shall be for a period of one year renewable on a monthly basis.

History: Effective December 1, 1987.

General Authority: NDCC 55-01-02

Law Implemented: NDCC 55-01-02; S.L. 1987, ch. 663

40-01-02-02. Qualifications for membership in the various classes defined.

1. Basic membership requires payment of a membership fee of ten dollars for United States residents and fifteen dollars for residents of other countries.

All organizational subscribers, exchanges, and former life members will receive a basic membership. All subscribers at the time membership is established will receive a basic membership to be extended through the term of their subscription.

2. Family membership requires payment of a membership fee of twenty-five dollars.
3. Honorary membership is recognition by the state historical board of a major contribution to the preservation and interpretation of the history of North Dakota in any form.

History: Effective December 1, 1987.

General Authority: NDCC 55-01-02

Law Implemented: NDCC 55-01-02; S.L. 1987, ch. 663

40-01-02-03. Benefits of various classes of membership outlined.

1. Basic membership benefits are subscription to North Dakota History, Plains Talk, a membership card, invitations to special events, and an invitation to the annual meeting.
2. Family membership benefits are basic benefits plus free admission for all family members to state historic sites and museums, a membership card, museum store and workshop discounts, invitations to special events, and an invitation to the annual meeting.
3. Honorary membership benefits are basic member benefits.

History: Effective December 1, 1987.

General Authority: NDCC 55-01-02

Law Implemented: NDCC 55-01-02; S.L. 1987, ch. 663

TITLE 43
Industrial Commission

FEBRUARY 1988

STAFF COMMENT: Article 43-03 contains all new material but is not underscored so as to improve readability.

ARTICLE 43-03

CONTRACTS FOR LIGNITE DEVELOPMENT AND LAND RECLAMATION
RESEARCH AND HYDROELECTRICITY IMPACT STUDIES

Chapter	
43-03-01	Statement of Industrial Commission Policy
43-03-02	Eligibility
43-03-03	Maximum Grant Amount and Matching Fund Requirement
43-03-04	Application Requirements
43-03-05	Review and Award Process
43-03-06	Public Information - Patent and New Technologies Policies

CHAPTER 43-03-01
STATEMENT OF INDUSTRIAL COMMISSION POLICY

Section	
43-03-01-01	History - Administration
43-03-01-02	North Dakota Project Required
43-03-01-03	Costs of Application Preparation
43-03-01-04	Acceptance and Rejection of Proposals
43-03-01-05	Reservation of Funds
43-03-01-06	Statement of Intent

43-03-01-01. History - Administration. Pursuant to the authority provided in sections 4 and 7 of chapter 729 of the 1987 Session Laws, the North Dakota industrial commission (hereinafter referred to in this article as "commission") is making funds available to provide financial assistance for lignite development and land reclamation research projects and hydroelectricity impact studies as further described in this article. The lignite research council, established by executive order 1987-4, will review and make recommendations to the commission on all applications for financial assistance under this program. The industrial commission concurred in the appointments to the lignite research council. Any and all awards of funds will be at the sole discretion of the commission, after receiving the recommendation of the lignite research council. In all instances, commission decisions will be made solely on the basis of acceptable applications submitted to the commission. The commission reserves the right to deny funds to any applicant not submitting a complete application or to any applicant

whose application, in the opinion of the commission, does not meet applicable criteria or provide sufficient justification for a request of funds.

History: Effective February 1, 1988.

General Authority: S.L. 1987, ch. 729, § 4

Law Implemented: S.L. 1987, ch. 729, §§ 4, 7

43-03-01-02. North Dakota project required. Funds will be awarded only for projects conducted entirely or largely within the boundaries of the state of North Dakota. The commission may consent to a portion of the project being conducted outside North Dakota, if necessary for the success of the overall project.

History: Effective February 1, 1988.

General Authority: S.L. 1987, ch. 729, § 4

Law Implemented: S.L. 1987, ch. 729, §§ 4, 7

43-03-01-03. Costs of application preparation. The commission is not liable for any cost, including costs of preparation of applications, incurred by applicants prior to issuance of a contract. The commission will be liable only for those costs and expenses expressly identified by contract.

History: Effective February 1, 1988.

General Authority: S.L. 1987, ch. 729, § 4

Law Implemented: S.L. 1987, ch. 729, §§ 4, 7

43-03-01-04. Acceptance and rejection of proposals. The rules in this article do not commit the commission to award funds. The commission reserves the right to accept or reject any or all proposals received as a result of the program, to negotiate with any and all

qualified applicants, to cancel or amend any part of this program, or to waive any requirement contained in this article if it is in the commission's best interests to do so.

History: Effective February 1, 1988.

General Authority: S.L. 1987, ch. 729, § 4

Law Implemented: S.L. 1987, ch. 729, §§ 4, 7

43-03-01-05. Reservation of funds. The commission is not obligated to award the total amount of funds made available under this program. Funds not awarded will be reserved for future program offerings.

History: Effective February 1, 1988.

General Authority: S.L. 1987, ch. 729, § 4

Law Implemented: S.L. 1987, ch. 729, §§ 4, 7

43-03-01-06. Statement of intent. The commission's sole interest in issuing the rules in this article is to further the development and use of North Dakota's lignite resources through the financial support of projects proposed and executed by qualified sponsors. The intent of this program is financial assistance for lignite development and land reclamation research and hydroelectricity impact studies, without regard to particular applicants. Projects which may be proposed are deemed to be activities of the respective applicants and not the commission.

History: Effective February 1, 1988.

General Authority: S.L. 1987, ch. 729, § 4

Law Implemented: S.L. 1987, ch. 729, §§ 4, 7

CHAPTER 43-03-02 ELIGIBILITY

Section

43-03-02-01 Eligible Applicants

43-03-02-02 Eligible and Ineligible Projects

43-03-02-01. Eligible applicants. Any person, corporation, partnership, cooperative, or association, or consortium of such parties, is eligible to apply for funds under this program. With regard to site specific feasibility studies, only owners of facilities, sponsors of projects, or operators having effective control of a facility or project are eligible to apply. Third parties who do not own or control or have the clear and firm commitment of ownership or control are not eligible for feasibility study assistance. Any interested person in doubt as to eligibility should contact the commission. Small businesses are encouraged to apply for assistance.

History: Effective February 1, 1988.

General Authority: S.L. 1987, ch. 729, § 4

Law Implemented: S.L. 1987, ch. 729, §§ 4, 7

43-03-02-02. Eligible and ineligible projects. In general, any lignite research project, land reclamation research project, or hydroelectricity impact study may be eligible for a contract under this program. The following are examples of eligible topics:

1. Eligible lignite research projects include, but are not limited to:
 - a. Conversions to lignite use.
 - b. Lignite cleaning or beneficiation.
 - c. Lignite desulfurization and emission control.
 - d. Lignite-water mixtures or lignite-methanol mixtures and other lignite-derived fuels.
 - e. Lignite-based cogeneration projects.
 - f. Development of markets for liquids or other byproducts derived from lignite.
 - g. Research and development into ash derived from lignite.
 - h. Studies of legal, regulatory, and economic factors affecting lignite use and development.
 - i. Development of materials for use in lignite market promotion.
 - j. Development of commercial programs to treat effluent, emissions, solid waste, or hazardous waste from lignite conversion plants, chemical spills and oil spills, using bioremediation technology.
 - k. Resource characterization and evaluation studies.
 - l. In general, any project which will utilize or enhance the development or use of lignite resources.
2. Eligible land reclamation research projects include, but are not limited to:
 - a. Prime farmland soil productivity research.
 - b. Development of productivity indices for reclaimed land.
 - c. Soil respreading and depth of soil replacement research.

- d. Research relating to root zone hydrology, runoff and erosion on reclaimed land.
 - e. Other projects that may reduce unnecessary regulatory costs and assist in effectively reclaiming mined land to its original or better productivity.
3. Eligible hydroelectricity impact studies include, but are not limited to:
- a. Studies comparing North Dakota and Canadian electricity production methods, pricing, marketing, and environmental practices.
 - b. Studies which involve coordination with energy producers and states to secure markets for lignite and lignite byproducts as they relate to the long-term energy needs of the United States.
 - c. Studies which assist in the development of international markets for lignite and its byproducts.
4. The following activities or uses are ineligible for funding under this program:
- a. Business startup capital.
 - b. Business working capital.
 - c. Business advertising or promotional expenses pertaining to a specific company or cooperative.

History: Effective February 1, 1988.

General Authority: S.L. 1987, ch. 729, § 4

Law Implemented: S.L. 1987, ch. 729, §§ 4, 7

CHAPTER 43-03-03 MAXIMUM GRANT AMOUNT AND MATCHING FUND REQUIREMENT

Section

43-03-03-01

Maximum Grant Amount

43-03-03-02

Matching Funds - Equity Requirements

43-03-03-01. Maximum grant amount. The maximum amount of commission funds per grant will be fifty thousand dollars. Applicants must justify amounts requested.

History: Effective February 1, 1988.

General Authority: S.L. 1987, ch. 729, § 4

Law Implemented: S.L. 1987, ch. 729, §§ 4, 7

43-03-03-02. Matching funds - Equity requirements. Funds received from any contract with the commission may not exceed fifty percent of the total project cost. Documentation demonstrating the matching funds, including letters of commitment from other funding sources, must be included with the application. Indirect costs (contributed equipment, materials, or services) may be used by any applicant to supply the required funding match or contribution.

History: Effective February 1, 1988.

General Authority: S.L. 1987, ch. 729, § 4

Law Implemented: S.L. 1987, ch. 729, §§ 4, 7

CHAPTER 43-03-04 APPLICATION REQUIREMENTS

Section

43-03-04-01	Application Format
43-03-04-02	Application Deadline
43-03-04-03	Application Fee
43-03-04-04	Outstanding Tax Liability

43-03-04-01. Application format. Proposals must include the parts listed in this section with minimal requirements as described. The body of the proposal, the parts found in subsections 5 through 12, should not exceed twenty double-spaced pages of text.

1. **Title page.** The title page must include the project title, principal investigator, principal submitting organization, date of submission, and amount of request.
2. **Transmittal page.** A transmittal letter, or organizational form, signed by an individual of the submitting organization legally committing the organization to the project.
3. **Summary.** A one-page abstract of the project indicating:
 - a. The objective;
 - b. The expected results;
 - c. The time period;
 - d. The total project costs; and
 - e. The major participants in the project.
4. **Table of contents, list of figures, and list of tables (as required).**

5. **Objectives.** A clear, concise statement of the objectives of the proposed project. The objectives should indicate how the proposed work will enhance the utilization of North Dakota lignite.
6. **Background.** A short summary of prior work related to the proposed work conducted by the participating organizations and by other organizations. The background section should clearly indicate the need for the proposed project.
7. **Goals.** A statement of intended results of the proposed project. The goals should provide the standards by which the project outcome is measured.
8. **Methods.** A description of the work to be performed under contract to the North Dakota industrial commission.
9. **Timetable.** An outline of the major project activities and their timetable for completion with identification of specific project deliverables.
10. **Personnel.** Brief narrative summaries of the experience and qualifications of the principal investigator and other major participants in the project.
11. **Qualifications of applicant.** Brief descriptions of the qualifications of the applicant pertinent to the proposed work.
12. **Budget.** The budget should contain an itemized breakdown of salary, direct operating costs, and indirect costs, to be supported by the North Dakota lignite research funds. Identification of the indirect costs or matching funds should also be indicated.
13. **Appendices.** Supporting documentation (as required).

History: Effective February 1, 1988.

General Authority: S.L. 1987, ch. 729, § 4

Law Implemented: S.L. 1987, ch. 729, §§ 4, 7

43-03-04-02. Application deadline. To be considered in the first review and award process, applications must be received by the commission within thirty days of February 1, 1988. To be considered in the second review and award process, applications must be received by the commission on or before April 1, 1988. Thereafter, applications for the first review and award process in each succeeding year must be received by the commission on or before October first, and applications for the second review and award process in each succeeding year must be received by the commission on or before April first.

History: Effective February 1, 1988.

General Authority: S.L. 1987, ch. 729, § 4
Law Implemented: S.L. 1987, ch. 729, §§ 4, 7

43-03-04-03. Application fee. All applications must be accompanied by a one hundred dollar nonrefundable application fee. Checks or money orders should be made payable to the "State of North Dakota".

History: Effective February 1, 1988.
General Authority: S.L. 1987, ch. 729, § 4
Law Implemented: S.L. 1987, ch. 729, §§ 4, 7

43-03-04-04. Outstanding tax liability. All applicants must complete and submit with the application an affidavit attesting to the fact that the applicant has no outstanding tax liability owed to the state of North Dakota.

History: Effective February 1, 1988.
General Authority: S.L. 1987, ch. 729, § 4
Law Implemented: S.L. 1987, ch. 729, §§ 4, 7

CHAPTER 43-03-05 REVIEW AND AWARD PROCESS

Section	
43-03-05-01	Application Evaluation - Constraints and Criteria
43-03-05-02	Application Review Process - Recommendation by Lignite Research Council
43-03-05-03	Contracts
43-03-05-04	Disbursement of Funds
43-03-05-05	Project Duration and Additional Allocations

43-03-05-01. Application evaluation - Constraints and criteria. All applications will be evaluated according to the constraints imposed by sections 4 and 7 of chapter 729 of the 1987 Session Laws, and the criteria established by the commission as stated in this section.

1. **North Dakota lignite related.** The commission desires that funded projects be applicable to lignite development and land reclamation research or hydroelectricity impact studies. The projects need not be unique to North Dakota's lignite resources but must be applicable to them. The commission therefore requires the following:
 - a. **Development.** All proposals must state how the project will assist in the development of North Dakota's lignite resources.

- b. Project location. All projects must be located entirely or largely within the boundaries of the state of North Dakota. If necessary, the commission may consent to a portion of the project being conducted out of state if necessary for the success of the project.
- c. Consistency with state policy. All proposals must state how the proposed project is consistent with sections 4 and 7 of chapter 729 of the 1987 Session Laws.

2. Financial related.

- a. Matching funds. All proposals must contain documentation establishing that funds from other sources, including the sponsor and federal, state, or other private sources, are firmly committed. Preference will be given to projects with a greater than fifty percent participation from matching or other funding sources and a smaller participation by the commission. Preference will also be given to projects with minimal or no use of indirect costs to meet the required funding match.
- b. Project costs compared to benefits. All proposals must show the costs of the proposed project as compared with the benefits. All proposals must show ancillary or indirect benefits from the project, such as new business creation, increased employment opportunities, community conservation, and other ancillary or indirect benefits from the research effort.
- c. Funding level necessary for effect. All proposals must show that the level of funding is necessary in order to achieve the project objectives, how long will project funding need to continue, and whether there are logical evaluation points along the project timetable. All proposals must show, if less funding is available than requested, whether the results will be delayed or unattainable.

3. Proposal related.

- a. Project objectives. The commission requires that the project objectives and the budget and work plan be concisely stated and have a reasonable probability of success.
- b. Research methodology. The commission requires that the proposal describe the facilities and techniques to be employed, their availability and capability, and disposition of any facilities or equipment acquired during the course of the project once the project is concluded.

c. Personnel qualifications. The commission requires that all proposals contain a statement of the qualifications and experience of the project director and key staff and estimate of the time to be committed by each.

History: Effective February 1, 1988.

General Authority: S.L. 1987, ch. 729, § 4

Law Implemented: S.L. 1987, ch. 729, §§ 4, 7

43-03-05-02. Application review process - Recommendation by lignite research council. Applications will be reviewed by commission staff and any outside reviewers deemed necessary. All applications will also be submitted to the lignite research council for review and recommendation. Before making a decision on any application, the commission will receive and consider the recommendations of the lignite research council regarding the application and proposed project.

History: Effective February 1, 1988.

General Authority: S.L. 1987, ch. 729, § 4

Law Implemented: S.L. 1987, ch. 729, §§ 4, 7

43-03-05-03. Contracts. All successful applicants will be required to enter into a contract with the commission and submit any supporting documentation required by the attorney general. The application will form an integral part of the contract.

History: Effective February 1, 1988.

General Authority: S.L. 1987, ch. 729, § 4

Law Implemented: S.L. 1987, ch. 729, §§ 4, 7

43-03-05-04. Disbursement of funds. Funds will be disbursed only after a contract has been executed. All disbursements will be made according to a schedule mutually agreed on by the commission and the applicant.

History: Effective February 1, 1988.

General Authority: S.L. 1987, ch. 729, § 4

Law Implemented: S.L. 1987, ch. 729, §§ 4, 7

43-03-05-05. Project duration and additional allocations. Projects may be conducted for multiyear periods. As a practical limit, however, project duration should be planned for two years or less. Once made, allocations are effective until the project is completed, canceled, or funds exhausted or rescinded by the commission. After the initial allocation of funds, any subsequent additional allocations by the commission cannot be guaranteed or assured and would depend on future appropriation of funds as well as the nature of the request and progress shown on prior work.

History: Effective February 1, 1988.
General Authority: S.L. 1987, ch. 729, § 4
Law Implemented: S.L. 1987, ch. 729, §§ 4, 7

CHAPTER 43-03-06
PUBLIC INFORMATION - PATENT AND NEW TECHNOLOGIES POLICIES

Section	
43-03-06-01	Proposal Ownership
43-03-06-02	Rights to Technical Data
43-03-06-03	Use for Governmental Purposes
43-03-06-04	Patent Rights - Manufacturing in North Dakota

43-03-06-01. Proposal ownership. Information contained in unsuccessful proposals will remain the property of the applicant, but the commission will retain file copies of all proposals, findings, and reports. All proposals will be considered public information and will be made available to the public upon request and payment of copying charges.

History: Effective February 1, 1988.
General Authority: S.L. 1987, ch. 729, § 4
Law Implemented: S.L. 1987, ch. 729, §§ 4, 7

43-03-06-02. Rights to technical data. Rights to technical data, including software developed under the terms of a grant resulting from proposals submitted, shall remain with the grantee, except that the state of North Dakota shall have the limited right to use such data for state government purposes.

History: Effective February 1, 1988.
General Authority: S.L. 1987, ch. 729, § 4
Law Implemented: S.L. 1987, ch. 729, §§ 4, 7

43-03-06-03. Use for governmental purposes. The grantee normally may copyright and publish material developed with commission support. The state of North Dakota and its consultants, independent contractors, and suppliers, to the extent such are providing services to the state, shall have an irrevocable royalty-free right to practice under any patents, patent applications, or other new technology developed under the commission's programs. The intent of the policy stated in this section is simply to enable state agencies to purchase or use, or both, new technology products or processes for governmental purposes without having to pay the imputed development costs of the products or processes twice; first in the research and development state under commission funding and then later, in the purchase of the processes or products. The state may not use this provision to enter

into the private marketplace through direct manufacture or production of goods and services.

History: Effective February 1, 1988.

General Authority: S.L. 1987, ch. 729, § 4

Law Implemented: S.L. 1987, ch. 729, §§ 4, 7

43-03-06-04. Patent rights - Manufacturing in North Dakota.

Applicants normally may retain the principal worldwide patent rights to any invention made with financial support under this program, except the patent holder agrees directly, or through licensing of patents, to assure that any manufacturing thereof shall substantially occur in North Dakota. Similarly, use of any new technology or other technical information funded in part under this program requires that any manufacturing thereof shall substantially occur in North Dakota. For the purposes of this section, the words "substantial" or "substantially" shall mean not that the primary manufacturing must occur in North Dakota, but rather that more than incidental manufacturing must occur in North Dakota. The applicant must agree to reimburse the entire grant amount received through the commission should such licensees or assignees relocate or be established out of the state and not continue substantial manufacturing in North Dakota.

History: Effective February 1, 1988.

General Authority: S.L. 1987, ch. 729, § 4

Law Implemented: S.L. 1987, ch. 729, §§ 4, 7

TITLE 45
Insurance, Commissioner of

JANUARY 1988

45-02-02-14. Excessive or unnecessary coverage.

1. **When presumed a violation.** An agent or broker is presumed to have violated subsection 8 of North Dakota Century Code section 26.1-26-42 when the agent or broker knowingly solicits, procures, or sells a medicare supplement policy containing both A and B coverage to any person who has such a medicare supplement policy in force unless the insured is informed by the agent and understands there is to be a replacement of the existing policy and there is an indication in writing or on the face of the application that the new policy is intended to replace the existing policy. It is not presumed to be a violation to solicit and sell a second policy which provides only B coverage. A violation may occur in other situations where there is the sale or solicitation of unnecessary or excessive coverage, even though no presumption has been established under this section.
2. **Suitability.** In recommending the purchase of any accident and health, health service, life, annuity, or nursing home policy to any consumer over age sixty-five, or medicare supplement policy to any consumer, an agent shall have reasonable grounds at the time of sale for believing that the recommendation is suitable for the consumer and shall make reasonable inquiries to determine suitability. The suitability of a recommended purchase of insurance will be determined by examination of the totality of the particular consumer's circumstances, including, but not limited to the following:
 - a. The consumer's income and assets;
 - b. The consumer's need for insurance at the time of sale; and

- c. The values, benefits, and costs of the consumer's existing insurance program, if any, when compared to the values, benefits, and costs of the recommended policy or policies.
3. Prior to determining whether to prosecute a complaint received for an alleged violation of the sale of life insurance under subsection 2 of section 45-02-02-14, the commissioner shall convene an advisory committee comprised of insurance professionals and other qualified persons to review individual life insurance sales transactions and to make recommendations to appropriate staff of the insurance department regarding the suitability of the sale and whether disciplinary action may be warranted by the facts if proven. The advisory committee shall include the president of the North Dakota life underwriters or his designated representative, the president of the North Dakota chapter of chartered life underwriters or his designated representative and may include a member designated by the board of the local chapter of life underwriters which is located nearest to the residence of the agent or broker who is the subject of the complaint.

History: Effective October 1, 1984; amended effective July 1, 1986; January 1, 1988.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-42

FEBRUARY 1988

45-02-02-14. Excessive or unnecessary coverage.

1. **When presumed a violation.** An agent or broker is presumed to have violated subsection 8 of North Dakota Century Code section 26.1-26-42 when the agent or broker knowingly solicits, procures, or sells a medicare supplement policy containing both A and B coverage to any person who has such a medicare supplement policy in force unless the insured is informed by the agent and understands there is to be a replacement of the existing policy and there is an indication in writing or on the face of the application that the new policy is intended to replace the existing policy. It is not presumed to be a violation to solicit and sell a second policy which provides only B coverage. A violation may occur in other situations where there is the sale or solicitation of unnecessary or excessive coverage, even though no presumption has been established under this section.
2. **Suitability.** In recommending the purchase of any accident and health, health service, life, annuity, or nursing home policy to any consumer over age sixty-five, or medicare supplement policy to any consumer, an agent shall have reasonable grounds at the time of sale for believing that the recommendation is suitable for the consumer and shall make reasonable inquiries to determine suitability. The suitability of a recommended purchase of insurance will be determined by examination of the totality of the particular consumer's circumstances, including, but not limited to, the following:
 - a. The consumer's income and assets;
 - b. The consumer's need for insurance at the time of sale; and

- c. The values, benefits, and costs of the consumer's existing insurance program, if any, when compared to the values, benefits, and costs of the recommended policy or policies.
3. Advisory committee. Prior to determining whether to prosecute a complaint received for an alleged violation of the sale of life insurance under subsection 2 of section 45-02-02-14, the commissioner shall convene an advisory committee comprised of insurance professionals and other qualified persons to review individual life insurance sales transactions and to make recommendations to appropriate staff of the insurance department regarding the suitability of the sale and whether disciplinary action may be warranted by the facts if proven. The advisory committee shall include the president of the North Dakota life underwriters or ~~his~~ the president's designated representative, the president of the North Dakota chapter of chartered life underwriters or ~~his~~ the president's designated representative and may include a member designated by the board of the local chapter of life underwriters which is located nearest to the residence of the agent or broker who is the subject of the complaint.

History: Effective October 1, 1984; amended effective July 1, 1986; January 1, 1988; February 1, 1988.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-42

MARCH 1988

45-02-02-07.1. License lapse. The license for any resident or nonresident insurance agent who has not had an active appointment with any company for a period of one year or more will be deemed to have lapsed.

History: Effective March 1, 1988.
General Authority: NDCC 26.1-26-49
Law Implemented: NDCC 26.1-26-31(5)

45-06-02-04. Coordination of benefits with other accident and sickness insurance policies. The contracts issued by the comprehensive health association of North Dakota for accident and sickness insurance coverage must in all cases be considered secondary to any other accident and sickness insurance policy the insured may have. Benefits to be paid by the comprehensive health association of North Dakota for a covered person on any individual claim may not exceed the difference in the amount between allowable covered expenses for that claim and any amounts covered by other accident and sickness insurance policies carried by the insured. For the purpose of this section, policy includes insurance certificates and other evidence of coverage.

History: Effective March 1, 1988.
General Authority: NDCC 26.1-04-08
Law Implemented: NDCC 26.1-04-03

45-07-01-02. Acceptable standards for premium rates.

1. If not in excess of the standards outlined below, proposed premium rates to debtors or creditors for credit insurance provided under a group term policy, or credit insurance

provided under individual term policies, except where such individual policies are issued as isolated transactions not related to a plan of insuring the debtors of a creditor, will, prima facie, be deemed to be reasonable in relation to benefits provided.

2. The standards for premium rates for credit life insurance are as follows:

a. Such standards specified in subdivisions c, d, and e are applicable to a plan of death benefits only, without additional benefits based upon a contingency other than death, without exclusions other than an exclusion for suicide and with age limitations not less favorable to the insured debtor than either of the following:

(1) Coverage being available only to debtors who have attained the age of sixty-five years or less at the times the respective indebtednesses are incurred.

(2) Coverage being available only to debtors who would attain the age of sixty-six years or less at the maturity dates of the respective transactions.

b. Premium rates, for other benefit plans, or for exclusions, limitations, or specifications other than outlined in subdivision a, or for indebtedness repayable other than as indicated in subdivision c, will be actuarially consistent with the premium rates given in subdivisions c, d, and e.

c. If premiums are paid or charged in a single sum, for decreasing coverage, for the entire duration of the indebtedness, such standard will be as specified below:

CREDIT LIFE INSURANCE
(Both Group and Individual)
Single Premium Rate
Per \$100 of Initial Insured Indebtedness,
Repayable in Twelve
Equal Monthly Installments

75 cents Sixty cents and beginning January 1, 1989, fifty cents

The single premium rate standard for coverage on indebtedness repayable in installments other than twelve in number will be equal to one-twelfth of the above premium rate multiplied by the number of full months in the period of such indebtedness.

d. If premiums are paid monthly on outstanding insurance balances, such standard will be **one dollar seventeen cents** ninety-four cents and beginning January 1, 1989,

seventy-eight cents per month per one thousand dollars of insurance in force.

- e. If credit life insurance is provided on a level basis, such premium standard will be one dollar forty cents one dollar twelve cents and beginning January 1, 1989, ninety-three cents per year per one hundred dollars of insurance in force.
 - f. For joint credit life coverage, a prima facie rate equal to 1.7 times the rate which would otherwise apply to that type of coverage.
 - g. As an alternative to the foregoing provisions of this subsection, where age data applicable to the insured persons are available, an insurer may determine, under a rating plan approved by the commissioner, premium rates that are based upon such age data.
3. The standards for premium rates, for credit accident and health insurance, are as follows:
- a. Such standards specified in subdivision c are applicable to any policy which:
 - (1) Contains an exclusion for preexisting conditions that is not less favorable to the insured debtor than one which excludes or denies a claim for disability resulting from preexisting illness, disease, or physical condition for such debtor received medical advice, consultation, or treatment during the six-month period immediately preceding the effective date of such debtor's coverage, where such preexisting condition would ordinarily be expected to affect materially such debtor's health during the period of coverage; provided, however, that after such coverage will have been in force for six months (twelve months, for a covered loan duration if more than three years), such preexisting exclusion clause will not operate to deny coverage for any disability commencing thereafter;
 - (2) Contains provisions which are not more restrictive to the insured debtor than ones which limit or exclude coverage for disabilities resulting from pregnancy, intentionally self-inflicted injuries, war, or military service; and
 - (3) Contains a provision which is not less favorable to the insured debtor than one which limits the availability of coverage to debtors who are aged sixty-five years or less at the times the respective indebtednesses are incurred, or than one which limits

the availability of coverage to debtors who would attain the age of sixty-six years or less at the maturity dates of the respective transactions.

- b. Premium rates, for benefit plans other than as specified in subdivision c, or for exclusions, limitations, or specifications other than as outlined in subdivision a, or for indebtedness repayable other than as indicated in subdivision c, will be actuarially consistent with the premium rates given in subdivision c.
- c. If premiums are paid or charged in a single sum, for the entire duration of the indebtedness, such standards will be as specified below:

CREDIT ACCIDENT AND HEALTH INSURANCE
(Both Group and Individual)
Single Premium Rates Per \$100 of Initial Insured
Indebtedness, Repayable in Indicated Number
of Equal Monthly Installments.

BENEFITS PAYABLE

Number of Equal Monthly Installments	After Fourteenth Day of Disability, Retroactive To First Day of Disability	After Fourteenth Day of Disability	After Thirtieth Day of Disability, Retroactive To First Day of Disability	After Thirtieth Day of Disability
	6	\$1-82	\$1-39	\$1-19
12	2-61	2-17	1-72	1-18
24	3-53	3-08	2-31	1-74
36	4-18	3-72	2-70	2-12
48	4-72	4-26	3-01	2-43
60	5-19	4-72	3-28	2-70
72	5-55	5-10	3-48	2-90
84	5-79	5-40	3-62	3-04
96	5-97	5-64	3-72	3-14
108	6-11	5-84	3-80	3-22
120	6-21	6-00	3-86	3-28
6	\$1.31	\$.83	\$1.05	\$.55
12	1.88	1.30	1.51	.94
24	2.54	1.85	2.03	1.39
36	3.01	2.23	2.38	1.70
48	3.40	2.56	2.65	1.94
60	3.74	2.83	2.89	2.16

72	4.00	3.06	3.06	2.32
84	4.17	3.24	3.18	2.43
96	4.30	3.38	3.27	2.51
108	4.40	3.50	3.34	2.58
120	4.47	3.60	3.40	2.62

- d. If premiums are paid monthly on outstanding insurable balances, such standards will be predicated upon monthly premium rates being computed on the basis of the following formula:

$$MP = \left(\frac{1 + \frac{.035n}{24}}{\frac{n+1}{2}} \right) SP$$

Where MP = monthly premium rate per one hundred dollars of outstanding insurable indebtedness,

SP = single premium rate per one hundred dollars of initial insured indebtedness,

n = term in months of the original loan (not to exceed one hundred twenty months).

4. Deviations from the prima facie standard rates provided in subsections 2 and 3 may be allowed for an insurer which demonstrates a loss ratio of sixty percent or more based on prima facie rates. Nothing herein precludes an insurer from filing, for the consideration of the commissioner, premium rates which are higher than the standards outlined in subsections 2 and 3, provided such insurer demonstrates, to the satisfaction of the commissioner, that the filing conforms with the purpose and intent of the premium standards outlined herein. In ruling upon such filing, the commissioner will give consideration to the following factors: available mortality or morbidity experience data, pertaining to the applicable class or classes of debtors of the creditor (including experience on any subsidiary or affiliate of such creditor); available age data; reasonable rates of expense; company loss ratio; and any other relevant factors. However, the commissioner will only allow an insurer with a loss ratio of more than sixty percent to increase its rate to higher than the prima facie standards outlined in subsections 2 and 3 under extraordinary situations as demonstrated by the company and after consideration of the factors described in this subsection.
5. The commissioner shall maintain year-by-year surveillance over the developing overall loss ratio experienced by each insurer providing credit life insurance or credit accident and health insurance in North Dakota. This loss ratio means the ratio of incurred claims to revenue premiums.

The commissioner will compare this loss ratio of the insurer with the commissioner's standard for the insurer, in order to determine that benefits provided are reasonable in relation to premiums charged. In arriving at this standard, the commissioner will take into account the following considerations: (a) the insurer's total annual premium volume, (b) the insurer's average annual premium volume per creditor account, and (c) any other relevant factors.

The incurred claims and revenue premiums, as used in the above loss ratio, and the annual premium volume, as used in items (a) and (b) above are those which are derived from the insurer's entire United States business, direct business only, credit life and credit accident and health combined. Creditor account is defined in section 45-07-01-05.

History: Amended effective March 1, 1988.

General Authority: NDCC 26.1-37-15

Law Implemented: NDCC 26.1-37

STAFF COMMENT: Chapters 45-03-09, 45-04-10, 45-05-03, 45-06-04, and 45-08-02 contain all new material but are not underscored so as to improve readability.

CHAPTER 45-03-09 ADMISSION OF FOREIGN INSURANCE COMPANIES

Section
45-03-09-01 Admission of Foreign Insurance Companies -
Conditions

45-03-09-01. Admission of foreign insurance companies - Conditions. In determining whether a foreign insurance company should be permitted to transact business in this state, and specifically in applying North Dakota Century Code section 26.1-02-02 and subsection 2 of section 26.1-11-01, the commissioner of insurance may require any foreign insurance company applying for a certificate of authority to provide the commissioner of insurance with a business plan for this state and an operational history of the company; last examination report; insurance regulatory information system reports; future business plans; operational history; loss experience; the kinds and nature of risks insured and to be insured; the financial condition and credit history of the company and its ownership; biographicals of its officers and board of directors; its proposed method of operation and its affiliations; its investments; any contracts leading to contingent liability or agreements in respect to guarantee and surety other than insurance; and the ratio of total annual premium and net investment income to the following: commission expenses, general insurance expenses, policy benefits paid and required, and policy reserve

increases. If after reviewing information supplied by the insurance company and the commissioner is satisfied that the company is in a condition such that the expanded operation of the company in this state or its operations outside this state will not create a condition which might be hazardous to its policyholders, creditors, or the general public and all other legal requirements are met, the commissioner shall issue the company a certificate of authority to transact business in this state of the kind or kinds of business to be specified. As part of this review process, the commissioner may require that a foreign company seeking admission to do business in this state demonstrate that it has actively operated satisfactorily and according to the law of the state where it is domiciled for a period of at least one year.

History: Effective March 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-02-02, 26.1-11-01

CHAPTER 45-04-10 ADVERTISING RULES

Section

45-04-10-01	Definitions
45-04-10-02	Applicability
45-04-10-03	Disclosure Requirements
45-04-10-04	Identity of Insurer
45-04-10-05	Jurisdictional Licensing and Status of Insurer
45-04-10-06	Statements About the Insurer
45-04-10-07	Enforcement Procedures
45-04-10-08	Conflict With Other Rules

45-04-10-01. Definitions. For the purpose of sections 45-04-10-01 through 45-04-10-08:

1. "Policy" includes any policy, plan, certificate, contract, agreement, statement of coverage, rider, or endorsement which provides for life insurance or annuity benefits.
2. "Insurer" includes any individual, corporation, partnership, reciprocal exchange, interinsurer, Lloyd's, fraternal benefit society, and any other legal entity which is defined as an "insurer" in the insurance code of this state or issues life insurance or annuities in this state and is engaged in the advertisement of a policy. This term also includes insurance agents, brokers, and agencies insofar as their own advertising practices for a particular policy or type of coverage are concerned.
3. "Advertisement" is material designed to create public interest in life insurance or annuities or in an insurer or in an insurance agent or agency, or to induce the public to

purchase, increase, modify, reinstate, or retain a policy including:

- a. Printed and published material, audiovisual material, and descriptive literature of an insurer or agent used in direct mail, newspapers, magazines, radio, and television scripts, billboards, and similar displays.
 - b. Descriptive literature, identification cards, and sales aids of all kinds issued by an insurer or agent, including, but not limited to, business calling cards, lead cards, surveys, circulars, leaflets, booklets, depictions, illustrations, and form letters.
 - c. Material used for the recruitment, training, and education of an insurer's sales personnel, agents, solicitors, and brokers which is designed to be used or is used to induce the public to purchase, increase, modify, reinstate, or retain a policy.
 - d. Prepared sales talks, presentations, and material for use by sales personnel, agents, solicitors, and brokers.
4. "Advertisement" for the purpose of this chapter does not include:
- a. Communications or materials used within an insurer's, agent's, or broker's own organization and not intended for dissemination to the public.
 - b. Communications with policyholders other than material urging policyholders to purchase, increase, modify, reinstate, request information relating to, or retain a policy.
 - c. A general announcement from a group or blanket policyholder to eligible individuals on an employment or membership list that a policy or program has been written or arranged; provided the announcement clearly indicates that it is preliminary to the issuance of a booklet explaining the proposed coverage.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

45-04-10-02. Applicability.

1. This chapter applies to any advertisement of life insurance or an annuity product intended for dissemination in this state and which advertisement is disseminated in any manner by or on behalf of an insurance company, agency, agent, or broker.

2. Every insurer shall establish and at all times maintain a system of control over the content, form, and method of dissemination of all advertisements of its policies. All such advertisements, regardless of by whom written, created, designed, or presented, are the responsibility of the insurer. However, this does not in any way prohibit enforcement of this chapter against individual agents, brokers, and agencies.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

45-04-10-03. Disclosure requirements.

1. The information required to be disclosed by this chapter may not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.
2. No advertisement may omit material information or use words, phrases, statements, references, or illustrations if such omission or such use has the capacity, tendency, or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any policy benefit payable, loss covered, premium payable, or state or federal tax consequences. The fact that the policy offered is made available to a prospective insured for inspection prior to consummation of the sale, or an offer is made to refund the premium if the purchaser is not satisfied, does not remedy misleading statements.
3. In the event an advertisement uses "Non-Medical", "No Medical Examination Required", or similar terms where issue is not guaranteed, such terms must be accompanied by a further disclosure of equal prominence and in juxtaposition thereto to the effect that issuance of the policy may depend upon the answers to the health questions.
4. An advertisement may not use as the name or title of a life insurance policy any phrase which does not include the words "life insurance" unless accompanied by other language clearly indicating it is life insurance.
5. An advertisement must prominently describe the type of policy advertised.
6. An advertisement of an insurance policy marketed by direct response techniques may not state or imply that because there is no agent or commission involved there will be a cost saving to prospective purchasers unless such is the fact. No such cost savings may be stated or implied without justification satisfactory to the insurance commissioner prior to use.

7. An advertisement for a policy containing graded or modified benefits must prominently display any limitation of benefits. If the premium is level and coverage decreases or increases with age or duration, such fact must be prominently disclosed.
8. An advertisement for a policy with nonlevel premiums must prominently describe the premium changes.
9. Dividends.
 - a. An advertisement may not utilize or describe dividends in a manner which is misleading or has the capacity or tendency to mislead.
 - b. An advertisement may not state or imply that the payment or amount of dividends is guaranteed. If dividends are illustrated, they must be based on the insurer's current dividend scale and the illustration must contain a statement to the effect that they are not to be construed as guarantees or estimates of dividends to be paid in the future.
 - c. An advertisement may not state or imply that illustrated dividends under a participating policy or pure endowments, or both, will be or can be sufficient at any future time to assure, without the further payment of premiums, the receipt of benefits, such as a paid-up policy, unless the advertisement clearly and precisely explains (1) what benefits or coverage would be provided at such time and (2) under what conditions this would occur.
10. An advertisement may not state that a purchaser of a policy will share in or receive a stated percentage or portion of the earning on the general account assets of the company.
11. Testimonials or endorsements by third parties.
 - a. Testimonials used in advertisements must be genuine; represent the current opinion of the author; be applicable to the policy advertised, if any; and be accurately reproduced. In using a testimonial the insurer makes as its own all of the statements contained therein, and such statements are subject to all the provisions of these rules.
 - b. If the individual making a testimonial or an endorsement has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee, or otherwise, or receives any benefit directly or indirectly other than required union scale wages, such fact must be disclosed in the advertisement.

- c. An advertisement may not state or imply that an insurer or a policy has been approved or endorsed by a group of individuals, society, association, or other organization unless such is the fact and unless any proprietary relationship between an organization and the insurer is disclosed. If the entity making the endorsement or testimonial is owned, controlled, or managed by the insurer, or receives any payment or other consideration from the insurer for making such endorsement or testimonial, such fact must be disclosed in the advertisement.
12. An advertisement may not contain statistical information relating to any insurer or policy unless it accurately reflects recent and relevant facts. The source of any such statistics used in an advertisement must be identified therein.
 13. Introductory, initial, or special offers and enrollment periods.
 - a. An advertisement of an individual policy or combination of such policies may not state or imply that such policy or combination of such policies is an introductory, initial, or special offer, or that applicants will receive substantial advantages not available at a later date, or that the offer is available only to a specified group of individuals, unless such is the fact. An advertisement may not describe an enrollment period as "special" or "limited" or use similar words or phrases in describing it when the insurer uses successive enrollment periods as its usual method of marketing its policies.
 - b. An advertisement may not state or imply that only a specific number of policies will be sold, or that a time is fixed for the discontinuance of the sale of the particular policy advertised because of special advantages available in the policy.
 - c. An advertisement may not offer a policy which utilizes a reduced initial premium rate in a manner which overemphasizes the availability and the amount of the reduced initial premium. When an insurer charges an initial premium that differs in amount from the amount of the renewal premium payable on the same mode, all references to the reduced initial premium must be followed by an asterisk or other appropriate symbol which refers the reader to that specific portion of the advertisement which contains the full rate schedule for the policy being advertised.
 - d. An enrollment period during which a particular insurance policy may be purchased on an individual basis may not be

offered within this state unless there has been a lapse of not less than twelve months between the close of the immediately preceding enrollment period for the same policy and the opening of the new enrollment period. The advertisement must specify the date by which the applicant must mail the application, which must be not less than ten days and not more than forty days from the date on which such enrollment period is advertised for the first time. This rule applies to all advertising media - i.e., mail, newspapers, radio, television, magazines, and periodicals - by any one insurer. The phrase "any one insurer" includes all the affiliated companies of a group of insurance companies under common management or control. This rule does not apply to the use of a termination or cutoff date beyond which an individual application for a guaranteed issue policy will not be accepted by an insurer in those instances where the application has been sent to the applicant in response to his request. It is also inapplicable to solicitations of employees or members of a particular group or association which otherwise would be eligible under specific provisions of the insurance code for group, blanket, or franchise insurance. In cases where an insurance product is marketed on a direct mail basis to prospective insureds by reason of some common relationship with a sponsoring organization, this section must be applied separately to each sponsoring organization.

14. An advertisement of a particular policy may not state or imply that prospective insureds shall be or become members of a special class, group, or quasi-group and as such enjoy special rates, dividends, or underwriting privileges, unless such is the fact.
15. An advertisement may not make unfair or incomplete comparisons of policies, benefits, dividends, or rates of other insurers. An advertisement may not falsely or unfairly describe other insurers, their policies, services, or methods of marketing.
16. For individual deferred annuity products or deposit funds, the following shall apply:
 - a. Any illustrations or statements containing or based upon interest rates higher than the guaranteed accumulation interest rates shall likewise set forth with equal prominence comparable illustrations or statements containing or based upon the guaranteed accumulation interest rates. Such higher interest rates may not be greater than those currently being credited by the company unless such higher rates have been publicly declared by the company with an effective date for new issues not more than three months subsequent to the date of declaration.

- b. If an advertisement states the net premium accumulation interest rate, whether guaranteed or not, it must also disclose in close proximity thereto and with equal prominence, the actual relationship between the gross and net premiums.
- c. If any contract does not provide a cash surrender benefit prior to commencement of payment of any annuity benefits, any illustrations or statements concerning such contract must prominently state that cash surrender benefits are not provided.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

45-04-10-04. Identity of insurer.

1. The name of the insurer, insurance agency, agent, or broker must be clearly identified on all advertisements, and if any specific individual policy is advertised it must be identified either by form number or other appropriate description. An advertisement may not use a trade name, an insurance group designation, name of the parent company of the insurer, name of a particular division of the insurer, agent, broker, or agency, service mark, slogan, symbol, or other device or reference without disclosing the name of the insurer, agent, broker, or agency if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the insurer, agent, broker, or agency or create the impression that an entity other than the insurer would have any responsibility for the financial obligation under a policy.
2. No advertisement may use any combination of words, symbols, or physical materials which by their content, phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials used by a governmental program or agency or otherwise appear to be of such a nature that they tend to mislead prospective insureds into believing that the solicitation is in some manner connected with such governmental program or agency.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

45-04-10-05. Jurisdictional licensing and status of insurer.

1. An advertisement which is intended to be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed may not imply licensing beyond such limits.

2. An advertisement may state that an insurer is licensed in the state where the advertisement appears, provided it does not exaggerate such fact or suggest or imply that competing insurers may not be so licensed.
3. An advertisement may not create the impression that the insurer, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of its policy forms or kinds of plans of insurance are recommended or endorsed by any governmental entity. However, where a governmental entity has recommended or endorsed a policy form or plan, such fact may be stated if the entity authorizes its recommendation or endorsement to be used in an advertisement.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

45-04-10-06. Statements about the insurer. An advertisement may not contain statements, pictures, or illustrations which are false or misleading, in fact or by implication, with respect to the assets, liabilities, insurance in force, corporate structure, financial condition, age or relative position of the insurer in the insurance business. An advertisement may not contain a recommendation by any commercial rating system unless it clearly defines the scope and extent of the recommendation.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

45-04-10-07. Enforcement procedures.

1. Each insurer shall maintain at its home or principal office a complete file containing a specimen copy of every printed, published, or prepared advertisement of its individual policies and specimen copies of typical printed, published, or prepared advertisements of its blanket, franchise, and group policies, hereafter disseminated in this state, with a notation indicating the manner and extent of distribution and the form number of any policy advertised. Such file is subject to inspection by this department. All such advertisements must be maintained in said file for a period of either four years or until the filing of the next regular report on the examination of the insurer, whichever is the longer period of time.
2. Each insurer subject to the provisions of this chapter shall file with this department with its annual statement a certificate of compliance executed by an authorized officer of the insurer wherein it is stated that to the best of his

knowledge, information, and belief the advertisements which were disseminated by or on behalf of the insurer in this state during the preceding statement year, or during the portion of such year when this chapter was in effect, complied or were made to comply in all respects with the provisions of this chapter and the insurance laws of this state as implemented and interpreted by this chapter.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

45-04-10-08. Conflict with other rules. It is not intended that this chapter conflict with or supersede any rules currently in force or subsequently adopted in this state governing specific aspects of the sale or replacement of life insurance including, but not limited to, rules dealing with life insurance cost comparison indices, deceptive practices in the sale of life insurance, and replacement of life insurance policies. Consequently, no disclosure required under any such rules shall be deemed to be an advertisement within the meaning of this chapter.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

CHAPTER 45-05-03 AUTOMOBILE WARRANTY INSURANCE

Section

45-05-03-01	Definition
45-05-03-02	Automobile Warranty Insurance Sold by Other Than Manufacturers or Auto Dealers
45-05-03-03	Identification of Insurer

45-05-03-01. Definition. For the purpose of North Dakota Century Code section 26.1-40-19, the phrase "engage in the business of providing or writing" means the undertaking of any act by any person, other than the automobile manufacturer or dealer or person representing an admitted insurance company which is authorized by the commissioner of insurance to engage in automobile warranty insurance, which act aids in any manner the issuing, making, offering, or providing for sale of an automobile warranty insurance contract, policy, or certificate.

History: Effective March 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-40-18, 26.1-40-22

45-05-03-02. Automobile warranty insurance sold by other than manufacturers or auto dealers. The term "automobile warranty insurance", as used in North Dakota Century Code section 26.1-40-19, means any contract or agreement which provides for the repair, service, or maintenance of a motor vehicle on a periodic basis or as a result of mechanical breakdown or normal wear and tear or any agreement to perform over a fixed period of time or for a specified duration, services relating to the maintenance or repair, or both, of an automobile. The form and rate to be charged for such insurance must, prior to sale, be approved by the commissioner pursuant to North Dakota Century Code sections 26.1-30-19 and 26.1-40-18.

History: Effective March 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-40-18, 26.1-40-22

45-05-03-03. Identification of insurer. Every automobile warranty form must contain a provision written in **boldface type** on the front page of the certificate, contract, or policy form which clearly identifies

any insurance company, automobile dealer, or administrator who has issued, underwrote, or otherwise offered the insurance form for sale.

History: Effective March 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-40-18, 26.1-40-22

CHAPTER 45-06-04 ADVERTISING RULES

Section	Purpose
45-06-04-01	Purpose
45-06-04-02	Applicability
45-06-04-03	Definitions
45-06-04-04	Form and Content of Advertisements
45-06-04-05	Deceptive Words, Phrases, or Illustrations Prohibited
45-06-04-06	Exceptions, Reductions, and Limitations To Be Disclosed
45-06-04-07	Preexisting Conditions
45-06-04-08	Testimonials or Endorsements by Third Parties
45-06-04-09	Jurisdictional Licensing and Status of Insurer
45-06-04-10	Identity of Insurer and Agent or Agency
45-06-04-11	Advertising File To Be Maintained
45-06-04-12	Violation Defined as Unfair Trade Practice

45-06-04-01. Purpose. The purpose of this chapter is to assure truthful and adequate disclosure of all material and relevant information in the advertising of disability and accident and sickness

insurance (including nursing home, long-term care, and medicare supplement insurance). This purpose is intended to be accomplished by the establishment of, and adherence to, certain minimum standards and guidelines of conduct in the advertising of such insurance in a manner which prevents unfair competition among insurers and is conducive to the accurate presentation and description to the insurance buying public of a policy or agreement of such insurance offered through various advertising media. Subsections 1 and 2 of North Dakota Century Code section 26.1-04-03 prohibit false, deceptive or misleading advertising in the conduct of the business of insurance. Because those statutes establish only general standards, this rule establishes specific standards for advertisements relating to individual group, blanket, and franchise disability, and accident and sickness insurance.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

45-06-04-02. Applicability.

1. This chapter applies to every "advertisement", as that term is defined in this chapter unless otherwise specified in this chapter, intended for presentation, distribution, or dissemination in this state when such presentation, distribution, or dissemination is made either directly or indirectly by or on behalf of an insurer, agent, or broker as those terms are defined in the insurance code of this state and this chapter.
2. Every insurer, agent, or broker shall establish and at all times maintain a system of control over the content, form, and method of dissemination of all advertisements of its policies. All such advertisements, regardless of by whom written, created, designed, or presented, are the joint and several responsibility of the insurer, agent, broker, or agency for whom such advertisements are prepared.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

45-06-04-03. Definitions.

1. An "advertisement" for the purpose of this chapter includes:
 - a. Printed and published material, audio visual material, and descriptive literature of an insurer, agent, or broker used in direct mail, newspapers, magazines, radio scripts, television scripts, billboards, and similar displays;

- b. Descriptive literature, identification cards, and sales aids of all kinds used by an insurer, agent, or broker for presentation to members of the insurance buying public, including, but not limited to, circulars, business calling cards, lead cards, surveys, leaflets, booklets, depictions, illustrations, and form letters; and
 - c. Prepared sales talks, presentations, and material for use by agents, brokers, and solicitors.
- 2. "Exception" for the purpose of this chapter means any provision in a policy whereby coverage for a specified hazard is entirely eliminated; it is a statement or a risk not assumed under the policy.
 - 3. "Institutional advertisement" for the purpose of this chapter means an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of accident and sickness insurance, or the promotion of the insurer.
 - 4. "Insurer" for the purposes of this chapter includes any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds, fraternal benefit society, nonprofit health service corporation, health maintenance organization, and any other legal entity which is defined as an "insurer" in the insurance code of this state and is engaged in the advertisement of an insurance policy as "policy" is defined in this section.
 - 5. "Invitation to contract" for the purpose of this chapter means an advertisement which is neither an invitation to inquire nor an institutional advertisement.
 - 6. "Invitation to inquire" for the purpose of this chapter means an advertisement having as its objective the creation of a desire to inquire further about the product and which is limited to a brief description of the loss for which the benefit is payable, and which may contain:
 - a. The dollar amount of benefit payable, and/or
 - b. The period of time during which the benefit is payable; provided the advertisement does not refer to cost. An advertisement which specifies either the dollar amount of benefit payable or the period of time during which the benefit is payable must contain a provision in effect as follows:

"For costs and further details of the coverage, including exclusions, any reductions or limitations and the terms under which the policy may be continued in force, see your agent or write to the company."

7. "Limitation" for the purpose of this chapter means any provision which restricts coverage under the policy other than an exception or a reduction.
8. "Policy" for the purpose of this chapter includes any policy, plan, certificate, contract, agreement, statement of coverage, rider, or endorsement which provides disability benefits, or medical, surgical, or hospital expense benefits, whether on an indemnity, reimbursement, service, or prepaid basis, nursing home benefits, long-term care insurance benefits, and medicare supplement benefits.
9. "Reduction" for the purpose of this chapter means any provision which reduces the amount of the benefit; a risk of loss is assumed but payment upon the occurrence of such loss is limited to some amount or period less than would be otherwise payable had such reduction not been used.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

45-06-04-04. Form and content of advertisements.

1. The format and content of an advertisement to which this chapter applies must be sufficiently complete and clear to avoid deception or the capacity or tendency to mislead or deceive. Whether an advertisement has a capacity or tendency to mislead or deceive must be determined by the insurance commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence, within the segment of the public to which it is directed.
2. Advertisements must be truthful and not misleading in fact or in implication. Words or phrases, the meaning of which is clear only by implication or by familiarity with insurance terminology, may not be used.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

45-06-04-05. Deceptive words, phrases, or illustrations prohibited.

1. No advertisement may omit information or use words, phrases, statements, references, or illustrations if the omission of such information or use of such words, phrases, statements, references, or illustrations has the capacity, tendency, or effect of misleading or deceiving purchasers or prospective

purchasers as to the nature or extent of any policy benefit payable, loss covered, or premium payable. The fact that the policy offered is made available to a prospective insured for inspection prior to consummation of the sale of an offer is made to refund the premium if the purchaser is not satisfied, does not remedy misleading statements.

2. No advertisement may contain or use words or phrases such as, "all"; "full"; "complete"; "comprehensive"; "unlimited"; "up to"; "as high as"; "this policy will help pay your hospital and surgical bills"; "this policy will help fill some of the gaps that medicare and your present insurance leave out"; "this policy will help to replace your income" (when used to express loss of time benefits); or similar words and phrases, in a manner which exaggerates any benefits beyond the terms of the policy.
3. An advertisement may not contain descriptions of a policy limitation, exception, or reduction, worded in a positive manner to imply that it is a benefit, such as, describing a waiting period as a "benefit builder", or stating "even preexisting conditions are covered after two years". Words and phrases used in an advertisement to describe such policy limitations, exceptions, and reductions must fairly and accurately describe the negative features of such limitations, exceptions, and reductions of the policy offered.
4. No advertisement of a benefit for which payment is conditional upon confinement in a hospital or similar facility may use words or phrases such as "extra cash"; "extra income"; "extra pay"; or substantially similar words or phrases because such words and phrases have the capacity, tendency, or effect of misleading the public into believing that the policy advertised will, in some way, enable them to make a profit from being hospitalized.
5. No advertisement of a hospital or other similar facility confinement benefit may advertise that the amount of the benefit is payable on a monthly or weekly basis when, in fact, the amount of the benefit payable is based upon a daily pro rata basis relating to the number of days of confinement. When the policy contains a limit on the number of days of coverage provided, such limit must appear in the advertisement.
6. No advertisement of a policy covering only one disease or a list of specified diseases may imply coverage beyond the terms of the policy. Synonymous terms may not be used to refer to any disease so as to imply broader coverage than is the fact.
7. An advertisement for a policy providing benefits for specified illnesses only, such as cancer, or for specified accidents only, such as automobile accidents, must clearly and

conspicuously in prominent type state the limited nature of the policy. The statement must be worded in language identical to, or substantially similar to the following: "THIS IS AN AUTOMOBILE ACCIDENT ONLY POLICY".

8. An advertisement of a direct response insurance product may not imply that because "no insurance agent will call and no commissions will be paid to agents" that it is "a low cost plan", or use other similar words or phrases because the cost of advertising and servicing such policies is a substantial cost in the marketing of a direct response insurance product.
9. The phrase "tax free" may not be used in or as a heading, caption, or title in any advertisement and may not be unduly or deceptively emphasized, but it may be used in connection with a reasonably complete explanation of the internal revenue service rules applicable to the particular benefits afforded by the policy or policies advertised.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

45-06-04-06. Exceptions, reductions, and limitations to be disclosed.

1. When an advertisement which is an invitation to contract refers to either a dollar amount, or a period of time for which any benefit is payable, or the cost of the policy, or specific policy benefit, or the loss for which such benefit is payable, it must also disclose those exceptions, reductions, and limitations affecting the basic provisions of the policy without which the advertisement would have the capacity or tendency to mislead or deceive.
2. When a policy contains a waiting, elimination, probationary, or similar time period between the effective date of the policy and the effective date of coverage under the policy or a time period between the date a loss occurs and the date benefits begin to accrue for such loss, an advertisement which is subject to the requirements of subsection 1 must disclose the existence of such periods.
3. An advertisement may not use the words "only"; "just"; "merely"; "minimum"; or similar words or phrases to deceptively describe or unfairly minimize the applicability of any exceptions and reductions contained in the policy advertised.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

45-06-04-07. Preexisting conditions.

1. An advertisement which is subject to the requirements of section 45-06-04-06 must, in negative terms, disclose the extent to which any loss is traceable to a condition existing prior to the effective date of the policy. The use of the term "preexisting condition" without an appropriate definition or description may not be used.
2. When a policy does not cover losses resulting from preexisting conditions, no advertisement of the policy may state or imply that the applicant's physical condition or medical history will not affect the issuance of the policy or payment of a claim thereunder. This rule prohibits the use of the phrase "no medical examination required" and phrases of similar import, but does not prohibit explaining "automatic issue". If an insurer requires a medical examination for a specified policy, the advertisement if it is an invitation to contract must disclose that a medical examination is required.
3. When an advertisement contains an application form to be completed by the applicant and returned by mail for a direct response insurance product, such application form must contain a question requiring a response by the applicant or a statement in prominent type, all in capital letters, which reflects the preexisting condition provisions of the policy immediately preceding the blank space for the applicant's signature. For example, such an application form must contain a question substantially as follows:

"Do you understand that this policy will not pay benefits during the first ----- year(s) after the issue date for a disease or physical condition which you now have or have had in the past?" ----- Yes

Or a statement in prominent type, all capitalized, substantially as follows:

"I UNDERSTAND THAT THE POLICY APPLIED FOR WILL NOT PAY BENEFITS FOR ANY LOSS INCURRED DURING THE FIRST ----- YEAR(S) AFTER THE ISSUE DATE ON ACCOUNT OF DISEASE OR PHYSICAL CONDITION WHICH I NOW HAVE OR HAVE HAD IN THE PAST."

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

45-06-04-08. Testimonials or endorsements by third parties.

1. Testimonials used in advertisements must be genuine, represent the current opinion of the author, be applicable to the policy

advertised, and be accurately reproduced. The insurer, in using a testimonial, makes as its own all of the statements contained therein, and the advertisement, including such statement is subject to all the provisions of these rules.

2. If the person making a testimonial, an endorsement, or an appraisal has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee, or otherwise, such fact must be disclosed in the advertisement. If a person is compensated for making a testimonial, endorsement, or appraisal, such fact must be disclosed in the advertisement by language substantially as follows: "Paid endorsement". This rule does not require disclosure of union "scale" wages required by union rules if the payment is actually for such "scale" for television or radio performance. The payment of substantial amounts, directly or indirectly, for "travel and entertainment" for filming or recording of television or radio advertisements removes the filming or recording from the category of an unsolicited testimonial and requires disclosure of such compensation. This subsection does not apply to an institutional advertisement which has as its sole purpose the promotion of the insurer.
3. An advertisement may not state or imply that any insurer or a policy has been approved or endorsed by an individual, group of individuals, society, association, or other organizations, unless such is the fact, and unless any proprietary relationship between an organization and the insurer is disclosed. If the entity making the endorsement or testimonial has been formed by the insurer or is owned or controlled by the insurer or the person or persons who own or control the insurer, such fact must be disclosed in the advertisement.
4. When a testimonial refers to benefits received under a policy, the specific claim data, including claim number, date of loss, and other pertinent information must be retained by the insurer for inspection for a period of four years or until the filing of the next regular report on examination of the insurer, whichever is the longer period of time.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

45-06-04-09. Jurisdictional licensing and status of insurer.

1. An advertisement which reasonably is expected to be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed may not imply licensing beyond those limits.

2. An advertisement may not create the impression directly or indirectly that the insurer, its financial condition or status, or the payment of its claims, or the merits, desirability, or advisability of its policy forms or kinds or plans of insurance are approved, endorsed, or accredited by any division or agency of this state or the United States government.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

45-06-04-10. Identity of insurer and agent or agency.

1. The full legal name of the actual insurer and insurance agent or agency must be shown in each advertisement. An advertisement may not use a trade name, any insurance group designation, name of the parent company of the insurer, name of a particular division of the insurer or agency, service mark, slogan, symbol, or other device in a manner which would have the capacity and tendency to mislead or deceive as to the true identity of the insurer or insurance agent or agency.
2. No advertisement may use any combination of words, symbols, or physical materials which by their content, phraseology, shape, color, or other characteristics are so similar to combination of words, symbols, or physical materials, used by agencies of the federal government or of this state, or otherwise appear to be of such a nature that it tends to confuse or mislead prospective insureds into believing that the solicitation is in some manner connected with an agency of the municipal, state, or federal government.
3. Each advertisement must clearly disclose that it is a promotion for an insurance product, company, agent, or agency.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

45-06-04-11. Advertising file to be maintained. Each insurer shall maintain at its home or principal office a complete file containing every printed, published, or prepared advertisement of its individual policies and typical printed, published, or prepared advertisements of its blanket, franchise, and group policies hereafter disseminated in this or any other state whether or not licensed in such state, with a notation attached to each such advertisement which shall indicate the manner and extent of distribution and the form number of any policy advertised. Such file is subject to regular and periodical inspection by the insurance commissioner. All such advertisements must be maintained in said file for a period of either four years or until

the filing of the next regular report on examination of the insurer, whichever is the longer period of time.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

45-06-04-12. Violation defined as unfair trade practice. A violation of this chapter by an insurance company or agent is an unfair method of competition and an unfair or deceptive act or practice in the conduct of the business of insurance, pursuant to North Dakota Century Code section 26.1-04-03.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

CHAPTER 45-08-02 GROUP COVERAGE DISCONTINUANCE AND REPLACEMENT MODEL REGULATION

Section	
45-08-02-01	Scope
45-08-02-02	Definition
45-08-02-03	Unfair Discrimination in Group Health Insurance Coverage Transfers
45-08-02-04	Effective Date of Discontinuance for Nonpayment of Premium or Subscription Charges
45-08-02-05	Requirements for Notice of Discontinuance
45-08-02-06	Extension of Benefits
45-08-02-07	Continuance of Coverage in Situations Involving Replacement of One Carrier by Another

45-08-02-01. Scope. This chapter is applicable to all insurance policies and certificates and subscriber contracts issued or provided by an insurance company, health maintenance organization, or a nonprofit service corporation on a group or group-type basis covering persons as employees of employers or as members of unions or associations.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(7), 26.1-30-19, 26.1-33-11, 26.1-33-12, 26.1-36-22, 26.1-36-23, 26.1-36-23.1

45-08-02-02. Definition. The term "group-type basis" means a benefit plan, other than "salary budget" plans utilizing individual insurance policies, certificates, or subscriber contracts, which meets the following conditions:

1. Coverage is provided through insurance policies, certificates, or subscriber contracts to classes of employees or members defined in terms of conditions pertaining to employment or membership.
2. The coverage is not available to the general public and can be obtained and maintained only because of the covered person's membership in or connection with the particular organization or group, including bank depositor groups.
3. There are arrangements for bulk payment of premiums or subscription charges to the insurer or nonprofit service corporation.
4. There is sponsorship of the plan by the employer, union, bank, or association.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(7), 26.1-30-19, 26.1-33-11, 26.1-33-12, 26.1-36-22, 26.1-36-23, 26.1-36-23.1

45-08-02-03. Unfair discrimination in group health insurance coverage transfers. Group coverage of accident and health insurance benefits transferred from one carrier to another must guaranty transfer of coverage for all eligible persons covered under the existing group insurance program and the transfer of such coverage must be negotiated on the basis of all eligible persons being covered under the group insurance program of the new carrier, irrespective of the current state of health of such persons, provided all such persons are currently covered under the present carrier's group insurance program. Violation of this section by an insurance company or agent constitutes unfair discrimination and is a prohibited practice as defined in subsection 7 of North Dakota Century Code section 26.1-04-03.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(7), 26.1-30-19, 26.1-33-11, 26.1-33-12, 26.1-36-22, 26.1-36-23, 26.1-36-23.1

45-08-02-04. Effective date of discontinuance for nonpayment of premium or subscription charges.

1. If a policy or contract or certificate subject to these rules provides for automatic discontinuance of the coverage after a premium or subscription charge has remained unpaid through the grace period allowed for such payment, the carrier is liable for valid claims for covered losses incurred prior to the end of the grace period.

2. If the actions of the carrier after the end of the grace period indicate that it considers the coverage as continuing in force beyond the end of the grace period (such as, by continuing to recognize claims subsequently incurred), the carrier is liable for valid claims for losses beginning prior to the effective date of written notice of discontinuance to the policyholder or other entity responsible for making payments or submitting subscription charges to the carrier. The effective date of discontinuance shall not be prior to midnight at the end of the third scheduled workday after the date upon which the notice is delivered.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(7), 26.1-30-19, 26.1-33-11, 26.1-33-12, 26.1-36-22, 26.1-36-23, 26.1-36-23.1

45-08-02-05. Requirements for notice of discontinuance.

1. Any notice of discontinuance so given by the carrier must include a request to the group policyholder or other entity involved to notify employees covered under the policy or subscriber contract of the date as of which the group policy or contract will discontinue and to advise that, unless otherwise provided in the policy, certificate, or contract, the carrier shall not be liable for claims for losses incurred after such date. Such notice of discontinuance must also advise, in any instance in which the plan involves employee contributions, that if the policyholder or in any instance in which the plan involves employee contributions, that if the policyholder or other entity continues to collect contributions for the coverage beyond the date of discontinuance, the policyholder or other entity may be held solely liable for the benefits with respect to which the contributions have been collected.
2. The carrier will prepare and furnish to the policyholder or other entity at the same time a supply of a notice form to be distributed to the employees or members concerned indicating such discontinuance and the effective date thereof, and urging the employees or members to refer to their certificates or contracts in order to determine what rights, if any, are available to them upon such discontinuance.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(7), 26.1-30-19, 26.1-33-11, 26.1-33-12, 26.1-36-22, 26.1-36-23, 26.1-36-23.1

45-08-02-06. Extension of benefits.

1. Every group policy or certificate or other contract subject to these rules hereafter issued, or under which the level of benefits is hereafter altered, modified, or amended, must provide a reasonable provision for extension of benefits in the event of total disability at the date of discontinuance of the group coverage, as required by the following paragraphs of this section.
2. In the case of a group life plan which contains a disability benefit extension of any type (e.g., premium waiver extension, extended death benefit in event of total disability, or payment of income for a specified period during total disability), the discontinuance of the group policy does not operate to terminate such extension.
3. In the case of a group plan providing benefits for loss of time from work or specific indemnity during hospital confinement, discontinuance of the policy during a disability has no effect on benefits payable for that disability or confinement.
4. In the case of hospital or medical expense coverages other than dental and maternity expense, a reasonable extension of benefits or accrued liability provision is required. Such a provision will be considered "reasonable" if it provides an extension of at least twelve months under "major medical" and "comprehensive medical" type coverages, and under other types of hospital or medical expense coverages provides either an extension of at least ninety days or an accrued liability for expenses incurred during a period of disability or during a period of at least ninety days starting with a specific event which occurred while coverage was in force (e.g., an accident).
5. Any applicable extension of benefits or accrued liability must be described in any policy or contract involved as well as in group insurance certificates. The benefits payable during any period of extension or accrued liability may be subject to the policy's or contract's regular benefit limits (e.g., benefits ceasing at exhaustion of a benefit period or of maximum benefits).

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(7), 26.1-30-19, 26.1-33-11,
26.1-33-12, 26.1-36-22, 26.1-36-23, 26.1-36-23.1

45-08-02-07. Continuance of coverage in situations involving replacement of one carrier by another.

1. This section shall indicate the carrier responsible for liability in those instances in which one carrier's contract replaces a plan of similar benefits of another.
2. Liability of prior carrier. The prior carrier remains liable only to the extent of its accrued liabilities and extensions of benefits. The position of the prior carrier is the same whether the group policyholder or other entity secures replacement coverage from a new carrier, self-insures, or foregoes the provision of coverage.
3. Liability of succeeding carrier.
 - a. Each person who is eligible for coverage in accordance with the succeeding carrier's plan of benefits (in respect of classes eligible and activity at work and nonconfinement rules) is covered by that carrier's plan of benefits.
 - b. Each person not covered under the succeeding carrier's plan of benefits in accordance with subdivision a must nevertheless be covered by the succeeding carrier in accordance with the following rules if such individual was validly covered (including benefit extension) under the prior plan on the date of discontinuance. Any reference in the following rules to an individual who was or was not totally disabled is a reference to the individual's status immediately prior to the date the succeeding carrier's coverage becomes effective.
 - (1) The minimum level of benefits to be provided by the succeeding carrier shall be the applicable level of benefits of the prior carrier's plan reduced by any benefits payable by the prior plan.
 - (2) Coverage must be provided by the succeeding carrier until at least the earliest of the following dates:
 - (a) The date the individual becomes eligible under the succeeding carrier's plan as described in subdivision a.
 - (b) For each type of coverage, the date the individual's coverage would terminate in accordance with the succeeding carrier's plan provisions applicable to individual termination of coverage (e.g., at termination of employment or ceasing to be eligible dependent, as the case may be).
 - (c) In the case of an individual who was totally disabled, and in the case of a type of coverage for which section 45-08-02-06 requires an

extension of accrued liability, the end of any period of extension or accrued liability which is required of the prior carrier by section 45-08-02-06 or, if the prior carrier's policy or contract is not subject to that section, would have been required of that carrier had its policy or contract been subject to section 45-08-02-06 at the time the prior plan was discontinued and replaced by the succeeding carrier's plan.

- c. In the case of a preexisting conditions limitation included in the succeeding carrier's plan, the level of benefits applicable to preexisting conditions of persons becoming covered by the succeeding carrier's plan in accordance with this subsection during the period of time this limitation applies under the new plan shall be the lessor of:
 - (1) The benefits of the new plan determined without application of the preexisting conditions limitation; and
 - (2) The benefits of the prior plan.
- d. The succeeding carrier, in applying any deductibles or waiting periods in its plan, shall give credit for the satisfaction or partial satisfaction of the same or similar provisions under a prior plan providing similar benefits. In the case of deductible provisions, the credit shall apply for the same or overlapping benefits periods and must be given for expenses actually incurred and applied against the deductible provisions of the prior carrier's plan during the ninety days preceding the effective date of the succeeding carrier's plan but only to the extent these expenses are recognized under the terms of the succeeding carrier's plan and are subject to similar deductible provision.
- e. In any situation where a determination of the prior carrier's benefit is required by the succeeding carrier, at the succeeding carrier's request the prior carrier shall furnish a statement of the benefits available or pertinent information, sufficient to permit verification of the benefit determination or the determination itself by the succeeding carrier. For the purposes of this section, benefits of the prior plan will be determined in accordance with all of the definitions, conditions, and covered expense provisions of the prior plan rather than those of the succeeding plan. The benefit determination will be made as if coverage had not been replaced by the succeeding carrier.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(7), 26.1-30-19, 26.1-33-11,
26.1-33-12, 26.1-36-22, 26.1-36-23, 26.1-36-23.1

TITLE 48
Livestock Sanitary Board

MARCH 1988

48-02-01-06. Swine - Breeding and feeder purposes. A permit is required for all swine imported into North Dakota. Breeding All breeding swine over six months of age require must have had a negative brucellosis test within thirty days prior to entry into North Dakota unless from validated herd or state. A negative test for pseudorabies is required within thirty days prior to shipment, unless from a qualified herd. A retest is required not less than thirty nor more than sixty days after importation.

History: Amended effective June 1, 1983; March 15, 1988.

General Authority: NDCC 36-01-08 36-01-01

Law Implemented: NDCC 36-01-08, 36-01-12

48-02-01-11. Swine - Breeding and feeder purposes - Pseudorabies.

1. It is the intent of this section to implement the criteria established by the national pseudorabies control board (NPCB) for recognizing pseudorabies (PRV) low prevalence areas as a method by which a state or area could be demonstrated to have a very low prevalence of pseudorabies or no pseudorabies. This method is not an eradication program.
2. All imported swine must test negative for pseudorabies within thirty days prior to entry into North Dakota or comply with one of the following:
 - a. Be from a class A or class B state or area, or other approved classification, as designated by the national pseudorabies control board;
 - b. Be from a qualified pseudorabies negative herd; or

- c. Be from a feeder swine pseudorabies monitored herd as designated by the national pseudorabies control board.
3. All swine for breeding or feeder purposes in North Dakota or imported into North Dakota must be individually identified by official ear tag or other identification approved by the state veterinarian.
 4. A pseudorabies vaccination for all swine is prohibited except with written approval of the state veterinarian.
 5. All breeding and feeder swine of unknown status must be quarantined until their pseudorabies status is determined by isolation and a pseudorabies test, at the owner's expense, as well as a retest in thirty to sixty days at the owner's expense, or such swine must be shipped direct to slaughter.
 6. A pseudorabies infected swine herd, as determined by a livestock sanitary board approved test, must be quarantined and isolated from other susceptible animals on the farm, or other premises where the infected herd is located. All reactor animals must be slaughtered. Then, the infected herd must be retested and receive two negative tests, the tests at least thirty days apart, with the first test occurring not sooner than thirty days after the last reactor animal is removed from the herd. Nursing piglets need not be tested. As an alternative to retest, the entire infected herd may be sent directly to slaughter. The quarantine will be lifted only after the retests required pursuant to this subsection have occurred, or the entire infected herd has been shipped directly to slaughter. Before the quarantine is lifted, the premises of the infected herd must be cleaned and disinfected as approved by the state veterinarian or his assistant, or other agent of the livestock sanitary board.
 7. All slaughter sows and boars must receive pseudorabies testing at the first point of sale in North Dakota, if a mandatory pseudorabies testing program is instituted by the livestock sanitary board. The livestock sanitary board may, pursuant to this section, by board action, at any time, institute a mandatory pseudorabies testing program in North Dakota.
 8. All swine in North Dakota or imported into North Dakota being used for exhibition purposes must meet the same requirements of this chapter as for breeding swine.
 9. Disposal of carcasses of swine dying from pseudorabies must be by a method approved by the state veterinarian.

History: Effective March 15, 1988.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08, 36-01-12

STAFF COMMENT: Chapter 48-04-02 contains all new material but is not underscored so as to improve readability.

**CHAPTER 48-04-02
PARATUBERCULOSIS (JOHNE'S DISEASE)**

Section

48-04-02-01 Exception to Notice Requirements Upon Sale or Gift
48-04-02-02 Procedure Required Upon Paratuberculosis Diagnosis

48-04-02-01. Exception to notice requirements upon sale or gift.

When cattle have been positively diagnosed as being infected with paratuberculosis (Johne's disease), by a test recognized and approved by the state veterinarian, and the diagnosis is known to the owner, agent, or other person having charge of the infected animal, the provisions of North Dakota Century Code section 36-14-01 do not apply, if the owner, agent, or other person having charge of the infected animals complies with the provisions of section 48-04-02-02.

History: Effective March 1, 1988.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-12, 36-14-01

48-04-02-02. Procedure required upon paratuberculosis diagnosis.

Upon positive diagnosis of paratuberculosis as required in section 48-04-02-01, the owner, agent, or other person having charge of any animal so infected, shall proceed as follows:

1. The infected animal must be identified, isolated, and sent to slaughter within fifteen days from the time of paratuberculosis diagnosis.
2. For the remainder of the herd of which the infected animal was a part, the owner, agent, or other person having charge of the herd shall submit all of the animals of the herd over two years of age to a paratuberculosis test recognized and approved by the state veterinarian. If any animals from the remainder of the herd are diagnosed positive, they must be identified, isolated, and sent to slaughter. Animals diagnosed as negative require no further testing. Any animals diagnosed in the suspect range, upon which a final determination cannot be made, require no further testing, but the owner, agent, or other person having charge of the herd may request a second test. If a second paratuberculosis test is administered, any animals diagnosed positive must be identified, isolated, and sent to slaughter, and any animals diagnosed as negative require no further testing. After removal of all animals tested and diagnosed positive from the herd pursuant to an approved test procedure, the status of the remainder of the herd will be unaffected, and there shall be

no requirement, upon sale or gift, that due notice of paratuberculosis or suspicion of paratuberculosis be given to any person.

History: Effective March 1, 1988.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-12, 36-14-01

48-02-02-03. Swine. Swine have the same requirements as ~~imports for other purposes, except no permit is required.~~
Repealed effective March 1, 1988.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08

TITLE 52
Motor Vehicle Department

MARCH 1988

STAFF COMMENT: Chapter 52-07-01 contains all new material but is not underscored so as to improve readability.

ARTICLE 52-07

OBTAINING CERTIFICATE OF TITLE FOR UNTITLED VEHICLES

Chapter
52-07-01 General Considerations and Requirements

CHAPTER 52-07-01
GENERAL CONSIDERATIONS AND REQUIREMENTS

Section
52-07-01-01 Procedure

52-07-01-01. Procedure. If a North Dakota resident owns a vehicle for which the resident is unable to obtain a proper certificate of title, the motor vehicle department will use the following forms and procedures to determine ownership of a vehicle and issue a certificate of title:

1. A check of the records of the North Dakota motor vehicle department, as well as the records of other appropriate states, will be conducted to determine if a certificate of title has previously been issued.

2. If no record of a previous certificate of title is found, the department will issue a North Dakota certificate of title to the applicant upon receipt of:
 - a. A notarized bill of sale.
 - b. A statement of facts from the applicant (Form MVD-139).
 - c. An inspection of the vehicle by the North Dakota highway patrol (Form MVD-128).
 - d. Appropriate title fee, license fees, and motor vehicle excise tax.
3. In all cases where there is no record of a previous title, the department will check the national crime information center (NCIC) computer to determine that the vehicle is not listed as a stolen vehicle.
4. If a record of a previous certificate of title is found, the department will advise the applicant of the name and address of the last owner of the vehicle but will take no further action to issue a certificate of title. The applicant must obtain the certificate of title from the last owner or obtain an order of the court awarding ownership to the applicant.

History: Effective March 1, 1988.

General Authority: NDCC 39-05-20(1)

Law Implemented: NDCC 39-05-20(1)

TITLE 56
Optometry, Board of

DECEMBER 1987

56-01-01-01. Organization of board of optometry.

1. **History and function.** The 1903 legislative assembly passed legislation regulating the practice of optometry, codified as North Dakota Century Code chapter 43-13. This chapter establishes a ~~five-member~~ seven-member board of optometry appointed by the governor. The board regulates the profession of optometry in the state.
2. **Board membership.** The board consists of ~~five~~ seven members appointed by the governor. ~~All~~ Five members are resident registered optometrists and have established optometric practices in the state. Members of the board serve five-year terms, ~~and not more than one term expires each year.~~
3. **Secretary.** The secretary is a member of the board elected as secretary of the board. The secretary maintains records of board proceedings and is responsible for administration of the board's activities.

4. **Inquiries.** Inquiries regarding the board may be addressed to the secretary:

Mr. A. L. Larson, O.D.
Secretary
State Board of Optometry
104 Third Avenue North West
Mandan, North Dakota 58554

Harlan Geiger, O.D.
Secretary
State Board of Optometry
220 Broadway
Fargo, North Dakota 58102

History: Amended effective December 1, 1987.
General Authority: NDCC 28-32-02.1, 43-13-13
Law Implemented: NDCC 28-32-02.1

56-02-01-01. **Definition of class A optometry school or college.** A class A optometry school or college is any optometry school or college accredited by the council on optometric education of the American optometric association, ~~inc.~~ Requirements for certification. The board shall provide application forms and set the date, time, place, and content of each examination for an initial certificate of registration. Such national tests and standards as are deemed reasonably necessary and uniformly applied by the board may be required by the board to determine a candidate's fitness under the law and this title for such certificate.

History: Amended effective December 1, 1987.
General Authority: NDCC 43-13-13
Law Implemented: NDCC 43-13-17

56-02-01-02. **Examination questions concerning optometric jurisprudence.** The board shall refuse to admit an applicant to its examination for certificate of registration unless and until the applicant shall have answered in the affirmative each of the following questions pertaining to optometric jurisprudence, and shall have satisfied the board of the applicant's honesty and good faith in so answering the questions:

1. Do you consider optometry a profession?
2. Would you sacrifice profit for the benefit of your patient?
3. Will you cooperate with practitioners of other professions in your work as an optometrist?
4. Will you continue as a student and take advantage of all educational opportunities to the best of your ability?

5. Will you endeavor to raise the standard of optometry and assist in every way possible to create a better understanding among fellow optometrists, professionally, educationally and ethically?
6. Do you realize that you cannot be employed as a practicing optometrist by a firm, corporation, partnership or individual who is not a registered optometrist or physician or as an employee of a professional corporation rendering the service of optometry or medical services, without violating the North Dakota optometry law?
7. Would you consult a fellow optometrist in the interest of your patient's welfare?
8. Will you familiarize yourself with the North Dakota optometry law and the rulings of the board, abide by the same, and assist the board and other officers in enforcement of the law?

History: Amended effective December 1, 1987.

General Authority: NDCC 43-13-13

Law Implemented: NDCC ~~43-13-17~~ 43-13-22, 43-13-28

56-02-01-04. Address notification required of each optometric office. ~~Licensed~~ Registered optometrists shall at all times keep the secretary of the North Dakota state board of optometry informed of ~~their~~ the correct street addresses of each of their offices and their correct mailing addresses. This is necessary for mailing purposes.

History: Amended effective December 1, 1987.

General Authority: NDCC 43-13-13

Law Implemented: NDCC 43-13-11, 43-13-23

56-02-01-06. Optometrist compliance verification. The board may require any licensed optometrist to submit written answers to questions regarding the optometrist's compliance with title 56 or North Dakota Century Code chapter 43-13. The board may require that such answers be given under oath.

History: Effective December 1, 1987.

General Authority: NDCC 43-13-13

Law Implemented: NDCC 43-13-14, 43-13-22

56-02-02-01. Postgraduate educational requirements. Effective January 17, 1974 As a condition of the annual renewal of the certificate of registration to practice optometry, every resident registered optometrist who is not retired from the practice of optometry shall have attended up to eighteen clock hours of approved study sessions during the three-year period preceding the

date of renewal the maximum number of classroom hours of optometric educational programs permitted to be required by North Dakota Century Code section 43-13-20, hereinafter called educational requirements, within the preceding three-year period, and shall have to attend up to eighteen clock hours of educational requirements every three years thereafter as a prerequisite to renewal of the optometric license permitting the optometrist to continue to practice optometry in North Dakota.

History: Amended effective December 1, 1987.

General Authority: NDCC ~~43-13-20~~ 43-13-13

Law Implemented: NDCC 43-13-20

56-02-02-02. Compliance with educational requirements. The required number of hours of educational requirements may be obtained by one or more of the following methods:

1. Educational programs and clinics sponsored by the North Dakota optometric association which programs and clinics would not require membership in the association as a prerequisite for attendance.
2. Postgraduate study sessions, seminars, or classroom study at schools or colleges of optometry which are accredited by the council on optometric education of the American optometric association.
3. Other educational programs, clinics, seminars, meetings, or study sessions without or within North Dakota that may be approved by the state board of optometry. A request for approval for a particular educational program, clinic, seminar, meeting, or study session must be made to the board at least thirty days prior to the educational meeting and the board shall either grant or deny its approval of such educational meeting within a reasonable period of time in advance of such educational meeting.
4. In situations of extenuating circumstances and upon receipt by the board of satisfactory evidence of such circumstances, the board may approve specific home study educational material for part of all of such educational requirements.
- 5- Group study programs approved by the board in accordance with the following:
 - a- Application to establish and approve a group study program must be filed with the secretary of the board by March thirty-first of each year.

b. Each group must apply to and be approved by the board for each year on appropriate forms to be obtained from the secretary of the board.

e. Failure of a group to apply to and be approved by the board for any year shall render attendance at such group study programs invalid for purposes of meeting the educational requirements.

d. No group will be approved nor will attendance at group study programs meet the educational requirements unless the following requirements are met:

(1) A minimum of five licensed optometrists must be members of such group.

(2) Each group must conduct not less than three group study programs, sessions, or meetings during each year.

(3) Each group study program, session or meeting shall not be less than two clock hours in duration and only two clock hours of credit shall be given, unless the prior written approval of the board has been granted.

History: Amended effective December 1, 1987.

General Authority: NDCC 43-13-20

Law Implemented: NDCC 43-13-20

56-02-02-03. Notification by secretary of the board. m1cb]x The secretary of the board shall give written notice to all licensed optometrists who are residents who are not retired, by May first of each year, of approved group study programs giving the name of the person in each approved group that should be contacted for information concerning the dates, locations, and subject matters of the various group study programs. The secretary shall also notify all such optometrists of other regular educational meetings which meet the educational requirements on May first of each year.

General Authority: NDCC 43-13-20

Law Implemented: NDCC 43-13-20

Repealed effective December 1, 1987.

56-02-02-04. Certificate of compliance. The Upon request, the secretary shall furnish all optometrists with certification forms. The forms must be filed with the secretary within fourteen days after any

group study program or educational program, which ~~met~~ meets the educational requirement requirements, and must be filled out by the secretary or chairman of the organization sponsoring such group study program, or educational meeting program, the dean of an accredited school or college of optometry, or by a person acceptable by to the board, in order that attendance will comply with the educational requirement requirements.

History: Amended effective December 1, 1987.

General Authority: NDCC 43-13-20

Law Implemented: NDCC 43-13-20

56-02-02-05. Secretary to keep records of compliance. The secretary, or the secretary's designee, shall keep accurate records of the number of clock classroom hours which such licensed registered optometrists have credited toward meeting the educational requirement and the secretary shall notify each such licensed optometrist who is at least six hours short of the educational requirement, the number of hours which the optometrist has yet to receive to meet the educational requirements of this chapter, and of North Dakota Century Code section 43-13-20 for the remainder of the three-year period, at least six months prior to the end of the three-year period requirements. At least six months prior to the end of any applicable registration period, the secretary shall give notice, by certified mail, to any registered optometrist who is six or more hours short of meeting the educational requirements for the three-year period ending on the date of renewal. Such notice must advise the registered optometrist of the number of hours of optometric educational programs which must be completed within the balance of the three-year period in order to comply with this section and North Dakota Century Code section 43-13-20.

History: Amended effective December 1, 1987.

General Authority: NDCC ~~43-13-20~~ 43-13-13

Law Implemented: NDCC 43-13-20

56-02-03-02. Code of ethics. Unethical conduct is conduct contrary to the ethics of the optometric profession as hereinafter set forth. The following code of ethics is adopted as a standard by the board of optometry: It shall be the ideal, the resolve, and the duty of all holders of certificates of registration to practice optometry in North Dakota to:

1. Keep the visual welfare of the patient uppermost at all times.
2. Keep inviolate all confidences committed to the optometrist in the optometrist's professional relationship with the patient.
3. Support organized optometry in its efforts to advance and promote the highest ideals of professional service.

4. Refrain from any exaggeration of a patient's condition.
5. Keep informed as to developments in the profession and to contribute the optometrist's share to the general knowledge and advancement of the profession by all means within the optometrist's power.
6. Refrain from all criticism reflecting upon the skill of a colleague.
7. Refuse to be employed, except as an associate of a registered optometrist or physician.
8. Refrain from advertising, except as hereinafter permitted: employing fraud, deceit, misrepresentation, or fraudulent advertising in the practice of optometry.

a. Printed professional advertising shall consist of and be limited to one professional card per issue of a newspaper, setting forth nothing more than the name, title, address, telephone numbers, and office hours of the optometrist, with the advertisement limited to a maximum size of one column, one inch {2.54 centimeters} in height per individual name, and a maximum size of one column, two inches {5.08 centimeters} in height for a combination of two names of associated optometrists, and a maximum size of one column, two and one-half inches {6.35 centimeters} in height for any combination of more than two names of associated optometrists. The professional card shall not be included in general local news columns or want ad columns, but shall be included in the regular newspaper panel of professional cards.

A new registrant opening a new office shall be permitted to use a newspaper announcement card located elsewhere than in a regular professional panel, not to exceed two columns, two inches {5.08 centimeters} in height for a period of not over two months immediately following the opening of his office, with the content and wording to be prescribed by the board. Old registrants when announcing a change of location or professional association shall be permitted to use the same size and style of announcement with the content prescribed by the board for a period of one month following the change.

An optometrist shall be allowed to insert two newspaper announcements in accordance with the foregoing for the benefit of the optometrist's

patients, concerning any major changes affecting the optometrist's regular established office hours. This insertion may be printed in the same form and size as that prescribed for regular opening announcement cards, which may not exceed two columns, two inches {5.08 centimeters}.

All mailed announcement cards, letters, or other literature of new or old registrants must follow the form prescribed by the board as to makeup and manner of use. Unapproved methods of all forms are prohibited.

No optometrist shall allow the optometrist's name or professional title to be used by any person or persons in any type of advertising employed by that person or persons to publicize that person's own particular field of business. For example: congratulatory or "thank you" ads, which are sometimes employed by contractors, suppliers, or other businessmen following construction, remodeling, or furnishing of an optometric office, or any other advertising of this nature.

It shall be permissible for any optometrist changing the optometrist's location of practice to post a dignified notice in such a position at the optometrist's old location that it will most advantageously serve to inform the optometrist's patients of his new location. This notice shall contain only the optometrist's name, profession, and site of new location in letters not to exceed two inches {5.08 centimeters} in height and may be used for a period not exceeding two months. No person licensed to practice as an optometrist may:

- (1) Seek to obtain patients by advertising or other forms of solicitation in a manner that is false, fraudulent, deceitful, misleading, or deceptive.
- (2) On behalf of himself, a partner, associate, association, corporation, organization, group, individual, or any other optometrist affiliated with him, use or participate, directly or indirectly, in a false, fraudulent, deceitful, misleading, or deceptive statement or claim.

b. No optometrist shall display any external office sign containing other than the optometrist's name and professional title. The sign shall be

used only on office windows or at the entrance to the optometrist's office.

A maximum of two such external office signs may be used on ground level locations. In the case of an upstairs location a maximum of four may be used, two at street level and two at office level. One separate sign listing office hours only is also permissible.

These signs shall not be luminous or illuminated and the letters must not be more than four inches {10.16 centimeters} in height for all street level locations nor more than seven inches {17.78 centimeters} in height for external office windows above the street level. Letters for external office signs on corridor doors shall not exceed two inches {5.08 centimeters} in height.

Any sign consisting of a single unit, projecting from the office entrance at right angles, shall be considered as only one sign even though lettered on both sides. Lawn signs properly used in conjunction with residential practices may be considered in the same category. No person licensed to practice as an optometrist may, directly or indirectly, make any false, fraudulent, deceitful, misleading, or deceptive statements to any person or the public which:

- (1) Create false, fraudulent, misleading, deceptive, or unjustified expectations of favorable results.
- (2) Make comparisons with other optometrists which are false, fraudulent, deceitful, misleading, or deceptive.
- (3) Contain representations that would be likely to cause a reasonable person to misunderstand or be deceived.

c. No public advertising by printed matter, radio, window display, waiting room or office display, road signs, clock signs, handbills, posters, circulars, periodicals, novelties, favors, nor advertising containing quotation of or prices or discount on or any specific amount of payment for eyeglasses, spectacles or accessories thereto, ophthalmic lenses, mountings, frames, pictures, or the phrases "free examination", "moderate prices", "low prices", "guaranteed glasses", "satisfaction guaranteed", or any variations thereof, or words of similar import

shall be used. Telephone directory advertising cards or cards in any other medium except regular newspapers shall not be used. Bold faced type in classified directory listing shall not be used.

Use of any other type or form of public advertising, display, or representation, using window displays or public exhibitions which contain or show optical materials, frames, mountings, lenses, optical instruments, optical sundries, goggles or accessories or pictures thereof, are prohibited. Radio programs, theater short subjects, or similar instrumentalities may only be used where an association or professional group are sponsoring the same as an educational project and the same has first been submitted to and approved by the board, and all public or institutional visual educational or professional programs may be entered into only after such program has been reviewed and approved by the board. Any public statement or advertisement concerning ophthalmic services or materials, including, but not limited to, lenses, frames, spectacles, contact lenses, or parts thereof, must include the following explanation, warnings, or disclaimers.

- (1) Any advertisement of prescription spectacles or contact lenses is required to contain language to the effect that an eye doctor's prescription is required for the purchase of such prescription spectacles or contact lenses.
- (2) Any price advertisement of prescription spectacles or contact lenses is required to contain the following information or be subject to the following conditions.
 - (a) A statement of whether or not the cost of an examination by an eye doctor is included in the price.
 - (b) If any advertised goods are to be available to the public at the advertised price, the advertisement must state the time limitation on the offer.
 - (c) The total quantity available under any advertisement shall be the amount reasonably anticipated to meet the anticipated market demand therefor unless "rainchecks" are given and filled within a reasonable time. If limited

quantities are available, the advertisement must so state and give the number available whenever reasonably possible.

(d) Any statement or advertisement which offers a discount on the price of ophthalmic materials or services (collectively "items") must specify the regular price of the materials or services if the total discounted items included in such statement or advertisement are five or less. For any such materials or services so advertised the regular price must be conspicuously posted at the location where such materials and services are available for purchase and made available by telephone or other reasonable inquiry. If the total discounted items exceed five and the regular price is not so specified, then the statement or advertisement must include the statement that the "regular price is available upon request".

(e) Any statement or advertisement which involves professional services shall be deemed to include the usual and customary services. If such services are not included then it must be disclosed what services are included in the price quoted and specifically whether the price includes professional examination and prescription and whether additional charges may be made for related or subsequent services required in individual cases.

(f) When contact lenses are advertised, a statement must be included giving the brand name, whether the price or discounted price includes an eye examination and all required accessories and, if not, what the examination, fitting, and followup care is, consists of, and what accessories are included in the advertised price.

d. Any statement or advertisement which purports to provide a "guaranteed cure" of any condition as a result of ophthalmic services or materials is false and misleading. This provision is not to be construed as prohibiting the advertising and giving of refunds to dissatisfied customers.

e. Any statement or advertisement which makes unsubstantiated claims comparing prices or quality of services or materials, or both, such as "best examination", or "lowest prices" as an inducement shall be presumed to be misleading. All offers of "free" merchandise or service must be made with extreme care so as to avoid any

possibility that consumers will be misled or deceived. When making "free" or similar offers, all the terms, conditions, and obligations upon which receipt and retention of the "free" item are contingent must be set forth clearly and conspicuously at the outset of the offer so as to leave no reasonable probability that the terms of the offer might be misunderstood. If an offer is introductory:

- (1) No "free" offer should be made in connection with the introduction of a new product or service offered for sale at a specified price unless the offerer expects, in good faith, to discontinue the offer after a limited time and to commence selling the product or service promoted, separately, at the same price at which it was promoted with the "free" offer; and
- (2) In such offers, no representation may be made that the price is for one item and that the other is "free" unless the offerer expects, in good faith, to discontinue the offer after a limited time and to commence selling the product or service promoted, separately, at the same price at which it was promoted with a "free" offer.

- f. Any optometrist who practices optometry under, or uses in connection with the practice of optometry as allowed by law and these regulations, any assumed name, corporate name, partnership name, trade name, or any name other than the name under which the optometrist is certified and licensed to practice optometry in North Dakota shall file an affidavit with the secretary of the North Dakota state board of optometry on forms provided by it stating such name and the individual names of optometrists practicing under such name; provided, however, that optometrists may practice under the name of a properly certified and registered professional corporation and that optometrists practicing as partners may practice under the full or last names of the partners. Optometrists who are employed by other licensed resident optometrists shall practice in their own names, but may practice in an office listed under the name of the individual optometrists or partnership of optometrist or professional corporation by whom they are employed. No optometrists may practice under any name that falsely, fraudulently, deceitfully, misleadingly, or deceptively portrays the services rendered or goods sold under such name.
- g. Copies (photocopies, tape recordings, video tapes, or other original or accurate reproductions) of all advertising disseminated by or on behalf of an optometrist in this state must be kept as a part of the business

records of such optometrist for one year from the date of such advertising.

History: Amended effective December 1, 1987.

General Authority: NDCC 43-13-13

Law Implemented: NDCC ~~43-13-13~~ 43-13-22(6)

56-02-04-01. Minimum equipment requirements. The minimum requirements of office equipment and accessories for optometrists, all of which shall be maintained in good working condition and shall be used in the minimum examination, shall include the following:

- 1- Ophthalmoscope-
- 2- Retinoscope-
- 3- Refractor or Phoropter-
- 4- Vertometer or lensometer-
- 5- Trial frame and trial case-
- 6- Perimeter or tangent screen-
- 7- Biomicroscope-
- 8- Tonometer-
- 9- Ophthalmometer-
- 10- Visual skills testing equipment-
- 11- Contact lens diameter gauge- *
- 12- Contact lens magnifying gauge- *
- 13- Cobalt or black light- *
- 14- Necessary radius charts and thickness charts for contact lenses- *

* For those offices where contact lenses are prescribed, at each location where examinations are conducted, shall be those customarily used and available according to the prevailing standards of the profession in the state of North Dakota.

History: Amended effective December 1, 1987.

General Authority: NDCC 43-13-13

Law Implemented: NDCC ~~43-13-13~~ 43-13-22

56-02-04-03. Minimum prescription and fee standards.

1. North Dakota optometrists shall make available to their patients a copy of their spectacle (not contact lenses) prescription upon request.
2. ~~No~~ Every licensed optometrist shall ~~charge a~~ make available to the patient a fee calculated on any basis other than a fee for the professional services rendered, to which shall be added the laboratory cost of the ophthalmic materials used and these two separate amounts shall, upon request, be made available to the patient information showing how the fee was calculated, including the amount charged for professional services rendered and for the laboratory cost of the ophthalmic materials used.

History: Amended effective December 1, 1987.

General Authority: NDCC 43-13-13

Law Implemented: NDCC ~~43-13-13~~ 43-13-22

STAFF COMMENT: Chapters 56-02-05 and 56-02-06 contain all new material but are not underscored so as to improve readability.

**CHAPTER 56-02-05
PHARMACEUTICAL AGENTS - CERTIFICATION**

Section

56-02-05-01	Authority to Administer Pharmaceutical Agents
56-02-05-02	Examination and Course Requirements
56-02-05-03	Therapeutic Pharmaceutical Agents Examination Requirement
56-02-05-04	Prior Classroom and Clinical Experience
56-02-05-05	Oral or Written Examination or Both
56-02-05-06	Continuing Education Requirements
56-02-05-07	Fees

56-02-05-01. Authority to administer pharmaceutical agents. The board may authorize persons engaging in the practice of optometry to administer pharmaceutical agents. In issuing an original or renewal certificate of registration, the board shall provide appropriate identification to be affixed in a prominent place on the certificate of registration indicating whether the registered person has been certified to prescribe and use diagnostic or therapeutic pharmaceutical agents, or both.

History: Effective December 1, 1987.

General Authority: NDCC 43-13-13

Law Implemented: NDCC 43-13-13.2

56-02-05-02. Examination and course requirements. Only those optometrists who have duly applied to the board and satisfactorily passed an examination and completed courses prescribed by the board, including courses in general and ocular pharmacology, cardiopulmonary resuscitation, and first aid for adverse reactions, shall be permitted the use of diagnostic pharmaceutical agents. No course or courses in pharmacology may be approved by the board unless taught by an institution having the capability for both the didactic and clinical instruction in pharmacology, the institution is accredited by a regional or professional accrediting organization or the United States department of education, and unless transcript credit for the course or courses is certified to the board by the institution as being equivalent in both hours and content to those courses in pharmacology required of health professional students graduating after June 1972.

History: Effective December 1, 1987.

General Authority: NDCC 43-13-13

Law Implemented: NDCC 43-13-13.2

56-02-05-03. Therapeutic pharmaceutical agents examination requirement. In addition to section 56-02-05-02, an applicant for certification to use therapeutic pharmaceutical agents shall be required to pass the "treatment and management of ocular disease" section of the optometrist examination approved by the international association of boards of examination in optometry, inc., and the national board of optometry exam in ocular therapy, or such other substituted courses as the board may approve.

History: Effective December 1, 1987.

General Authority: NDCC 43-13-13

Law Implemented: NDCC 43-13-13.2

56-02-05-04. Prior classroom and clinical experience. For the purpose of fulfilling the minimum educational statutory requirements for certification to prescribe and administer pharmaceutical agents, the board may approve prior classroom and clinical experience hours dealing with diagnosis, treatment, and management of ocular diseases. Clinical experience must be hours in the office or clinic of a licensed ophthalmologist or an optometrist certified to prescribe and administer diagnostic and therapeutic pharmaceutical agents in North Dakota.

History: Effective December 1, 1987.

General Authority: NDCC 43-13-13

Law Implemented: NDCC 43-13-13.2

56-02-05-05. Oral or written examination or both. The board may require an examination for administering or prescribing pharmaceutical agents which may be either written or oral, or both, and cover subjects in general pharmacology, ocular pharmacology, and ocular pharmacology applied to relevant clinical procedures.

History: Effective December 1, 1987.
General Authority: NDCC 43-13-13
Law Implemented: NDCC 43-13-13.2

56-02-05-06. Continuing education requirements. For those optometrists who are certified in the use of pharmaceutical agents, one-half of the total hours of continuing education required by this title shall have emphasis in the treatment and management of diseases of the eye and its adnexa.

History: Effective December 1, 1987.
General Authority: NDCC 43-13-13
Law Implemented: NDCC 43-13-13.2

56-02-05-07. Fees. Persons desiring to be certified to administer or prescribe pharmaceutical agents shall pay an additional fee of fifty dollars upon application for certification and an additional thirty-five dollars upon issuance of certification.

History: Effective December 1, 1987.
General Authority: NDCC 43-13-13
Law Implemented: NDCC 43-13-13.2

CHAPTER 56-02-06 DISCIPLINARY ACTION - PROCEDURE

Section	
56-02-06-01	Disciplinary Action
56-02-06-02	Disciplinary Procedure
56-02-06-03	Appeals

56-02-06-01. Disciplinary action. The board may revoke or suspend any certificate of registration or certification granted by it under the provisions of North Dakota Century Code chapter 43-13 or issue a letter of private or public reprimand when it appears to the satisfaction of the majority of the members of the board that the holder of this certificate has violated any provisions of title 56 or North Dakota Century Code chapter 43-13.

History: Effective December 1, 1987.
General Authority: NDCC 43-13-13
Law Implemented: NDCC 43-13-22, 43-13-23, 43-13-24, 43-13-25, 43-13-26

56-02-06-02. Disciplinary procedure. Before taking any disciplinary action under section 56-02-06-01, the board shall follow

the procedures set forth in North Dakota Century Code sections 43-13-23 through 43-13-25.

History: Effective December 1, 1987.

General Authority: NDCC 43-13-13

Law Implemented: NDCC 43-13-22, 43-13-23, 43-13-24, 43-13-25, 43-13-26

56-02-06-03. Appeals. Any revocation of a certificate of registration to practice optometry may be appealed as provided in North Dakota Century Code section 43-13-26.

History: Effective December 1, 1987.

General Authority: NDCC 43-13-13

Law Implemented: NDCC 43-13-22, 43-13-23, 43-13-24, 43-13-25, 43-13-26

TITLE 62
Plumbing, Board of

JANUARY 1988

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 - one hundred sixty 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.

5. Limitation of lead content. Pipe and fittings used in the potable water supply system may not contain more than eight percent lead.

History: Effective July 1, 1985; amended effective January 1, 1988.

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.~~ Joints for potable water used in copper, brass, or wrought copper fittings must be made with a solder containing not more than 0.2 percent lead. Soldered joints shall not be used for tube installed underground.
5. **Flared.** Every flared joint for annealed-temper copper water tube shall be made with fittings meeting approved standards. The tube shall be reamed and then expanded with a proper flaring tool.
6. **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 alkalis.

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 elastomeric gaskets, metal clamps and screws of corrosion-resistant materials, approved insert fittings or threaded joints according to approved standards. The commingling of acrylonitrile-butadiene-styrene and 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 Fahrenheit [4.4 degrees Celsius] or more than ninety degrees Fahrenheit [32.22 degrees Celsius].

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; January 1, 1988.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

TITLE 67

Public Instruction, Superintendent of

MARCH 1988

67-02-05-04. Middle school endorsement for grades five through eight.

1. Single subject middle school endorsement. This endorsement is available for a secondary teacher certified in mathematics, science, or social studies who completes (or shows evidence of having completed) a minimum of eight semester credits which includes:

a. Adolescent development.

b. Learning theory/educational psychology.

c. Foundations of middle school.

d. Reading in the content areas.

e. Special methods (elementary or middle) in the content area.

A secondary teacher certified in English must complete the above plus an additional eight semester credits in reading/language arts coursework at the elementary/middle level.

2. Broad field middle school endorsement. This endorsement is available to a certified elementary or secondary teacher upon completion of a college approved middle school teacher preparation program that includes professional education, subject area preparation, and student teaching.

History: Effective March 1, 1988.

General Authority: NDCC 15-36-01, 28-32-02

Law Implemented: NDCC 15-36-01

TITLE 69
Public Service Commission

JANUARY 1988

69-09-02-35. Installation and maintenance - Conformance to National Electrical Safety Code. The installation and maintenance of electric supply and communication lines shall conform to rules and regulations established in the ~~1984~~ 1987 edition of the National Electrical Safety Code, issued ~~July 15, 1983~~ August 1, 1986, which is adopted by reference.

History: Amended effective September 1, 1984; January 1, 1988.

General Authority: NDCC 49-02-04

Law Implemented: NDCC 49-02-04, 49-20-02

69-09-03-01. Safety. Gas pipeline facilities used for the intrastate distribution and transmission of gas shall be designed, constructed, and operated to meet the safety standards ~~as~~ set forth in ~~the current~~ regulations adopted by of the United States department of transportation adopted in section 69-09-03-02. The commission may require such proof of compliance as it deems necessary.

History: Amended effective July 1, 1986; January 1, 1988.

General Authority: NDCC 28-32-02, 49-02-04

Law Implemented: NDCC 49-02-01.2, 49-02-04

69-09-03-02. Adoption of regulations. The following parts of Title 49, Code of Federal Regulations in effect as of October 1, 1987, are adopted by reference:

1. Part 190 - Department of Transportation Pipeline Safety Enforcement Procedures.
2. Part 191 - Department of Transportation Regulations for Transportation of Natural Gas by Pipeline; Reports of Leaks.

3. Part 192 - Transportation of Natural and Other Gas
by Pipeline: Minimum Safety Standards.

History: Effective June 1, 1984; amended effective July 1, 1986;
January 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-01.2

CHAPTER 69-09-06

PROHIBITION ON SALE AND DIRECT INDUSTRIAL USE OF NATURAL GAS FOR OUTDOOR LIGHTING

[Repealed effective January 1, 1988]

TITLE 70
Real Estate Commission

JANUARY 1988

70-02-03-15. Agency disclosure required. In all real estate transactions the licensee is the agent of the seller unless all parties otherwise agree in writing. The agency relationship must be disclosed in writing to the parties before the signing of a written contractual agreement. The disclosure language must state at least the following information in substantially this form:

"I -----, a real estate licensee, stipulate that I am representing the ----- (Buyer/Seller) in this transaction.

Licensee"

Each licensee in the transaction shall make such a disclosure.

History: Effective January 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-23-11.1(1)(d)

TITLE 74
Seed Commission

DECEMBER 1987

74-04-01-01. Definitions. As used in this chapter:

1. "Basic seed" means seed potatoes produced by means of meristem, stem cutting, or other techniques for increase by certified growers.
2. "Certification" is strictly limited to the act of endorsing that the potatoes have met the standards or requirements specified in this chapter for seed potatoes. Certification does not mean or constitute any warranty that the potatoes are merchantable, disease free, fit for a particular purpose or anything other than that the potato crop was inspected and that at the time of inspection did meet the standards set forth in this chapter.
3. "Damaged by ~~dirty~~ soil" means that the individual potato has more than fifty percent of its surface affected by light caked ~~dirty~~ soil, or more than fifteen percent of its surface badly caked with ~~dirty~~ soil.
4. "Dry land type", as allowed for long varieties only, means not seriously misshapen.
5. "Except for shape", as allowed for long varieties only, means the potatoes may be seriously misshapen.
6. "Grade" refers to the tuber quality, condition, and size factors as specified in this chapter.
7. "Inspection" means visual examination or observation of sample plants or tubers.
8. "Latent diseases" means diseases not detectable by visual inspection.

9. "Lightly caked with ~~dire~~ soil" means approximately one-eighth of an inch [3.18 millimeters] in depth.
10. "Seed potatoes" means Irish potato tubers to be used for planting.
11. "Seriously damaged by ~~dire~~ soil" means a potato having caked soil on more than one-half of the surface or an equivalent amount of soil in excessively thick chunks on a lesser area.
12. "Tag" refers to the state seed department's official certification tag used to identify certified seed.
13. "Tolerance" means a permissible allowance for such factors as disease, grade defects, and varietal mixture.
14. "Virus tested" means tested for latent viruses by methods established by the state seed department.
15. "Zero tolerance" means that no amount is permissible. It does not mean that the seed is absolutely free of a disease or disease causing agent, grade defect, or varietal mixture, but that none was found during inspection.

History: Amended effective December 1, 1981; December 1, 1987.

General Authority: NDCC 4-10-03

Law Implemented: NDCC 4-10-04

74-04-01-04. Application fees and restrictions.

1. Application for field inspection must be received in the state seed department, university station, Fargo, North Dakota, not later than June ~~twentieth~~ fifteenth. There is a twenty-five cent per acre [.40 hectare] cash penalty for later applications.
2. At least one-half the fees and all due accounts must accompany the applications.
3. Applications are subject to cancellation in the case of crop failure or other valid reason and the application fee, minus twenty-five dollars will be returned if the request reaches the state seed department before the inspector arrives in the general locality of the field. However, in such a case, the crop must be plowed under or destroyed so as not to create a possible disease hazard.
4. Separate application forms are required for latent virus testing.

5. Loss by drown outs, if over twenty-five percent of the field, will be allowed after the first inspection only. No adjustments will be made thereafter.
6. Fees, which are subject to change, are:
 - a. Field inspection, ten dollars per acre [.40 hectare] including tags and bulk fees; minimum fee per farm, fifty dollars; and minimum fee per field, ten dollars.
 - b. Late penalty, twenty-five cents per acre [.40 hectare].
 - c. Latent virus testing - single virus test, thirty cents per acre [.40 hectare].
 - d. Grade inspection, ~~five~~ and ~~one-half~~ six cents per hundredweight [45.36 kilograms].
7. Prompt payment of all fees will be required at all times.

History: Amended effective December 1, 1981; December 1, 1987.

General Authority: NDCC 4-10-03

Law Implemented: NDCC 4-10-04

74-04-01-07. Seed classification and limited generation.

1. Basic seed shall be seed developed in seed plots for North Dakota certified growers and have specific standards established by the state seed department. All seed potatoes shall be limited in the number of years they may be reproduced.
2. Foundation I seed shall be one year removed from basic seed and need not be planted in tuber units. All stocks shall originate from disease-tested material.
3. Foundation II seed may be more than one year removed from basic seed. Basic seed must be disease-tested seed developed in seed plots grown in tuber units and have specific standards established by the state seed department. Seed stocks will be grown a limited number of generations.
4. Eligible certified seed shall consist of seed passing the winter test and eligible for certification. Foundation seed must be seed meeting standards for recertification.
 - a. Foundation seed will be produced on farms found to be free of bacterial ring rot. If no bacterial ring rot is found on the farm the next year following an infection, the seed stocks may be reentered for inspection. However, if

bacterial ring rot is found the second year, all seed stocks must be removed from the farm. But all new seed stocks are strongly recommended following an infection of ring rot on the farm.

b. Excessive blackleg symptoms will be cause for rejection as foundation stock.

5. Certified shall be seed potatoes passing field and grade inspection but not necessarily winter tested. Foundation seed stocks shall be limited to five generations of propagation, dependent upon seed availability. Generation numbers increase with years of reproduction from the original seed source. Nuclear stock will be minitubers or plantlets or stem cuttings.

History: Effective December 1, 1981; amended effective December 1, 1987.

General Authority: NDCC 4-10-03

Law Implemented: NDCC 4-10-04

74-04-01-09. Winter testing program.

1. All foundation and basic seed potato fields must be randomly sampled and tested if the grower intends to plant the same seed lot or sell to growers who intend to enter the lot for certification the following year.
2. The results will be based on visible inspection of the plants for virus or viruslike symptoms from the sample the grower submitted.
3. Other factors such as vigor, other diseases, and any factor that might impair seed quality will be considered in the winter testing program.
4. Information concerning sample size and time to submit samples will be available from the state seed department.
5. Lots failing the winter test will be ineligible for planting in the certification program.
6. In the event of frost or other serious malfunctions of the winter test, eligibility of a seed lot will be based on the current field readings.

History: Effective December 1, 1981; amended effective December 1, 1987.

General Authority: NDCC 4-10-03

Law Implemented: NDCC 4-10-04

74-04-01-10. Storage and packaging requirements.

1. A storage to be eligible must have been cleaned and disinfected prior to harvest. Storages not previously used for certified seed must be inspected by the state seed department.
2. Seed potatoes to be eligible for final certification tags must be stored in a warehouse containing only seed potatoes which have been field inspected. Such warehouses may contain field inspected stocks rejected for seed certification for causes other than such diseases as ring rot.
3. Equipment for handling, sorting, or grading can be used only on certified stock, but also must be cleaned and disinfected.
4. Containers.
 - a. Graded stocks shall be placed in new sacks or in clean, disinfected crates or bulk containers which are tagged or marked in an approved manner to indicate the lot contains certified seed potatoes.
 - b. Brands or markings must feature "North Dakota" as the production area.
 - c. No used bags may be brought into the farming operation.
5. Out-of-state storage. Growers, upon special application, may be permitted final certification on eligible stocks in approved nearby storages outside the state.
6. Bin inspection. Certified storages may be checked by an authorized inspector during the storage season.
7. Yield and storage reports. Before tags will be issued for a lot of potatoes, a report will be given to the state seed department stating yield of each field entered for certification and the location of the storages.
8. Transfers of seed potatoes to other parties. A lot of seed potatoes eligible for final certification may be transferred to another party along with tags provided authorization is given by the state seed department.
9. Each bin containing certified seed potatoes must be plainly labeled for certification with the grower's name and address, hundredweight [45.36 kilograms] or bushels [35.24 liters], variety, and field identification.

History: Effective December 1, 1981; amended effective December 1, 1987.

General Authority: NDCC 4-10-03

74-04-01-11. Official North Dakota seed potato grades. Final grade determination shall be made based on physical defects, size, shape, and cleanliness. Two grades, first or blue tag, and second or yellow tag, are available for shipment outside the state. A white tag is available but restricted to shipments within the state. The potatoes will be packed in new burlap sacks or clean, disinfected containers identified by official tags attached as to variety, crop year, grower and accompanied by an official state or federal grade certificate. United States department of agriculture revised standards, effective March 1987, 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,* 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 {47.6 millimeters} in diameter, but not to exceed more than twelve ounces {340.20 grams} in weight. For long varieties, one and three-quarters inches {44.5 millimeters} in diameter, but not to exceed more than fourteen ounces {396.90 grams} in weight. For all varieties, size b shall be from one and one-half inches {38.1 millimeters} to not more than two and one-quarter inches {57.1 millimeters} in diameter. seed potatoes shall consist of unwashed potatoes of one variety which must meet the following requirements:

a. Shape:

(1) Fairly well-shaped except for long varieties.

(a) Dryland type (see definitions section 74-04-01-01).

(b) Except for shape (see definitions section 74-04-01-01).

b. Free from:

(1) Freezing injury.

- (2) Blackheart.
- (3) Soft rot and wet breakdown.
- (4) Late blight tuber rot.
- (5) Bacterial ring rot.
- (6) Nematode or tuber moth injury.
- (7) Fresh cuts or fresh broken off second growth.

c. Free from serious damage caused by:

- (1) Hollow heart.
- (2) Vascular ring discoloration.

d. Free from damage by soil and other causes (see definitions section 74-04-01-01 and classification of defects, section 6, tables I and II of section 74-04-01-11).

e. Size:

- (1) Minimum size, unless otherwise specified, must be one and seven-eighths inches [47.6 millimeters] for round or intermediate shaped varieties and one and three-quarters inches [44.5 millimeters] for long varieties in diameter.
- (2) Maximum size may not exceed twelve ounces [340.2 grams] for round or intermediate shaped varieties and fourteen ounces [396.9 grams] for long varieties.
- (3) For all varieties, size B must be from one and one-half inches [38.1 millimeters] to not more than two and one-quarter inches [57.1 millimeters] in diameter.

f. Tolerances are as follows. In order to allow for variations incident to proper grading and handling in the foregoing grade, the following tolerances, by weight, are provided as specified:

a. (1) For defects:

- (1) (a) Ten percent for potatoes in any lot which are seriously damaged by hollow heart.
- (2) (b) Ten percent for potatoes in any lot which are damaged by ~~dirty~~ soil. (See definitions section 74-04-01-01).

- (3) (c) Five percent for potatoes in any lot which are seriously damaged by internal vascular ring 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:
- (d) Eleven percent for potatoes which fail to meet the remaining requirements of grade, including therein not more than six percent for external defects and not more than five percent for internal defects; provided that included in these tolerances not more than the following percentages shall be allowed for the defects listed:

	Percent
Bacterial ring rot	0.00
Late blight tuber rot	1.00
Damage by pitted or surface scab, or both	2.00
Damage by <u>dry dry-type or</u> <u>moist-type Fusarium</u> tuber rot	2.00
Nematode or tuber moth injury	0.00
Frozen, soft rot, or wet breakdown	0.50
Varietal mixture	0.50

b- (2) For off-size:

- (1) (a) Undersize. Five percent for potatoes in any lot which fail to meet the required or specified minimum size.
- (2) (b) 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 potatoes shall consist of unwashed potatoes that meet the requirements for blue tag grade except for defects caused by hollow heart,

internal discoloration, firmness, sprouts, and sunken, flattened or depressed areas with or without underlying flesh discolored, and are not seriously damaged by ~~dire~~ soil and for increase in maximum size, and for increased tolerance for defects listed below:

a. Tolerances.

(1) For defects:

(a) Twenty percent for potatoes seriously damaged by hollow heart.

~~b-~~ (b) Not more than ten percent of the potatoes seriously damaged by wireworm.

~~e-~~ (c) 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.

(d) Firmness, sprouts, internal discoloration, sunken, flattened, or depressed areas with or without underlying flesh discolored are not grade factors.

~~g-~~ (2) Size. For round varieties the maximum size shall be fourteen ounces [396.90 grams]. For long varieties, the maximum size shall be sixteen ounces [453.60 grams]. Maximum size, unless otherwise specified may not exceed fourteen ounces [396.90 grams] for round or intermediate shaped varieties and sixteen ounces [453.60 grams] for long varieties.

3. White tag. Official white identification tags will be furnished on request for potatoes which passed field inspection requirements and are being transferred for seed purposes, within the state of North Dakota only. Such stock shall meet United States number two grade requirements, except for defects caused by firmness, sunburn, hollow heart, wireworm, and sunken, flattened or depressed areas with or

without underlying flesh discolored. Not more than two percent shall be damaged by dry rot. Unless otherwise specified, the maximum size shall be fourteen ounces [396.60 grams] and one and one-half inches [38.1 millimeters] minimum. State seed department grade inspection on white tag lots is not compulsory, but may be obtained upon request.

4. 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. Application of tolerances. Individual samples may not have more than double the tolerances specified, except that at least one defective and one off-size potato may be permitted in any sample; provided that en route or at destination, one-tenth of the samples may contain three times the tolerance permitted for potatoes which are frozen or affected by soft rot or wet breakdown; and provided, further, that the averages for the entire lot are within the tolerances specified for the grade.
5. Samples for grade and size determination. Individual samples shall consist of at least twenty pounds [9.06 kilograms]. The number of such individual samples drawn for grade and size determination will vary with the size of the lot.
6. Classification of defects.
 - a. Brown discoloration following skinning, dried stems, flattened depressed areas (showing no underlying flesh discoloration), greening, skin checks, and sunburn do not affect seed quality and may not be scored against the grade.
 - b. Table I - External defects.

DAMAGE

<u>Defect</u>	<u>When materially detracting from the appearance of the potato</u>	<u>OR</u>	<u>When removal causes a loss of more than 5 percent of the total weight of the potato</u>
Air cracks			x
Bruises			x
Cuts and broken-off second growth (healed)	x		x

Elephant hide		
(scaling)	x	
Enlarged, discolored, or sunken lenticels	x	
Folded ends	x	
Second growth	x	
Shriveling	When more than moderately shriveled, spongy, or flabby.	
Sprouts	When more than 20 percent of the potatoes in any lot have any sprout more than 1 inch [25.4 mm] in length.	
Surface cracking	x	x
Flea beetle injury	x	x
Grub damage	x	x
Rodent and/or bird damage	x	x
Wireworm or grass damage	Any hole more than 3/4 inch [19.1 mm] long or when the aggregate length of all holes is more than 1 1/4 inches [31.8 mm] ¹ .	
Dry rots		x
Rhizoctonia	x	
Scab, pitted	x	x
Scab, russet	When affecting more than 1/3 of the surface.	
Scab, surface	When affecting more than 5 percent of the surface.	
Silver scurf	When affecting more than 25 percent of the surface.	
Growth cracks	When seriously detracting from the appearance.	
Pressure bruises and sunken areas - with underlying flesh discolored		When removal causes a loss of more than 10 percent of the total weight.

¹ Definitions of damage and serious damage are based on potatoes that are two and one-half inches [63.5 mm] in diameter or six ounces [170.10 g] in weight. Correspondingly lesser or greater areas are permitted on smaller or larger potatoes.

c. Table II - Internal defects.

DAMAGE

Defect	When materially detracting from the appearance of the potato	OR	When removal causes a loss of more than 5 percent of the weight of the potato
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Ingrown sprouts x

<u>Internal</u> <u>discoloration</u> <u>occurring interior</u> <u>to the vascular</u> <u>ring (such as,</u> <u>internal brown</u> <u>spot, mahogany</u> <u>browning and</u> <u>heat necrosis).</u> <u>All other internal</u> <u>discoloration</u> <u>excluding discoloration</u> <u>confined to the</u> <u>vascular ring.</u>	When more than the equivalent of three scattered light brown spots 1/8 inch [3.2 mm] in diameter ¹ .	OR	a loss of more than 5 percent of the weight of the potato
--	--	----	--

SERIOUS DAMAGE

Defect	When seriously detracting from the appearance of the potato	OR	When removal causes a loss of more than 10 percent of the total weight of the potato
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Internal
discoloration
confined to the
vascular ring. x

Hollow heart or
hollow heart with
discoloration.

When affected area exceeds
that of a circle 3/4 inch
[19.1 mm] in diameter¹.

¹Definitions of damage and serious damage are based on potatoes that are two and one-half inches [63.5 mm] in diameter or six ounces [170.10 g] in weight. Correspondingly lesser or greater areas are permitted on smaller or larger potatoes.

7. Classification and serological tested stocks.

- a. Foundation seed classification may be indicated on the tag provided the lot meets foundation standards.
- b. Serologically tested stocks for potato virus x, potato virus s, or potato virus m may be so indicated on the tag if within the specified tolerance during the current growing season.

Blue and yellow tag shipments must be inspected and meet respective grade requirements.

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; December 1, 1987.

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-B 1 Jan 81.

***Refer to definition of damage by dirt in section 74-04-01-01.

TITLE 81
Tax Commissioner

MARCH 1988

STAFF COMMENT: Chapter 81-02.1-02 contains all new material but is not underscored so as to improve readability.

**CHAPTER 81-02.1-02
CERTIFICATION OF ASSESSMENT OFFICIALS**

Section	
81-02.1-02-01	Definitions
81-02.1-02-02	Responsibility of State Supervisor of Assessments
81-02.1-02-03	Certification Requirements - Township Assessor
81-02.1-02-04	Certification Requirements - Class II City Assessor
81-02.1-02-05	Certification Requirements - Class I City Assessor
81-02.1-02-06	Certification Requirements - County Director of Tax Equalization
81-02.1-02-07	Certificates
81-02.1-02-08	Maintaining Certification
81-02.1-02-09	Failure to Maintain Certification

81-02.1-02-01. Definitions. As used in this chapter and for the administration of North Dakota Century Code chapter 11-10.1, unless the context otherwise requires:

1. "Assessment official" means a person responsible for initially determining the assessments of real property in a township, assessment district, or a city. The term also includes a county director of tax equalization who is responsible for supervising and instructing the township assessors and class II city assessors.

2. "Class I city assessor" means an assessor for a city with a population of five thousand or more.
3. "Class II city assessor" means an assessor for a city with a population of less than five thousand.
4. "County director of tax equalization" means a person appointed pursuant to North Dakota Century Code chapter 11-10.1.
5. "Township assessor" means a person appointed or elected as assessor pursuant to North Dakota Century Code chapter 58-05. The term also includes a person appointed as a district assessor as defined in North Dakota Century Code section 57-02-33.

History: Effective March 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 11-10.1-01(1), 11-10.1-05(1)(2)

81-02.1-02-02. Responsibility of state supervisor of assessments.

The state supervisor of assessments is responsible for establishing certification requirements for all assessment officials in North Dakota, certifying the assessment officials, and monitoring the certification process.

History: Effective March 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 11-10.1-01(1), 11-10.1-05(2)

81-02.1-02-03. Certification requirements - Township assessor.

1. To be certified as a township assessor after February 29, 1988, a person shall:
 - a. Successfully complete a minimum of twenty-four hours of instruction taught by a certified county director of tax equalization. Instruction includes, but is not limited to:
 - (1) Principles and theory of value.
 - (2) Market comparison, cost and income approaches to value.
 - (3) Valuation of agricultural land, residential, and commercial property.
 - (4) Laws and forms affecting assessors.
 - (5) Assessment statistics.
 - (6) Case study appraisal.

- b. Successfully complete a statewide standard test for township assessors. The twenty-four hours of instruction may be waived upon successful completion of the statewide standard test without having first attended the instruction.
2. A township assessor must become certified within twelve months of appointment or election. Any person who does not become certified within twelve months is not eligible for reappointment.

History: Effective March 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 11-10.1-05(2)

81-02.1-02-04. Certification requirements - Class II city assessor.

1. To be certified as a class II city assessor, a person shall:
 - a. Successfully complete a minimum of twenty-four hours of instruction taught by a certified county director of tax equalization. Instruction includes, but is not limited to:
 - (1) Principles and theory of value.
 - (2) Market comparison, cost and income approaches to value.
 - (3) Laws and forms affecting assessors.
 - (4) Statistics of residential and commercial property.
 - (5) Valuation of residential and commercial property.
 - (6) Case study appraisal of residential or commercial property.
 - b. Successfully complete a statewide standard test for class II city assessors. The twenty-four hours of instruction may be waived upon successful completion of the statewide standard test without having first attended the instruction.
2. A class II city assessor who is also a township assessor must have a current township assessor certificate.
3. A class II city assessor must become certified within twelve months of appointment. Any person who does not become certified within twelve months is not eligible for reappointment.

History: Effective March 1, 1988.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 11-10.1-05(2)

81-02.1-02-05. Certification requirements - Class I city assessor.

1. To be certified as a class I city assessor, a person shall:
 - a. Have a high school diploma or its equivalent.
 - b. Successfully complete one hundred fifty hours of assessment and appraisal instruction approved by the state supervisor of assessments. Thirty hours of instruction are required in each of the following courses:
 - (1) Tax administration.
 - (2) Principles and theory of value.
 - (3) Residential property appraisal.
 - (4) Commercial property appraisal.
 - (5) Other appraisal-related courses.
2. Any of the courses may be challenged by successfully completing the required problems, reports, and test.
3. A class I city assessor shall successfully complete the instruction within three years of appointment. A person who does not fulfill the requirements within three years is not eligible for reappointment.

History: Effective March 1, 1988.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 11-10.1-01(1)(2)

81-02.1-02-06. Certification requirements - County director of tax equalization.

1. To become certified, a county director of tax equalization shall:
 - a. Have a high school diploma or its equivalent.
 - b. Successfully complete one hundred ninety hours of assessment and appraisal instruction approved by the state supervisor of assessments. Instruction is required in the following courses:
 - (1) Thirty hours of tax administration.

- (2) Thirty hours of principles and theory of value.
 - (3) Thirty hours of residential property appraisal.
 - (4) Thirty hours of commercial property appraisal.
 - (5) Thirty hours of agricultural land valuation.
 - (6) Forty hours of teaching appraisal techniques.
2. Any of the courses may be challenged by successfully completing the required problems, reports, presentations, and test.
 3. A county director of tax equalization shall successfully complete the instruction within three years of appointment. A person who does not fulfill the requirements within three years is not eligible for reappointment.

History: Effective March 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 11-10.1-01(1)(2)

81-02.1-02-07. Certificates. Upon successful completion of the necessary requirements within the specified time, the state supervisor of assessments shall issue the proper certificate to the following assessment officials:

1. Township assessor.
2. Class II city assessor.
3. Class I city assessor.
4. County director of tax equalization.

History: Effective March 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 11-10.1-01(1), 11-10.1-05(1)

81-02.1-02-08. Maintaining certification. An assessment official is required to attend educational sessions in order to maintain certification. All educational sessions must be approved by the state supervisor of assessments.

A county director of tax equalization and a class I city assessor are certified for a term of four years by the state supervisor of assessments. In order to maintain certification, each of these assessment officials shall successfully complete thirty hours of approved classroom instruction or thirty hours of approved seminars during each four-year certification period.

Certification as a township assessor or a class II city assessor is valid for one year. The certification is renewable by attendance at an approved annual seminar which is conducted by a certified county director of tax equalization.

History: Effective March 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 11-10.1-01(1), 11-10.1-05(1)

81-02.1-02-09. Failure to maintain certification. The certificate of any person who does not fulfill the requirements of section 81-02.1-02-08 will be considered void by the state supervisor of assessments.

The state supervisor of assessments will notify the assessment official and the governing body of the assessment official's jurisdiction of the nonrenewal of certification.

History: Effective March 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 11-10.1-01(1), 11-10.1-05(1)

81-03-05.1-05. Subchapter S corporation tax credits.

1. The following tax credits may not be claimed by a subchapter S corporation required to pay state income tax pursuant to subsection 1 of North Dakota Century Code section 57-38-01.4:
 - a. Credit for contributions to nonprofit private colleges.
 - b. Credit for contributions to nonprofit private high schools.
 - c. Geothermal, solar, or wind energy device credit.
 - d. Venture capital corporation credit.
 - e. Myron G. Nelson Fund, Incorporated credit.
 - f. Credit for employment of the developmentally disabled or chronically mentally ill.
2. These tax credits may only be claimed by an individual shareholder on form 37 individual income tax return (long form), or a fiduciary shareholder on form 38 fiduciary income tax return (long method).
3. The tax credit claimed by each shareholder must be computed by using the shareholder's distributive share ratio. The

computed credit is subject to the limitations imposed by North Dakota Century Code chapters 10-30.1, 10-30.2, and 57-38.

History: Effective March 1, 1988.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 10-30.1-05, 10-30.2-11, 10-30.2-12, 57-38-01.4, 57-38-01.7, 57-38-01.8, 57-38-01.16

81-03-09-26. Sales factor - In general.

1. Subsection 7 of North Dakota Century Code section 57-38.1-01 defines the term "sales" to mean all gross receipts of the taxpayer not allocated under North Dakota Century Code sections 57-38.1-04 through 57-38.1-08 and North Dakota Century Code section 57-59-01 article IV(1)(g) defines the term "sales" to mean all gross receipts of the taxpayer not allocated under paragraphs 5 through 8 of article IV. Thus, for the purposes of the sales factor of the apportionment formula for each trade or business of the taxpayer, the term "sales" means all gross receipts derived by the taxpayer from transactions and activities in the regular course of such trade or business. The following are rules for determining "sales" in various situations.
 - a. In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, "sales" includes all gross receipts from the sales of such goods or products, or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the tax period, held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales, less returns and allowances, and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales. Federal and state excise taxes, including sales taxes, shall be included as part of such receipts if such taxes are passed on to the buyer or included as part of the selling price of the product.
 - b. In the case of cost plus fixed fee contracts, such as the operation of a government owned plant for a fee, "sales" includes the entire reimbursed cost, plus the fee.
 - c. In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency, or the performance of equipment service contracts, research and development contracts, "sales" includes the gross receipts from the performance of such services including fees, commissions, and similar items.

- d. In the case of a taxpayer engaged in renting real or tangible property, "sales" includes the gross receipts from the rental, lease, or licensing the use of the property.
 - e. In the case of a taxpayer engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, "sales" includes the gross receipts therefrom.
 - f. If a taxpayer derives receipts from the sale of equipment used in its business, such receipts constitute "sales". For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program. The gross receipts from the sale of the trucks are included in the sales factor.
2. In some cases certain gross receipts should be disregarded in determining the sales factor in order that the apportionment formula will operate fairly to apportion to this state the income of the taxpayer's trade or business. See section ~~81-03-09-33~~ 81-03-09-34.
 3. In filing returns with this state, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in the returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under article IV of the multistate tax compact or the Uniform Division of Income for Tax Purposes Act are not uniform in the inclusion or exclusion of gross receipts, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

History: Amended effective March 1, 1988.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38.1-15, 57-59-01 (art.IV(15))

81-03-09-27. Sales factor - Denominator. The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded under section ~~81-03-09-33~~ 81-03-09-34.

History: Amended effective March 1, 1988.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38.1-15, 57-59-01 (art.IV(15))

81-04.1-01-03.1. Definitions. Any person having nexus in North Dakota and making taxable sales in or making taxable sales having a destination in North Dakota must obtain a North Dakota sales and use tax permit from the tax commissioner and collect and remit tax on these sales.

For purposes of implementing ~~chapters 704 and 715 of 1987 Session Laws~~ subsection 8 of North Dakota Century Code section 57-39.2-01 and subsection 5 of North Dakota Century Code section 57-40.2-01, unless the context otherwise requires:

1. "Advertisement" means any message by which a retailer solicits retail sales of tangible personal property. It includes but is not limited to:
 - a. Each transmittance, by United States mail, common carrier or otherwise, of a printed sales solicitation message in the form of a bulk mailing or bulk delivery, a sales catalog, brochure, advertising flier, billing or package insert or similar publication ~~of~~ or device.
 - b. Each transmittance of a sales solicitation message by space advertising in a newspaper, magazine, or other publication, which is local, regional, or national in nature.
 - c. Each transmittance of a sales solicitation message by radio, television, telephone, telegraph, computer data base, or by cable, optic, microwave or other electronic means, or by any other communications means.
2. "Destination" means the location to which the delivery of tangible personal property is made by a retailer or the retailer's agent.
3. "Regular or systematic solicitation" means three or more separate transmittances of any advertisement or advertisements during a testing period.
4. "Separate transmittance" means any transmittance of an advertisement during any twenty-four-hour period.
5. "Solicitation" means:
 - a. Offering, by advertisement, to make a taxable sale with a destination in North Dakota.
 - b. Inviting offers to purchase tangible personal property for delivery in North Dakota.
6. "Taxable sale" means a sale made by a retailer or a retailer maintaining a place of business in this state to purchasers for final use or consumption and not for resale or processing.

7. "Testing period", with respect to the determination of whether a person is required to obtain a permit and collect use tax as a retailer for tax periods commencing on or after the effective date of this section, means the twelve-month period ending on September thirtieth of the preceding calendar year.

History: Effective November 1, 1987; amended effective March 1, 1988.

General Authority: NDCC 57-39.2-19, 57-40.2-13

Law Implemented: NDCC 57-39.2-19, 57-40.2-01

81-04.1-01-09.1. Effect of rate changes on contracts and sales agreements. On contracts for construction of highways, roads, streets, bridges, and buildings for which the contract was awarded prior to December 1, 1986, the contractor is liable for sales and use tax at the rate of four percent, contracts awarded after November 30, 1986, and before July 1, 1987, are subject to the five percent rate, and contracts awarded after June 30, 1987, and before July 1, 1989, are subject to the five and one-half percent rate.

Except for contracts for the construction of highways, roads, bridges, and buildings, when an unconditional contract to sell tangible personal property is entered into prior to the effective date of a rate change, and the goods are delivered after that date, the new rates are applied to the transaction. When an unconditional contract to sell tangible personal property is entered into prior to the effective date, and the goods are delivered prior to that date, the tax rates in effect for the prior period are applied to the transaction.

When a contract to sell tangible personal property contains a specific provision to pass title prior to delivery of the goods, the rates in effect at the time title transfers are applied.

Lessors who lease tangible personal property are required to collect tax from their lessees at the rate in effect at the time the lease or rental payment is due, including payments on contracts entered into prior to a rate change.

History: Effective March 1, 1988.

General Authority: NDCC 57-39.2-19, 57-40.2-13

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-10, 57-40.2-01, 57-40.2-02.1, 57-40.2-03.3, 57-40.2-09

81-04.1-01-11. Handling charges and finance or carrying charges. When tangible personal property is sold at a fixed price plus an additional service, or handling, or ~~finance~~ charge, such charges are part of the selling price, and sales tax must be computed on the gross receipts from such sale. Finance, carrying, and interest charges are not taxable as handling charges if separately agreed upon by the buyer and the seller and if separately billed by the seller to the buyer.

History: Effective June 1, 1984; amended effective March 1, 1988.
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

81-04.1-01-27. Bookkeeping requirements. All sales tax permit holders, construction contractors, those selling, storing, using, or consuming tangible personal property in this state and every lessor and lessee of tangible personal property for use in this state must keep adequate and complete records showing:

- 1- Gross receipts from sales or rental payments from leases of tangible personal property.
- 2- All deductions allowed by law and claimed in filing returns.
- 3- Total purchase price of all tangible personal property purchased for sale, consumption, or lease in North Dakota.

The records must include the books of account ordinarily maintained by the average businessman engaged in a similar business, together with all bills, receipts, invoices, cash register tapes, or other original documents supporting the entries in the books of accounts as well as all schedules or working papers used in the preparation of sales or use tax returns.

All records must be maintained so that details underlying the summary accounting data are identifiable and available upon the tax commissioner's request. Supporting documents such as sales invoices, purchase invoices, and credit memoranda, must be readily available.

Repealed effective March 1, 1988.

History: Effective June 1, 1984.
General Authority: NDCC 57-39.2-19, 57-40.2-13
Law Implemented: NDCC 57-39.2-01, 57-39.2-10, 57-39.2-11, 57-39.2-21, 57-40.2-01, 57-40.2-09, 57-40.2-13

81-04.1-01-27.1. Recordkeeping a sales and use tax transaction.

1. In general. Every retailer doing business in this state or storing, using, or consuming in this state tangible personal property purchased from a retailer and every lessor and lessee of tangible personal property for use in this state shall keep complete and adequate records necessary for the commissioner to determine the amount of North Dakota sales and use tax due.

Unless the commissioner authorizes an alternative method of recordkeeping in writing, these records must show:

- a. Gross receipts from sales, or rental payments from leases, of tangible personal property, including any services that are a part of the sale or lease made in this state.
- b. All deductions allowed by law and claimed in filing a return.
- c. Total purchase price of all tangible personal property purchased for sale, consumption, or lease in this state.

These records must include the normal books of account ordinarily maintained by a prudent businessman engaged in business, and together with all bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of accounts and all schedules or working papers used in preparation of tax returns.

2. Microfilm or microfiche records. Records may be microfilmed or microfiched, as long as the records are authentic, accessible, and readable, and the following requirements are fully satisfied:
 - a. Appropriate facilities are provided for preservation of the films or fiche for the periods open to examination.
 - b. A detailed index of all microfilmed and microfiched data is maintained and arranged to permit the immediate location of a particular record.
 - c. A reader-printer in good working order at the examination site for reading, locating, and reproducing any record maintained on microfilm or microfiche.
 - d. Written procedures governing the establishment of a microfilm or microfiche system, and the individuals responsible for maintaining and operating the system with appropriate authorization from the board of directors, general partners, or owner.
 - e. The microfilm or microfiche system is complete and used consistently in the regular conduct of the business.
 - f. Established procedures with appropriate documentation to follow the original document through the microfilm or microfiche system.
 - g. Established internal procedures for microfilm or microfiche inspection and quality assurance.

- h. Effective identification, processing, storage, and preservation of microfilm or microfiche, making it readily available for inspection by the commissioner.
 - i. A record of where, when, by whom, and on what equipment the microfilm or microfiche is produced.
 - j. When displayed on a microfilm or microfiche reader (viewer) or reproduced on paper, the material exhibits a high degree of legibility and readability. Legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.
 - k. All production of microfilm or microfiche and processing, duplication, quality control, storage, identification, and inspection must meet industry standards as set forth by the American national standards institute, national micrographics association, or national bureau of standards.
3. Records prepared by automated data process (ADP) systems. An automated data process systems tax accounting system may be used to provide the records required for the verification of tax liability. Although automated data process systems vary from one taxpayer to another, all automated data process systems must include a method of producing legible and readable records necessary to verify tax liability. The following requirements apply to a taxpayer maintaining records on an automated data process system:
- a. Recorded or reconstructible data. Automated data process systems records must be able to trace any transaction back to the original source or forward to a final total. If a detail printout is not made of a transaction at the time it is processed, the system must have the ability to reconstruct the transaction.
 - b. General and subsidiary books of account. A general written ledger, with source references to coincide with financial reports for tax reporting periods. Where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers must be written out.
 - c. Supporting documents and audit trail. The audit trail must be designed so the details underlying the summary accounting data may be identified and made available to the commissioner upon request. The system must be designed to make supporting documents, such as sales invoices, purchase invoices, credit memoranda, and like documents readily available.

d. Programming documentation. A description of the automated data process systems portion of the accounting system must be made available. The statements and illustrations as to the scope of operations must indicate:

(1) The application being performed.

(2) The procedures employed in each application which may be supported by flow charts, block diagrams, or other description of the input or output procedures.

(3) The controls used to ensure accurate and reliable processing. Effective rates of important changes must be noted.

e. Data storage media. Adequate record retention facilities must be available for storing tax information, printouts, and all supporting documents required by law.

4. Records retention. All records pertaining to transactions involving sales or use tax liability must be preserved for a period of not less than three years and three months.

5. Examination of records. All records must be made available for examination on request by the commissioner or the commissioner's authorized representatives.

6. Failure to maintain and disclose complete and adequate records. Upon failure of the taxpayer, without reasonable cause, to substantially comply with the requirements of this section, the commissioner shall:

a. Impose the full penalty provided by law.

b. Enter any order necessary to obtain compliance with this regulation.

History: Effective March 1, 1988.

General Authority: NDCC 57-39.2-19, 57-40.2-13

Law Implemented: NDCC 57-39.2-01, 57-39.2-10, 57-39.2-11, 57-39.2-21, 57-40.2-01, 57-40.2-09, 57-40.2-13

81-04.1-01-28. Coupons. When a manufacturer, processor, or wholesaler issues a coupon entitling a purchaser to credit on the item purchased, the tax is due on the total gross receipts.

Example: If a manufacturer, processor, or wholesaler issues coupons entitling the holder to a credit allowance of seven cents on the purchase of its products from a retailer, the sales tax is computed by the retailer as follows:

Regular price

-75

Sales tax at four percent	- 04
Subtotal	- 79
Credit for coupon	- 07
Amount due from purchaser	- 72

Regular price	.75
Sales tax at 5 1/2 percent	.05
Subtotal	.80
Credit for coupon	.07
Amount due from purchaser	.73

When a retailer issues a coupon entitling the purchaser to a discounted price on the item purchased and when the retailer receives no reimbursement from a manufacturer, processor, or wholesaler, the sales tax is due from the purchaser only on the discounted price.

Example: If a retailer issues coupons entitling the holder to a credit allowance of seven cents on the purchase of its products from the retailer, the sales tax is computed by the retailer as follows:

Regular price	- 75
Credit for coupon	- 07
Subtotal	- 68
Sales tax at four percent	- 03
Amount due from purchaser	- 71

Regular price	.75
Credit for coupon	.07
Subtotal	.68
Sales tax at 5 1/2 percent	.04
Amount due from purchaser	.72

History: Effective October 1, 1986; amended effective March 1, 1988.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01(3)(7), 57-39.2-02.1

81-04.1-01-30. Taxing separate articles. When a retailer makes a single sale involving several separate taxable items, sales tax is calculated on the sum of the retail prices of the goods. Retailers are prohibited from calculating tax on each separate item.

History: Effective March 1, 1988.

General Authority: NDCC 57-39.2-19, 57-40.2-13

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-08.2

81-04.1-03-02. Sales by employers to employees. Purchases of tangible personal property by employees from their employer are subject to sales tax. Employers operating a restaurant or cafeteria exclusively for employees are retailers and the gross receipts from such sales are subject to sales tax. Employees ordering merchandise from an employer's wholesale catalog for personal use are subject to sales tax.

Employers who provide free meals to their employees are subject to tax on the cost of the items given away. When an employer is unable to determine the exact cost of a giveaway meal, tax is due on fifty percent of the retail selling price of the meal.

History: Effective June 1, 1984; amended effective March 1, 1988.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3

81-04.1-03-11. Computers - Hardware and software. Computers, peripheral computer equipment, and computer programs, with the exception of custom programs, are subject to tax.

For purposes of administration of the sales and use tax law, unless the context otherwise requires, the following definitions apply:

1. Computers and peripherals (hardware). The components and accessories which constitute the physical computer assembly, including, but not limited to, such items as the central processing unit, keyboards, consoles, monitors, memory, disk and tape drives, terminals, printers, plotters, modems, type readers, document sorters, optical readers and digitizers, and networks.
2. Computer programs (software).
 - a. Operating or executive programs include the programming system or technical language upon which the basic operating procedures of the computer are recorded. The operating program serves as an interface with user applied programs and allows the user to access the computer's processing capabilities.
 - b. Applied programs include the programming systems or technical language, including the tapes, disks, cards, or other media on which such language is recorded, designed either for application in a specialized use, or upon which a plan for the solution of a particular problem is based. Examples of applied programs include payroll processing, general ledger, sales data, spreadsheet, word processing, and data management programs. Typically, applied software programs can be transferred from one computer to another by storage media.
 - c. Storage media includes hard disks, compact disks, floppy disks, diskettes, diskpacks, magnetic tape, cards, or other media used for nonvolatile storage of information readable by computer.
3. Sale, lease, or rental of computer programs. The transfer of title, possession, or use for a consideration of any computer

software which is not a custom computer program is a transfer of tangible personal property and is taxable.

a. Prewritten (canned) programs. Prewritten programs may be transferred to a customer in the form of punched cards, magnetic tape, or other storage media or by listing the program instructions. The tax applies to the sale or lease of the storage media or program listing on which or into which such prewritten programs have been recorded, coded, or punched.

(1) Tax applies whether title to the storage media on which the program is recorded, coded, or punched passes to the customer or the program is recorded, coded, or punched on storage media furnished by the customer. The temporary transfer of possession of a program, for a consideration, for the purpose of direct use or to be recorded or punched by the customer or by the lessor on the customer's premises, is a sale or lease of tangible personal property and is taxable.

(2) Tax applies to the entire amount charged to the customer. Where the consideration consists of license fees, royalty fees, or program design fees, all fees present or future, whether for a period of minimum use or for extended periods, are includable in the purchase price subject to tax.

(3) The sale of a prewritten (canned) program is a taxable transaction, even though the program is transferred by remote telecommunications from the seller's place of business, to or through the purchaser's computer.

(4) Maintenance contracts sold in connection with the sale or lease of prewritten computer programs generally provide that the purchaser will be entitled to receive storage media on which prewritten program improvements or error corrections have been recorded. The maintenance contract also provides that the purchaser will be entitled to receive telephone or onsite consultation services.

(a) If the purchase of the maintenance contract is not optional with the purchaser, then the charges for the maintenance contract are taxable, including the consultation services as part of the sale or lease of the prewritten program.

(b) If the purchase of the maintenance contract is optional with the purchaser, but the purchaser

does not have the option to purchase the consultation services separately from the storage media improvements or error corrections, then the charges for consultation services are taxable as part of the sale or lease of storage media. If, however, the purchaser may at his option, contract for the consultation services separately from the storage media, then the charges for the consultation services are nontaxable.

- (5) Computer machines, equipment, and programs purchased or leased exempt from tax on the basis of a resale exemption are subject to use tax if they are put to a taxable use at any time subsequent to the exempt purchase. The subsequent sale of tangible personal property which has been leased or rented is subject to sales or use tax.
- (6) The sale of statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or any other information, produced or compiled by a computer and sold or reproduced for sale in substantially the same form as it is produced is a sale of tangible personal property, unless the information from which such reports were compiled was furnished by the same person to whom the finished report is sold in which case the original report is not subject to tax.
- (7) When additional copies of records, reports, manuals, and tabulations are provided, tax applies to the charges made for the additional copies. Additional copies are all copies in excess of those produced simultaneously with the production of the original and on the same printer, where the copies are prepared by running the same program, by using multiple printers, by looping the program, by using different programs to produce the same output, or by other means.

If no separate charge is made for additional copies by the service bureau or data processing firm, then tax applies to that portion of the gross receipts on which the cost of the additional computer time, the cost of materials, and labor costs to produce the additional copies bear to the total job cost. Charges for copies produced by means of photocopying, multilithing, or by other means are subject to tax.

- (8) Charges for training services are nontaxable. The service bureau or data processing firm is the consumer of tangible personal property used in training others or provided to the trainees without a

separate charge for the materials as part of the training services.

(a) Tax applies to charges for training materials, including books and manuals furnished to trainees for a charge separate from the charge for training services.

(b) When a person sells tangible personal property, such as computers or programs, and provides training materials to the customer without making an additional charge for the training materials, this is a sale of the training materials. The selling price of the training is considered to be included in the sales price of the tangible personal property.

d. "Custom program" means any computer program which is written or prepared for a single customer, including those services represented by separately stated charges for the modification of existing prewritten programs.

(1) Tax does not apply to the sale or lease of a custom computer program regardless of the form in which the program is transferred. The tax does not apply to the transfer of a custom program or custom programming services performed in connection with the sale or lease of computer equipment if such charges are separately stated from the charges for the equipment.

(2) If the custom programming charges are not separately stated from the sale or lease of equipment they will be considered taxable as part of the sale.

(3) A custom computer program includes a program prepared to the special order of a customer who will use the program to produce and sell or lease copies of the program. The copies, however, are taxable as prewritten computer programs.

4. Time sharing. The sale or lease of computer time through the use of the terminal or as a result of a batch service arrangement is a nontaxable service and is not subject to tax if separately billed or charged. However, any charges for computer machines and equipment, remain subject to tax.

5. Data processing service. The charge for reports compiled by a computer exclusively from data furnished by the same person for whom the data is prepared is a service and is not subject to sales or use tax unless it is part of a unitary transaction which is subject to sales or use tax.

History: Effective March 1, 1988.

General Authority: NDCC 57-39.2-19, 57-40.2-13

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-40.2-01, 57-40.2-02.1

81-04.1-03-12. Sales by political parties and political committees. Political parties and political committees organized for political purposes are considered to be conducting educational activities. Political party or political committee sales of tickets, admissions, or tangible personal property are exempt from sales or use tax provided the entire net proceeds are used for political purposes and provided the sales do not occur in a publicly owned facility.

"Political party" means any association, committee, or organization which nominates a candidate for election to any office which may be filled by a vote of the electors of this state or any of its political subdivisions and whose name appears on the election ballot as the candidate of the association, committee, or organization.

"Political committee" means any committee, club, association, or other group of persons which receives contributions primarily for political purposes.

"Political purpose" means any activity undertaken in support of or in opposition to the election or nomination of a candidate for public office.

History: Effective March 1, 1988.

General Authority: NDCC 57-39.2-19, 57-40.2-13

Law Implemented: NDCC 16.1-08.1-01, 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-40.2-01, 57-40.2-02.1, 57-40.2-04

81-04.1-04-02. Agriculture - Farm machinery and equipment- Farm machinery repair parts. 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. Motor vehicles required to be registered with the motor vehicle department, including vehicles such as trucks, pickups, cars, snowmobiles, all-terrain vehicles, and garden tractors, do not qualify as farm machinery. Irrigation equipment sold for nonagricultural purposes is subject to sales tax at the full rate. Tires, 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.

The reduced rate applies to parts, excluding tires, used to repair qualifying farm machinery. The reduced rate on farm machinery repair parts applies only when the machinery is used exclusively for agricultural purposes. These same parts are subject to the general North Dakota sales and use tax rate when sold to contractors or others who do not use the machinery exclusively for agricultural purposes.

Farm repair parts include any durable goods, except tires, used to repair a qualifying farm machinery. Durable goods do not include fluids, gases, oils, greases, lubricants, paints, and waxes. Farm machinery repair parts do not include items like tools, lumber, twine, fencing material, or storage tanks.

Sales of parts not clearly identified for use in farm machinery are subject to the reduced rate when used by the seller to repair farm machinery.

When parts are sold over the counter, the seller should use discretion but should generally accept in good faith the purchaser's word as to their intended use. When the purchaser intends to use the parts on a qualifying farm machine, the reduced rate applies. If the parts are for nonfarm machinery use, the general sales tax rate must be charged.

History: Effective June 1, 1984; amended effective July 1, 1985; July 1, 1987; March 1, 1988.

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

81-04.1-04-10.1. Amusement - Coin-operated amusement devices.

Sales tax is due on eighty percent of the gross receipts collected from coin-operated amusement devices. Sales tax is included in the gross receipts from coin-operated amusement devices and must be deducted before calculating gross receipts subject to sales tax (taxable sales).

Taxable sales are calculated as follows: taxable sales = [gross receipts divided by 105.5% (1.055)] multiplied by 80% (.80). Taxable sales may also be calculated in a single step as follows: taxable sales = gross receipts multiplied by 75.83% (.7583).

In the absence of a written agreement stipulating division of gross receipts between the coin-operated amusement device owner and the location operator, the coin-operated amusement device owner is responsible for sales tax on eighty percent of the gross receipts.

The purchaser of a coin-operated amusement device is liable for sales tax on a coin-operated amusement device purchased in this state or

for use tax on a coin-operated amusement device purchased outside of this state regardless of whether a license fee is paid to any governmental authority for operating the coin-operated amusement device.

History: Effective November 1, 1987; amended effective March 1, 1988.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3, 57-40.2-02.1

81-04.1-04-24. Health - Hospitals and infirmaries. Health institutions operating cafeterias, gift shops, or novelty shops open to the public are required to collect and remit sales tax on their gross receipts. If the cafeteria is operated solely for convenience of the staff, the proceeds are not subject to tax. Sales to these institutions of food supplies used in the cafeteria operation and sales of inventory for gift shops or novelty shop purposes are sales for processing or resale and are not subject to tax.

Hospital sales of lodging accommodations to nonpatients, including sales to families of registered patients, are subject to sales tax.

History: Effective June 1, 1984; amended effective March 1, 1988.

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, 57-39.2-11, 57-39.2-20, 57-40.2-01, 57-40.2-02.1, 57-40.2-03.2, 57-40.2-05, 57-40.2-07, 57-40.2-09, 57-40.2-13

81-04.1-04-43. School - Students - Fraternities and sororities. Colleges, universities, student fraternities, or sororities serving meals to students other than members, for which separate charges are made, or operating canteens selling tangible personal property must collect and remit sales tax.

College and university food service operations which provide catering services are responsible for collecting and remitting sales tax on the gross receipts from catering activities.

College and university sales of lodging accommodations to nonstudents, including sales to families of enrolled students, are subject to sales tax.

Student fraternities and sororities are not political subdivisions or institutions of the state and are not exempt from sales tax on purchases of tangible personal property for their own use.

History: Effective June 1, 1984; amended effective March 1, 1988.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3, 57-39.2-04, 57-39.2-20

TITLE 90

Water Well Contractors, Board of

JANUARY 1988

90-01-01-01. Organization of state board of water well contractors.

1. **History.** The 1971 legislative assembly passed the act providing for licensing of water well contractors and creating the board of water well contractors, codified as North Dakota Century Code chapter 43-35. The 1985 legislative assembly added pitless unit installers and the 1987 legislative assembly added monitoring well contractors to the coverage.
2. **Board membership.** The board consists of six members. The state engineer and the state health officer, or their duly authorized designees, are ex officio members. Two members are water well contractors appointed by the governor, one member is a pitless unit installer, and one member is appointed at large by the governor.
3. **Executive secretary and treasurer.** The executive secretary and treasurer of the board is appointed by the board, is responsible for the administration of the board's activities, and is responsible for the examining process provided for by North Dakota Century Code chapter 43-35.
4. **Inquiries.** Inquiries regarding the board or examinations should be addressed to the executive secretary and treasurer:

Mr. M. O. Lindvig
Secretary-Treasurer
State Board of Water Well Contractors
State Water Commission
State Office Building
Bismarck, North Dakota 58505

History: Amended effective November 1, 1981; December 1, 1985;
January 1, 1988.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1