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TITLE 6  
Aeronautics Commission



MARCH 1990

6-02-01-13. Application. An application is a proceeding seeking authorization or permission which the commission may give under statutory or other delegated authority administered by it.

1. All applications shall be in writing and under oath shall set forth the full name and post-office address of the applicant, shall state clearly and concisely the authorization or permission sought, and shall cite by appropriate reference the statutory provision or other authority under which commission authorization or permission is sought.
2. Every application will be signed and verified by the party filing the application.
3. At the time the original application is filed, five additional copies thereof must also be filed.
4. Corporations. If the applicant is a corporation, a certified copy of its articles of incorporation shall be annexed to the application. If the applicant's articles of incorporation have already been filed with the commission in some prior proceeding, it shall be sufficient if this fact is stated in the application and reference is made of the subject matter and number of the prior proceeding.
5. Whenever the commission shall require the filing of a financial statement by any intrastate common air carrier, this statement shall be prepared as of the last day of the most recent calendar quarter, except, where possible, a more recent date may be submitted. Such financial statements shall include:
  - a. A balance sheet of the form and style usually followed in the particular industry. Sufficient detail should be

included so as to provide the following information (separate schedule showing the detail may be used if preferred):

- (1) Amount and kinds of stock authorized.
- (2) Amount and kinds of stock issued and outstanding.
- (3) Terms of preference of preferred stock, whether cumulative or participating, preferred as to dividends, assets, or otherwise.
- (4) A brief description of each mortgage showing the amount, date of maturity, rate of interest, and name of mortgagee or trustee.
- (5) Number and amount of bonds authorized, and number and amount issued, giving the name of the company or corporation which issued the same, describing each class separately, and giving date of issue, par value, rate of interest, date of maturity, and how secured.
- (6) Each note outstanding, giving date of issue, amount, date of maturity, and rate of interest in whose favor.
- (7) Other indebtedness, giving detail by classes and describing security, if any, with a brief statement of the devolution or assumption of any portion of such indebtedness upon or by any person or corporation if the original liability has been transferred, together with the amount of interest paid thereon during the year terminated by the balance sheet.

- b. An income statement of the form and style usually followed in the particular industry and covering the twelve-month period the balance sheet terminates.
- c. A schedule showing a detail of the interest and dividends paid during the period covered by the income statement.

6. The application must include a statement of passenger traffic potential and a summary of research utilized to develop marketing and business plans to ensure profitability.

7. All applications must be submitted on forms approved by the commission.

History: Amended effective March 1, 1990.

General Authority: NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

Law Implemented: NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

6-02-01-13.1. Denial of application or suspension or revocation of authorization, permission, certificate, or license. The commission may, after notice and hearing, deny an application or suspend or revoke an existing authorization, permit, certificate, or license for just cause. Acts or omissions of an applicant or holder of an authorization, permit, certificate, or license constituting just cause may include:

1. The failure to pay such fees or file a bond as is required by law or this title;
2. The failure to provide information to the commission as required by law or this title;
3. A violation of a rule, procedure, or standard in this title or North Dakota Century Code title 2;
4. Commission of a fraud or the making of a knowing misstatement in an application, in information submitted to the commission, or in a proceeding before the commission; or
5. If the issuance of a common carrier certificate for authority to operate as an intrastate air carrier is not in the best interest of the development and coordination of aeronautical activities in the state. In determining the best interest of the development and coordination of aeronautical activities in the state, the commission shall consider, but not be limited to, routes and service of the proposed intrastate air carrier and existing air carriers, the present and future impact upon air service to the communities affected by the application, the present and future air service needs of the state of North Dakota, the safety of the public, and the financial responsibility of the air carrier.

History: Effective March 1, 1990.

General Authority: NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

Law Implemented: NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

6-02-01-13.2. Immediate suspension or revocation of common carrier certificate. Notwithstanding other provisions of this title, the commission may, without prior notice or hearing, suspend or revoke a common carrier certificate upon receipt of notification that the federal aeronautics administration has determined or declared the carrier to be unfit to operate a common carrier service under the provisions of 14 CFR, part 121 or 135. Notice of the commission's action must be immediately given to the carrier and the carrier, upon its request, is entitled to a hearing concerning such action. The commission may suspend all or a part of the rules in this title if, in its discretion, compliance with the rule or rules to be suspended will unreasonably delay the hearing authorized under this section.

History: Effective March 1, 1990.

General Authority: NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

Law Implemented: NDCC 2-05-08, 2-05-13, 2-05-15, 2-05-16

STAFF COMMENT: Chapter 6-02-04 contains all new material but is not underscored so as to improve readability.

CHAPTER 6-02-04  
INTRASTATE AIR CARRIERS

Section	
6-02-04-01	Application for Common Carrier Certificate or Transfer of Certificate - Additional Information
6-02-04-02	Insurance
6-02-04-03	Other Standards

6-02-04-01. Application for common carrier certificate or transfer of certificate - Additional information. In addition to information which must be provided to the commission as part of the application process as required by law or this title, an application for a common carrier certificate to operate as an intrastate air carrier or the transfer of an existing certificate must also contain the following information:

1. The route or routes over which the applicant desires to operate and the intended points of service including a description of the bases of operation and aircraft maintenance;
2. A description of each aircraft which the applicant intends to use;
3. A proposed schedule of service and schedule of rates to be charged between the points of service including documentation showing code sharing and marketing contracts with major carriers and the rates to be charged for such services;
4. A plat or map showing the routes over which the applicant desires to operate, such plat or map also showing the routes of existing air carriers or airlines whether or not subject to the jurisdiction of the commission;
5. A description of the need for the air service to be provided by the applicant;
6. Proof of insurability;
7. Copies of federal certificates of air commerce; and

8. Such other information, exhibits, or other data as may be requested by the commission to assist it in acting upon the application.

History: Effective March 1, 1990.

General Authority: NDCC 2-05-15

Law Implemented: NDCC 2-05-15

6-02-04-02. Insurance. Each holder of a common carrier certificate shall maintain insurance against loss in the following form and amount:

1. The carrier must comply with all insurance requirements as specified by the United States department of transportation air carrier operator certificates under 14 CFR, parts 121 and 135, or any other federal certificate requirement.
2. An advance ticket performance bond of ten thousand dollars must be deposited with the commission as security for the failure of the carrier to provide service in the event of discontinuance of service as a result of the suspension, revocation, or termination of a common carrier certificate.

History: Effective March 1, 1990.

General Authority: NDCC 2-05-15

Law Implemented: NDCC 2-05-15

6-02-04-03. Other standards. In addition to rules, procedures, or standards as otherwise set forth in this title or in North Dakota Century Code title 2, a holder of a common carrier certificate is required to comply with the following standards or requirements:

1. The holder shall contact airport management to arrange terminal space and passenger loading leases and contracts.
2. The holder shall contact airport management to arrange safety and security measures to comply with federal, state, and local laws and ordinances.

History: Effective March 1, 1990.

General Authority: NDCC 2-05-15

Law Implemented: NDCC 2-05-15



TITLE 7  
Agriculture, Commissioner of



APRIL 1990

STAFF COMMENT: Chapter 7-03.1-21 contains all new material but is not underscored so as to improve readability.

CHAPTER 7-03.1-21  
SHEEP MILK REGULATIONS AND FARM STANDARDS  
FOR PRODUCTION OF SHEEP MILK

Section	
7-03.1-21-01	Health of Herd
7-03.1-21-02	Sampling
7-03.1-21-03	Sediment Test
7-03.1-21-04	Classification
7-03.1-21-05	Antibiotics, Medicinals, and Chemicals
7-03.1-21-06	Raw Milk from Outside Sources
7-03.1-21-07	Water Supply
7-03.1-21-08	Milk Truck Loading Area
7-03.1-21-09	Sewage Disposal
7-03.1-21-10	Milkhouse
7-03.1-21-11	Utensils and Equipment
7-03.1-21-12	Acceptable Methods of Storage of Raw Sheep Milk at Producer Dairy Facility
7-03.1-21-13	Milking Area
7-03.1-21-14	Yard or Loafing Area and Premises
7-03.1-21-15	Milking Procedures for Producer Dairies
7-03.1-21-16	Processing Standards for Sheep Milk Manufacturing and Processing Plants
7-03.1-21-17	Storage and Thawing
7-03.1-21-18	Requirements for Sheep Milk Cheese

7-03.1-21-01. Health of herd. Raw sheep milk offered for sale must be from healthy sheep. Raw sheep milk may not be mixed with milk from other dairy animals.

History: Effective April 1, 1990.  
General Authority: NDCC 4-29-03, 4-30-55.1  
Law Implemented: NDCC 4-30-27, 4-30-40

7-03.1-21-02. Sampling. At a frequency set by the dairy commissioner, a raw milk sample must be taken from each sheep producer dairy and sent to a laboratory approved by the dairy commissioner for analysis. Samples must be taken by licensed samplers or persons named by the dairy commissioner and must be representative of all lactating sheep in the flock. Analysis of the samples must include, but is not limited to, bacterial counts, somatic cell counts, antibiotic, medicinal and chemical levels, and sediment content.

History: Effective April 1, 1990.  
General Authority: NDCC 4-29-03, 4-30-55.1  
Law Implemented: NDCC 4-30-18

7-03.1-21-03. Sediment test. Raw sheep milk offered for sale must be tested for sediment content. The milk tested must be classified as number one or number two. Number one classification includes milk with sediment content not exceeding fifty hundredths milligrams of sediment per sample, or its equivalent. Number two classification includes milk with sediment content not exceeding one and fifty hundredths milligrams of sediment per sample, or its equivalent. All sediment tests must be by the mixed sample method or otherwise approved by the dairy commissioner.

History: Effective April 1, 1990.  
General Authority: NDCC 4-29-03, 4-30-55.1  
Law Implemented: NDCC 4-30-18, 4-30-23, 4-30-30

#### 7-03.1-21-04. Classification.

1. Raw sheep milk is classified as undergrade when:
  - a. Bacteria counts by the direct microscopic cell count or standard plate count methods exceed one million bacteria per milliliter;
  - b. Two out of the last four somatic cell counts exceed one million somatic cells per milliliter (effective July 1, 1991);
  - c. Sediment content exceeds one and fifty hundredths milligrams of sediment or equivalent per sample by the mixed sample method; or
  - d. An inspection shows poor sanitation, filth, or other conditions which could affect milk quality but which are not hazardous to humans.

2. Milk classified as undergrade because of bacteria must be kept off the market if it does not have an acceptable level of bacteria within thirty days of being classified as undergrade.
3. The dairy commissioner shall send a warning letter to the producer of milk classified as undergrade because of somatic cell counts. Between three and twenty-one days after the first warning letter, another sample must be taken. If the somatic cell count exceeds one million somatic cells per milliliter, the dairy commissioner shall keep the milk off the market (effective July 1, 1990).
4. The dairy commissioner shall resample and retest milk classified as undergrade because of sediment content between three and twenty-one days after notice of violation. If it is found to exceed one and fifty hundredths milligrams of sediment by the mixed sampling method, or equivalent, it must be kept off the market.
5. When milk is classified as undergrade because of poor sanitation, the dairy commissioner shall reinspect the production site within thirty days.
6. The undergrade status may be lifted when all corrections have been made.

History: Effective April 1, 1990.

General Authority: NDCC 4-29-03, 4-30-55.1

Law Implemented: NDCC 4-30-27, 4-30-30, 4-30-31

7-03.1-21-05. Antibiotics, medicinals, and chemicals. Raw sheep milk may not exceed antibiotic, medicinal, or chemical limits set by either the United States food and drug administration or the environmental protection agency. Milk exceeding these limits must be kept off the market.

History: Effective April 1, 1990.

General Authority: NDCC 4-29-03, 4-30-55.1

Law Implemented: NDCC 4-29-03, 4-30-27, 4-30-31

7-03.1-21-06. Raw milk from outside sources. Milk supplies approved by an out-of-state agency having milk production and testing standards similar to North Dakota are eligible to enter North Dakota. All such milk must be sampled and tested by the North Dakota dairy commissioner, or by an out-of-state agency approved by the dairy commissioner. The milk must meet all North Dakota quality standards prior to entering the North Dakota market.

History: Effective April 1, 1990.

General Authority: NDCC 4-29-03, 4-30-55.1

Law Implemented: NDCC 4-29-03, 4-29-04

7-03.1-21-07. Water supply.

1. The water supply for a producer dairy facility must be properly located, protected, and operated. It must be of ample supply and safe for cleaning utensils and equipment. Rural farm water supplies approved by the state department of health and consolidated laboratories are acceptable. Wells constructed according to the state board of water well contractors' standards, tested every three years by a laboratory approved by the dairy commissioner and found to comply, are acceptable. Other water supplies may be approved by the dairy commissioner if tested each year and found to comply with state requirements regarding coliform content. After repairs or disruption to the water system, it must be tested. It must comply with state standards for coliform. All new water supplies to a producer dairy facility must comply with the state department of health and consolidated laboratories' requirements for rural water or the state board of water well contractors' requirements for well construction.
2. Each dairy producer facility must include a separate handwashing facility containing soap, individual sanitary towels, hot and cold water under pressure with a freefall mixing faucet, hand sink or wash basin.

History: Effective April 1, 1990.

General Authority: NDCC 4-29-03, 4-30-55.1

Law Implemented: NDCC 4-30-27

7-03.1-21-08. Milk truck loading area. The truck loading area of a dairy producer facility must provide all weather access to the milk storage area. It must drain properly to prevent pooling of water. It must provide easy access to the milkroom or milkhouse. Farm animals may not have free access to the milk loading area.

A producer dairy facility must have a platform or slab made of concrete or other nonporous material, outside the milkhouse. It must be centered under a hose port opening in the wall suitable for transferring milk from the bulk tank to the milk truck. The platform or slab must be at least six feet by six feet [1.83 meters by 1.83 meters]. The port opening must be closed when not in use.

History: Effective April 1, 1990.

General Authority: NDCC 4-29-03, 4-30-55.1

Law Implemented: NDCC 4-30-27

7-03.1-21-09. Sewage disposal. Disposal of wastes from a dairy producer facility may not pollute the soil, create an odor problem, create an insect breeding area, or contaminate any water supply. The dairy sheep flock may not have access to the disposal site.

History: Effective April 1, 1990.  
General Authority: NDCC 4-29-03, 4-30-55.1  
Law Implemented: NDCC 4-30-27

7-03.1-21-10. Milkhouse.

1. For the purposes of this section, the term "milkhouse" includes milkroom.
2. A dairy producer facility must provide a milkhouse for handling and cooling milk and for washing, handling, and storing utensils and equipment. It must be conveniently located, properly constructed, and well lighted and ventilated. Light fixtures over a milk handling or storage area must be shatterproof.
3. The floor of the milkhouse must be concrete or other nonporous material. It must be graded for proper drainage. The walls and ceilings must be made of smooth, easily cleaned material, and dusttight.
4. All outside doors of the milkhouse must be tight fitting and self-closing. If it is a part of a barn or other building, the milkhouse must be partitioned and sealed to keep out dust, flies, and rodents. Solid doors between the milkhouse and milking area must be tight fitting and self-closing.
5. The milkhouse must have a wash and rinse vat made of material approved by the dairy commissioner, a utensil rack, and milk cooling facilities. The milkhouse must have enough hot and cold water under pressure for cleaning the milking equipment.
6. Other products which are likely to contaminate milk or create a health hazard may not be stored or handled in the milkhouse.
7. The milkhouse must be kept clean. It must be free of trash, animals, and fowl.
8. Single service articles kept in the milkhouse must be properly stored and may not be reused.
9. Only pesticides approved for use in the milkhouse by the environmental protection agency may be kept in the milkhouse. These pesticides must be used according to label directions to prevent contamination of the milk.
10. Antibiotics and other medicines approved for use on dairy animals may be stored in the milkhouse or milkroom, if care is taken not to contaminate the milk supply or milk contact equipment.

History: Effective April 1, 1990.

General Authority: NDCC 4-29-03, 4-30-55.1  
Law Implemented: NDCC 4-30-27

7-03.1-21-11. Utensils and equipment. Utensils and equipment used in milking and milk handling operations must be in good repair, clean, and properly stored. Cleaning equipment must be in good condition and properly stored. Milk contact surfaces must be free of milk and other residue. The surfaces must be washed, rinsed, drained, and stored in a sanitary manner after each use. Milk contact surfaces must be sanitized before each use. All utensils and equipment must comply with applicable 3A standards as defined in North Dakota Century

Code section 4-30-01. Approved dairy cleaners, sanitizers, and brushes must be available for use in the milkhouse. Such brushes must be stored in the milkhouse.

History: Effective April 1, 1990.  
General Authority: NDCC 4-29-03, 4-30-55.1  
Law Implemented: NDCC 4-30-27

7-03.1-21-12. Acceptable methods of storage of raw sheep milk at producer dairy facility.

1. Bulk milk tank.
  - a. A bulk milk tank meeting 3A sanitary standards, as defined in North Dakota Century Code section 4-30-01 for construction, may be used in producer dairy facilities, provided it has an approved milk measuring device and a working thermometer. A conversion table for calculating weight must be in the milkhouse. The volume of milk in the bulk tank after the first milking must reach the bulk tank agitator and be at a level that will allow adequate agitation of the milk. Failure to produce adequate volumes of milk from the first milking may result in suspension of a producer's certification to sell raw milk.
  - b. The bulk tank must be cleaned, after being emptied and sanitized, before being refilled.
  - c. New tanks must be equipped with a tight-fitting, approved valve that is designed for use on a bulk milk tank. Tanks and valves must comply with 3A sanitary standards, or be acceptable to the dairy commissioner. Valves not designed for in-place cleaning must be taken apart, hand-cleaned, and sanitized between milk pickups and refillings.
  - d. Milk may not be held at the producer dairy facility longer than ninety-six hours from the first milking until pickup, except during storm-related conditions. Any time milk is removed from the bulk tank, the tank must be emptied

completely, washed, and sanitized before the next milking. Milk offered for sale must be removed from the bulk tank only through the tank milk valve.

- e. The bulk tank must be in the milkhouse and accessible for cleaning and servicing. It may not be placed over a floor drain or under a ventilator.

## 2. Freezing.

- a. Milk to be stored at a producer dairy facility for more than ninety-six hours before being shipped to a processing facility must be frozen. Milk must be cooled to a temperature of forty degrees Fahrenheit [4.4 degrees Celsius] within two hours after milking.
- b. Freezing is allowed only in containers approved by the dairy commissioner. Frozen milk temperatures may not rise above zero degrees Fahrenheit [-18 degrees Celsius] until the milk has reached the processing facility. At no time may fresh raw sheep milk be placed into a container holding frozen raw sheep milk. The freezing of sheep milk must be completed within six hours after milking, unless otherwise specifically directed by the dairy commissioner.
- c. The freezing unit must be made of materials that are nonporous and easily cleanable. It must be free of dust, pits, and corrosion. It must be in the milkhouse or in another area acceptable to the dairy commissioner. The unit must be emptied, cleaned, and defrosted at least once every two months. No more than ten percent of the freezer capacity may receive milk warmer than zero degrees Fahrenheit [-18 degrees Celsius].

3. Any other method approved by the dairy commissioner may be used.

History: Effective April 1, 1990.

General Authority: NDCC 4-29-03, 4-30-55.1

Law Implemented: NDCC 4-30-27

## 7-03.1-21-13. Milking area.

1. Each producer dairy shall provide a milking barn or milking parlor suited for sanitary milking operations.
2. No swine or fowl are permitted in any part of the milking area.
3. The milking area must be well lighted and ventilated. The floor and gutters in the milking area must be constructed of concrete or other nonporous material. The milking area must

be in good repair. Ramps must be made on nonporous material. Rubber mats to reduce slippage may be placed on the ramps. The milking area must be dusttight. The walls and ceiling of the milking area must be in good repair. The milking area must be kept clean. Any manure must be removed daily and properly stored.

History: Effective April 1, 1990.

General Authority: NDCC 4-29-03, 4-30-55.1

Law Implemented: NDCC 4-30-27

7-03.1-21-14. Yard or loafing area and premises. The yard or loafing area of a producer dairy must be large enough to prevent overcrowding. The yard or loafing area must be drained to prevent standing water and must be kept clean. Manure must be spread daily or stored so that it is not accessible to the milking flock. Stored manure must be spread before June fifteenth of each year, or contained so that it will prevent the reproduction of flies.

History: Effective April 1, 1990.

General Authority: NDCC 4-29-03, 4-30-55.1

Law Implemented: NDCC 4-30-27

7-03.1-21-15. Milking procedures for producer dairies.

1. All milking sheep must be kept clean. Immediately before milking, the udders and teats must be washed. A paper towel moistened with a sanitizing solution must be used. Then, the udders and teats must be wiped dry. Other methods may be approved by the dairy commissioner.
2. The milker's outer clothing must be clean. The milker's hands must be clean and dry. No person with an infected cut or open sores on their hands or arms may milk sheep or handle milk, milk containers, utensils, or equipment.
3. Milk from sheep known to be infected with mastitis, residues of antibiotics or other drugs, milk containing pesticides or other chemical residues greater than the limits set by the dairy commissioner, or milk from sheep during the first ninety-six hours after freshening (colostrum) must be milked last or with separate equipment. This milk must be kept off the market.
4. Milk stools, surcingles, and antikickers must be kept clean and properly stored.
5. Dusty operations may not take place right before or during milking.
6. Strong-flavored feed may be fed only after milking.

7. Concentrates and feed, if stored in a building used for dairy operations, must be kept in tightly covered boxes or bins.

History: Effective April 1, 1990.  
General Authority: NDCC 4-29-03, 4-30-55.1  
Law Implemented: NDCC 4-30-27

7-03.1-21-16. Processing standards for sheep milk manufacturing and processing plants. Sheep milk manufacturing and processing plants shall comply with all of the requirements for other dairy manufacturing and processing plants found in North Dakota Century Code chapter 4-30-33, and any rules adopted pursuant to it.

History: Effective April 1, 1990.  
General Authority: NDCC 4-29-03, 4-30-55.1  
Law Implemented: NDCC 4-30-33, 4-30-34

7-03.1-21-17. Storage and thawing. Raw sheep milk brought frozen to a manufacturing or processing plant must be kept frozen until it is needed for processing. Thawing procedures must be approved by the dairy commissioner. Thawing means the process of raising the milk's temperature above thirty-two degrees Fahrenheit [0 degrees Celsius]. All thawed raw sheep milk must be processed immediately and may not be refrozen.

History: Effective April 1, 1990.  
General Authority: NDCC 4-29-03, 4-30-55.1  
Law Implemented: NDCC 4-30-33, 4-30-34

7-03.1-21-18. Requirements for sheep milk cheese. All raw sheep milk must be pasteurized or heat treated before being used in cheese or other food products intended for human consumption. Heat treated finished cheese must be properly identified and aged at least six months before being offered for human consumption. The dairy commissioner may approve changes to this section if the commissioner finds that the health, safety, and welfare of the general public, as well as the quality of the product, will not be compromised.

History: Effective April 1, 1990.  
General Authority: NDCC 4-29-03, 4-30-55.1  
Law Implemented: NDCC 4-30-33, 4-30-34, 4-30-35



TITLE 10  
Attorney General



FEBRUARY 1990

10-08-01-01. Qualifications for license. No retail license shall be issued to any person, nor shall any such previously issued license be renewed or retained unless the applicant files a sworn statement upon the application showing the following qualifications:

1. The applicant or manager must not have been convicted (excluding administrative sanctions) within five years prior to the application for the license of any violation of any law of the United States or this state or of any local ordinance which law or ordinance relates to:
  - a. The manufacture, sale, distribution, or possession for sale or distribution of an alcoholic beverage.
  - b. Prostitution as set forth in North Dakota Century Code chapter ~~12.1-29~~ and applicable federal and local laws.
  - c. Obscenity as set forth in North Dakota Century Code chapter ~~12.1-27.1~~ and applicable federal and local laws.
  - d. Drugs as set forth in North Dakota Century Code chapter ~~19-03.1~~ and applicable federal and local laws.
  - e. Felony offenses.
  - f. The third driving while intoxicated conviction within a two-year period.

The applicant or manager may not be denied a retail license because of prior conviction of the above offenses if the person has been determined sufficiently rehabilitated under North Dakota Century Code section ~~12.1-33-02.1~~ found guilty of, pled guilty to, or released from incarceration or probation for a felony within the last five years.

2. The applicant has secured a local license, a copy of which is attached to the sworn application or manager must not have been found guilty of, or pled guilty to, a misdemeanor or an infraction offense contained in North Dakota Century Code chapters 5-01, 5-02, 5-03, 12.1-06, 12.1-08, 12.1-09, 12.1-10, 12.1-11, 12.1-12, 12.1-20, 12.1-22, 12.1-23, 12.1-24, 12.1-27.1, 12.1-28, 12.1-29, 12.1-31, 12.1-31.1, 19-03.1, 53-04, 53-06.1, 53-06.2, or have committed any other crime which has a direct bearing on the applicant's fitness to be involved in the sale or dispensing of alcoholic beverages within the last three years.
3. The applicant's building in which the business is to be conducted meets the local and state requirements regarding sanitation and safety, and a copy of such local and state reports regarding sanitation and safety is attached to the sworn application.
4. The applicant has secured a local license, a copy of which is attached to the sworn application.
5. The applicant may be issued a retail license even if such person has pled or been found guilty, or has committed an offense under subsection 2 if the person has been determined by the attorney general to be sufficiently rehabilitated.

History: Effective September 1, 1983; amended effective February 1, 1990.

General Authority: NDCC 5-02-09.1

Law Implemented: NDCC 5-02-02(3), 5-02-02(4), 5-02-02(5)

STAFF COMMENT: Chapter 10-08-03 contains all new material but is not underscored so as to improve readability.

#### CHAPTER 10-08-03 PURCHASES FOR RETAIL SALE

Section  
10-08-03-01            Purchase of Alcoholic Beverages by Retailers

10-08-03-01. Purchase of alcoholic beverages by retailers. All alcoholic beverages purchased by a North Dakota licensed retailer for the purpose of resale must be purchased only from a North Dakota licensed wholesaler.

History: Effective February 1, 1990.

General Authority: NDCC 5-02-09.1

Law Implemented: NDCC 5-02-01

TITLE 17  
Chiropractic Examiners, Board of



FEBRUARY 1990

17-01-02-03. Board expenses. Each member of the board of chiropractic examiners shall be reimbursed for the member's expenses for each day the member is actually engaged in performing the duties of the member's office as provided for in North Dakota Century Code section 44-08-04, and such mileage and travel expenses as are provided for in North Dakota Century Code section 54-06-09 and additional allowance for other necessary expenses incurred. Each member of the board shall receive compensation in the amount of one hundred dollars for each day or portion thereof spent in the discharge of the member's duties. The secretary-treasurer of the board shall receive an annual salary ~~of one~~ not to exceed five thousand dollars.

History: Effective April 1, 1982; amended effective April 1, 1984; February 1, 1990.

General Authority: NDCC 28-32-02, 43-06-05

Law Implemented: NDCC 43-06-05, 44-08-04, 54-06-09

17-01-03-01. Duties of president. The president shall preside at all meetings of the board, and shall perform such other duties as generally devolve upon that office and as prescribed by law. In the president's absence the vice president shall preside and perform the duties of the president. In the absence of both the president and vice president, the secretary-treasurer shall preside and perform the duties of the president.

History: Amended effective February 1, 1990.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-06-05

17-01-03-03. Joint duties of president and secretary-treasurer. ~~The president and secretary-treasurer shall sign all orders for the~~

payment of money on accounts and other orders of the board. Repealed effective February 1, 1990.

General Authority: ~~NDCE 28-32-02~~  
Law Implemented: ~~NDCE 43-06-05~~

17-02-01-01. Educational requirements. To qualify for a license to practice chiropractic, the applicant shall have a degree from an approved and accredited college of chiropractic where the resident course of instruction is not less than four years of nine months each or four thousand class hours.

It shall be the object of the board to foster higher professional standards as rapidly as is consistent with the best interests of the profession. Repealed effective February 1, 1990.

History: ~~Amended effective July 1, 1982; April 1, 1984.~~  
General Authority: ~~NDCE 28-32-02, 43-06-05~~  
Law Implemented: ~~NDCE 43-06-08, 43-06-09~~

17-02-01-01.1. Approved schools. All chiropractic colleges fully accredited and not merely recognized for accreditation by the council on chiropractic education or its successor are approved chiropractic colleges by the board. Repealed effective February 1, 1990.

History: ~~Effective April 1, 1984.~~  
General Authority: ~~NDCE 28-32-02, 43-06-05~~  
Law Implemented: ~~NDCE 43-06-09~~

17-02-01-02. Applications for examination. Application shall be made on the official form issued by the board. The forms may be secured upon application to the secretary-treasurer. If the applicant graduated prior to 1966 (prenational board) and has been in active practice, the applicant must pass five examinations (x-ray, orthopedics, jurisprudence, nutrition, and neurology) and also five practicals (x-ray, spinal biomechanics, extremity adjusting, first aid, and case management).

All applicants graduating after 1966 and before July 1988 must pass parts I and II of the national board, plus five examinations (x-ray, orthopedics, jurisprudence, nutrition, and neurology) and also five practicals (x-ray, spinal biomechanics, extremity adjusting, first aid, and case management).

If the applicant graduated after July 1988, the applicant must have passed all parts of the national board, plus the clinical competency examination. The applicant must pass jurisprudence and five practicals (x-ray, spinal biomechanics, extremity adjusting, first aid, and case management).

History: Amended effective February 1, 1990.

General Authority: NDCC 28-32-02  
Law Implemented: NDCC 43-06-08

17-02-01-03. Fee for examination. At least thirty days prior to the date set for regular meeting of the board of examiners, every applicant shall file with the secretary-treasurer a written application properly sworn to before a notary public, together with the applicant's diploma, or photocopy of the diploma, and a fee of one hundred fifty dollars, no part of which shall be returned. The application shall be attested by the dean of the college or school of which the candidate is a graduate. Repealed effective February 1, 1990.

History: Amended effective April 1, 1984.  
General Authority: NDCC ~~28-32-02~~, ~~43-06-05~~  
Law Implemented: NDCC ~~43-06-08~~

17-02-01-06. Examination requirements. ~~Every~~ To be entitled to a license, every candidate must answer correctly at least seventy-five percent of the questions propounded in each subject, besides making in addition to conducting a satisfactory clinical demonstration, to be entitled to a license.

History: Amended effective February 1, 1990.  
General Authority: NDCC 28-32-02  
Law Implemented: NDCC ~~43-06-11~~ 43-06-08

17-02-01-08. Examination subjects. Written examinations shall be conducted in the subjects as set forth in North Dakota Century Code ~~section~~ sections 43-06-10 and 43-06-10.1. Each candidate must make a satisfactory clinical demonstration in the practical examinations set forth by the board.

~~Each candidate shall in addition to the above make a satisfactory clinical demonstration of vertebral palpation, nerve tracing, and adjustment, as taught by the school of which the candidate is a graduate.~~

History: Amended effective February 1, 1990.  
General Authority: NDCC 28-32-02  
Law Implemented: NDCC 43-06-10

17-02-01-10. License issued. When it shall have been determined by the board that any candidate has successfully passed the examination and made satisfactory demonstration of the clinical art, and is a person of good moral character, there shall be issued to such candidate a license to practice chiropractic, which must be countersigned by the president and secretary-treasurer of the board and authenticated by its official seal signed by all members of the board.

History: Amended effective February 1, 1990.  
General Authority: NDCC 28-32-02  
Law Implemented: NDCC ~~43-06-11~~ 43-06-08

17-02-01-10.1. License displayed. If a licensed chiropractor moves from his primary location, the office of the secretary-treasurer must be notified of the change of location of the chiropractor. The certificate must at all times be displayed in the office of the chiropractor. In case of loss by fire or other destruction, a duplicate certificate may be issued by the board at a regular meeting upon receipt of satisfactory evidence of the destruction and payment of a fee not to exceed twenty-five dollars.

History: Effective February 1, 1990.  
General Authority: NDCC 28-32-02  
Law Implemented: NDCC 43-06-04.1

17-02-01-11. Second examination. Any candidate failing the first examination may take a second examination at the next regular examination session upon the payment of one hundred dollars. Repealed effective February 1, 1990.

History: Amended effective April 1, 1984.  
General Authority: NDCC ~~28-32-02, 43-06-05~~  
Law Implemented: NDCC ~~43-06-12~~

17-02-01-12. Licenses recorded. Upon receiving a certificate of license, the chiropractor must have it recorded in the office of the register of deeds in the county where the chiropractor engages in practice. Should a licensed chiropractor move to another county in the state, the certificate must be recorded again and the secretary-treasurer of the board notified of the change of location of the chiropractor. The certificate must at all times be displayed in the office of the chiropractor. In case of loss by fire or other destruction, a duplicate certificate may be issued by the board (at a regular meeting) upon receipt of satisfactory evidence of the destruction and a fee of five dollars. Repealed effective February 1, 1990.

General Authority: NDCC ~~28-32-02~~  
Law Implemented: NDCC ~~43-06-14~~

17-02-01-13. Renewal License renewal and fees. Every chiropractor who has been licensed by the board shall renew their licenses and remit the license by remitting a renewal fee in the amount of fifty not to exceed two hundred dollars on or before September first of each year. Application for renewal certificates must be made upon the official renewal blanks issued by the board. Renewal blanks may be secured upon application to the secretary-treasurer. No renewal

certificate will be issued if it has been shown at an administrative hearing that the licensee has violated any of the rules of the board or North Dakota Century Code chapter 43-06. No renewal certificate will be issued if the continuing educational requirements as set forth in North Dakota Century Code section 43-06-13 have not been met. A license which has not been renewed as a result of nonpayment of the annual registration fees ~~fee~~ may be reinstated upon payment to the board of the amount of renewal fees then in default along with an additional administrative fee of one hundred dollars past renewal fees plus an additional administrative fee not to exceed four hundred dollars. Proof of appropriate continuing education hours must be presented. If a license has not been renewed during a continuous five-year period, no renewal of the license may issue and the applicant must pass the examinations required by North Dakota Century Code sections 43-06-10 and 43-06-10.1.

History: Amended effective April 1, 1984; February 1, 1990.  
General Authority: NDCC 28-32-02, ~~43-06-05~~  
Law Implemented: NDCC ~~43-06-13~~ 43-06-04.1

## CHAPTER 17-02-02

### LICENSE REVOCATION

[Repealed effective February 1, 1990]

17-02-03-02. Reporting ~~quarantinable~~ contagious or infectious diseases. To comply with the state law regarding ~~quarantinable~~ contagious or infectious diseases, the chiropractor ~~will~~ shall immediately upon making an examination of such cases notify the health officer of the community of the existence of such diseases.

History: Amended effective February 1, 1990.  
General Authority: NDCC 28-32-02  
Law Implemented: NDCC 43-06-16

17-02-03-03. Releasing patients from quarantine. Before a chiropractor shall release from quarantine a patient suffering from a ~~quarantinable~~ contagious or infectious disease, the patient shall ~~have~~ first ~~been~~ be examined by the attending chiropractor, and if ~~found~~ fully recovered and ready for release and the patient has passed the required number of days in quarantine as required by statute, the patient's condition shall then be reported by the attending chiropractor to the health officer, who shall have full charge of the disinfection of the patient, the patient's clothing, and the place of quarantine.

History: Amended effective February 1, 1990.  
General Authority: NDCC 28-32-02  
Law Implemented: NDCC 43-06-16

17-02-04-01. Rights and privileges. Chiropractors Unless otherwise limited by statute, chiropractors shall be entitled to all rights and privileges of physicians and surgeons in this state, insofar as the chiropractor does not abuse the chiropractor's statutory rights.

History: Amended effective February 1, 1990.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-06-01, 43-06-17

17-02-04-03. Advertising. Chiropractors will be privileged to advertise their practice in any legitimate manner that tends to uphold and keep the science clear and out of the class of fake advertising set forth in the American chiropractic association code of ethics adopted by this state.

History: Amended effective February 1, 1990.

General Authority: NDCC ~~28-32-02~~ 43-06-04.1, 43-06-15

Law Implemented: NDCC 43-06-15, ~~43-06-19~~

17-02-04-04. Definition of practice of chiropractic. Any chiropractor may adjust any displaced tissue of any kind or nature, and practice physiotherapy, electrotherapy, and hydrotherapy as taught by chiropractic schools and colleges, but shall not prescribe for, or administer to any person, any medicine or drug now or hereafter included in materia medica, to be taken internally, nor perform any surgery, except as herein stated, nor practice obstetrics, nor use the titles physician or surgeon, but may use the title Doctor of Chiropractic, or D.C. (See North Dakota Century Code section ~~43-06-01.~~) Repealed effective February 1, 1990.

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

Law Implemented: NDCC ~~43-06-01, 43-06-11~~

17-02-04-05. School certifications. Wherever satisfactory evidence is obtained which reflects upon the integrity of a school in a single instance or misrepresenting in certifying to its graduates, it shall immediately devolve upon all graduates of said school applying for a license to prove that their own credentials were honorably obtained. In this they shall have every reasonable aid from the board. Repealed effective February 1, 1990.

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

Law Implemented: NDCC ~~43-06-09~~

STAFF COMMENT: Article 17-03 contains all new material but is not underscored so as to improve readability.

ARTICLE 17-03  
DISCIPLINARY MATTERS

Chapter	
17-03-01	Unprofessional Conduct
17-03-02	Professional Education

CHAPTER 17-03-01  
UNPROFESSIONAL CONDUCT

Section	
17-03-01-01	Unprofessional Conduct

17-03-01-01. Unprofessional conduct. The board may revoke, suspend, or deny a license to any person otherwise qualified or licensed by the board who is found to have committed unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

1. Exploitation of patients for financial gain, which includes:
  - a. Overutilization of chiropractic services or practices. Overutilization is defined as services or practices rendered or goods or appliances sold by a chiropractor to a patient for the financial gain of the chiropractor or a third party which are excessive in quality or quantity to the justified needs of the patient.
  - b. Ordering of excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient.
  - c. Exercising undue influence on a patient or client, including the promotion or the sale of services, goods, appliances, or drugs in such a manner as to exploit the patient or client.
  - d. The administration of treatment or the use of diagnostic procedures which are clearly excessive as determined by the customary practices and standards of the local community of licensees.
2. Willfully harassing, abusing, or intimidating a patient, either physically or verbally.
3. Failing to maintain a patient record and a billing record for each patient which accurately reflect the evaluation or

treatment of the patient and the bills charged to the patient. Unless otherwise provided, all patient records must be retained for at least six years.

4. The willful or grossly negligent failure to comply with the substantial provisions of federal, state, or local laws, rules, or regulations governing the practice of the profession.
5. Any conduct which has endangered or is likely to endanger the health, welfare, or safety of the public including habitual intemperance, illegal use of controlled substances, or conducting unauthorized experiments or tests upon patients.
6. Conviction of a crime which is substantially related to the qualifications, functions, or duties of a chiropractor.
7. Conviction of a felony or any offense involving moral turpitude, dishonesty, or corruption.
8. Violation of any of the provisions of law regulating the dispensing or administration of narcotics, dangerous drugs, or controlled substances.
9. The commission of any act involving moral turpitude or dishonesty, whether the act is committed in the course of the individual's activities as a licenseholder or otherwise.
10. Knowingly making or signing any false certificate or other document relating to the practice of chiropractic care which falsely represents the existence or nonexistence of a state of facts.
11. Violating or attempting to violate, directly or indirectly, or assisting in or abetting in the violations of, or conspiring to violate any provision of the law or the rules adopted by the board.
12. Making or giving any false statement or information in connection with the application for issuance of a license.
13. Participation in any act of fraud or misrepresentation.
14. Except as required by law, the unauthorized disclosure of any information about a patient revealed or discovered during the course of examination or treatment.
15. The employment or use of persons known as cappers or steerers to obtain business.
16. The offering, delivering, receiving, or accepting of any rebate, refund, commission, preference, patronage, dividend,

discount, or other consideration as compensation or inducement for referring patients to any person.

17. Practicing or offering to practice beyond the scope permitted by law, or accepting and performing professional responsibilities which a licensee knows or has reason to know that the licensee is not competent to perform, or performing without adequate supervision professional services which a licensee is authorized to perform only under the supervision of a licensed professional, except in an emergency situation where a person's life or health is in danger.
18. Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, by experience, or by licensure, to perform them.
19. Advertising or soliciting for patronage that is not in the public interest, which includes:
  - a. Advertising or soliciting which is false, fraudulent, deceptive, or misleading.
  - b. Advertising or soliciting which guarantees any service or result.
  - c. Advertising or soliciting which makes any claim relating to professional services or products or the cost or price thereof which cannot be substantiated by the licensee.
  - d. Advertising or soliciting which make claims of professional superiority which cannot be substantiated by the licensee.
  - e. Advertising or soliciting which is based upon a claim that the chiropractor uses a secret or special method of treatment and the chiropractor refuses to divulge the secret or special method of treatment to the board.
  - f. Advertising no out-of-pocket expenses or practicing same.
  - g. Advertising free examination or service.
20. Violation of any term of suspension or probation imposed by the board.

History: Effective February 1, 1990.

General Authority: NDCC 43-06-04.1, 43-06-15

Law Implemented: NDCC 43-06-15

CHAPTER 17-03-02  
PROFESSIONAL EDUCATION

Section  
17-03-02-01 Professional Education  
17-03-02-02 Peer Review

17-03-02-01. Professional education.

1. All licensees shall complete a minimum of twelve hours of approved continuing chiropractic education per year. Only hours earned at board-approved continuing chiropractic education programs will be acceptable. In order to receive board approval, a continuing chiropractic education program:
  - a. Must be a program sponsored by the board;
  - b. Must be a program approved by the council on chiropractic education;
  - c. Must be a program sponsored by a college of chiropractic accredited by the council on chiropractic education or its successor;
  - d. Must be a health-related seminar sponsored by an equally accredited college or university;
  - e. Must be a medical seminar qualifying for continuing education credits; or
  - f. Must be an educational program arranged by the North Dakota chiropractic association and approved by the board.
2. In order to have a program approved, the sponsor shall submit to the board the following information in addition to any other information requested by the board:
  - a. A detailed course outline or syllabus including such items as the method of instruction and the testing materials.
  - b. The qualifications and subjects taught by each instructor appearing in the program.
  - c. The procedure to be used for recording attendance of those attendees seeking to apply for continuing chiropractic education credit.
  - d. The instructor is approved by the board of chiropractic examiners.

3. The board must be the sole determinant of whether the courses are approved for continuing chiropractic education credit. The board shall make that determination based on the information submitted to it. In making its decision, the board shall determine whether or not the course submitted for credit meets the basic objectives and goals of continuing chiropractic education. Those basic goals include the growth of knowledge, the cultivation of skills and greater understanding, the continual striving for excellence in chiropractic care, and the improvement of health and welfare of the public.

History: Effective February 1, 1990.

General Authority: NDCC 43-06-13

Law Implemented: NDCC 43-06-13

17-03-02-02. Peer review.

1. Peer review must be performed by a committee of three individuals appointed by the president of the board. Membership on the committee shall consist of three licensed chiropractors, none of whom may be in a direct or indirect business or personal relationship with the provider, insurer, or patient whose care is being reviewed.
2. The peer review committee shall investigate cases referred by the board that concern whether a licensed chiropractor (1) properly utilized services, (2) rendered or ordered appropriate treatment or services, or (3) charged unconscionable fees or charges for treatment.
3. The fees and charges for treatment include all services provided to the consumer regardless of the monetary consideration paid to the health care provider.
4. The term "unconscionable fees or charges" means (1) charges for improperly utilized services or utilized services or (2) unreasonable charges for provider services, tests, or treatments.
5. The term "properly utilized services" means a determination of whether the services provided were necessary and reasonable as substantiated by clinical records and reports of the provider.

History: Effective February 1, 1990.

General Authority: NDCC 43-06-14.1

Law Implemented: NDCC 43-06-14.1



TITLE 24  
Electrical Board



JANUARY 1990

24-02-01-02. General statement of policy and interpretative rules.

1. Apprentice electricians. There are two categories of apprentice electricians.
  - a. Apprentice electricians under the joint apprenticeship training committee training program approved by the department of labor.
  - b. Electrician trainees who may not be eligible for the joint apprenticeship training committee program and other persons desiring to accumulate a sufficient time and capability in the electrical trade to qualify them to apply for permission to take the examination for journeyman electrician's license.

Any person may work as an apprentice under a licensed master electrician, but the master electrician may not allow an apprentice to work on any installation without direct constant supervision by a North Dakota licensed electrician working with the apprentice at the worksite.

Any master electrician who fails or refuses to comply with this section or who fails or refuses to comply or demonstrate compliance with this section at the request of the board or its representative, shall subject his license to nonrenewal, suspension, or revocation by the board.

2. Master electricians. A master electrician may exercise his privileges as a licensed master for no more than one shop or business.

3. Purpose and scope. The purpose of these standards is the practical safeguarding of persons and of buildings and their contents, from electrical hazards arising from the use of electricity for light, heat, and power. It covers the electrical conductors and equipment installed within or on public and private buildings and other premises, including yards, carnival and parking lots, also the conductors that supply streetlighting, together with the associated equipment necessary to its safe operation.

These standards, based on the National Electrical Code, are the result of years of experience and research to meet the demand for uniform standards to govern electrical wiring in North Dakota, and provide basic rules for intelligent and uniform installation and inspection.

All requirements contained herein must be given careful consideration to ensure greatest permanence, convenience, and safety. These standards do not constitute a design specification for any particular installation, nor an instruction manual for untrained persons. Skill and experience are necessary factors for a safe and adequate wiring installation. In cases where these requirements differ or are in conflict with the requirements of the ~~1987~~ 1990 edition, National Electrical Code and the ~~1985~~ 1988 edition, Life Safety Code NFPA no. 101, the more restrictive requirements shall be the minimum.

- ~~3-~~ 4. Administrative powers and duties. The executive director of the North Dakota state electrical board, under the direction of the board, shall administer laws, rules, and wiring standards of this state, the electrical requirements of the ~~1987~~ 1990 edition, National Electrical Code, and the ~~1985~~ 1988 edition, Life Safety Code NFPA no. 101. In all cases where any action is taken by the executive director to enforce the provisions of any sections contained in these electrical regulations, the ~~1987~~ 1990 edition, National Electrical Code, and the ~~1985~~ 1988 edition, Life Safety Code NFPA no. 101, such acts must be done in the name of and on behalf of the state and the executive director, in so acting for the state, shall not render the executive director liable for any damages that may accrue to persons or property as a result of any such act committed in good faith in the discharge of the executive director's duties, and any suit brought against the executive director by reason thereof, must be defended by the state until final termination of proceedings contained therein.

The electrical regulations of these standards, the ~~1987~~ 1990 edition, National Electrical Code, and the ~~1985~~ 1988 edition, Life Safety Code NFPA no. 101, may be modified or waived by special permission in particular cases where such modification or waiver is specifically permitted or in particular cases where an advancement in the technology of electricity makes

such modification or waiver advisable in the best interest of the people of North Dakota. Such "special permission" must, in all cases, be obtained from the executive director in writing prior to the commencement of the work.

The executive director or the electrical inspector shall have the power to enter any building or premises at any reasonable hour in the discharge of their duties, and it shall be competent for them, when necessary, to remove any existing obstructions such as laths, plastering, boarding, or partitions, which may prevent ~~a perfect~~ an inspection of electrical wiring and equipment; they shall also have the power to enter any building used in whole or in part for the purpose of public assemblage at any time when occupied by the public in order to examine electrical wiring and equipment in such building, and it shall be unlawful for any person to interfere with them in the performance of their duties.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-03. General requirements. Electrical installations must be planned to provide adequate capacity for the load.

1. Wiring systems shall have conductors of sufficient capacity to furnish each outlet without excessive line loss or voltage drop. The voltage drop may not exceed five percent at the farthest outlet of power, heating and lighting loads, or combinations of such loads.
2. All wiring materials must be listed by underwriters' laboratories, incorporated, or other accepted testing laboratories to safeguard life and property. It is the duty of the electrical installer to secure permission from the executive director to use materials, devices, and methods of installation not specifically covered by these standards.
3. All installations must be made in a workmanlike manner with special attention paid to the mechanical execution of work. All conductors must be rigidly supported and all fittings securely fastened.
4. When wiring public school buildings, approval must be received from the department of public instruction and the state electrical board.
5. Overhead conductors may not cross over water wells or known sites where water wells may be drilled. A minimum distance of twenty feet [6.10 meters] in all directions must be maintained for overhead conductors.

6. Buildings moved must have an electrical wiring certificate before service is reconnected.

~~7.~~ Hospitals, nursing homes, homes for the aged, and dormitories which house more than sixteen people must be wired in metal raceway. Portable cleaning equipment receptacle outlets must be installed in corridors and located so that no point in the corridor along the floorline, measured horizontally, is more than twenty-five feet [7.62 meters] from an outlet. Spacing of receptacle outlets for dormitories and homes for the elderly must be in conformity with section 210-52(a), ~~1987~~ 1990 edition, National Electrical Code.

Exception: By special permission from the state electrical board, receptacles in dormitories and homes for the elderly may be located conveniently for the permanent fixture layout.

~~8.~~ 7. In the wiring of nursing homes and hospitals, reference must be made to the state department of health and consolidated laboratories for special requirements pertaining to operating rooms, delivery rooms, and emergency lighting.

~~9.~~ 8. Aluminum conductors in sizes smaller than no. 6 may not be used. Aluminum conductors installed and all corresponding materials must be underwriters' laboratories listed. All materials used must be installed according to the requirements of the National Electrical Code. Connections must be made with the type approved for aluminum. Consideration must be given to the use of different types of metal.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-04. Places of assembly. This section covers all buildings, structures, or portions of buildings designed or intended for the assembly of one hundred or more persons.

Places of assembly include, but are not limited to: assembly halls, auditoriums, including auditoriums in schools; mercantile, business and other occupancies; exhibition halls; armories; dining facilities, including restaurants; church chapels; dancehalls; mortuary chapels; museums; skating rinks; gymnasiums and multipurpose rooms; bowling lanes; poolrooms; clubrooms; places of awaiting transportation; courtrooms; drinking establishments; and conference rooms.

Occupancy of any room or space for assembly purposes by less than one hundred persons in a building of other occupancy, and incidental to such other occupancy, must be classed as part of the other occupancy and subject to the applicable provisions.

When such building structures or portions thereof contain a projection booth or stage platform or area for the presentation of theatrical or musical production, either fixed or portable, the wiring for that area must comply with all applicable provisions of article 520, ~~1987~~ 1990 edition, National Electrical Code.

(For methods of determining population capacity, see occupant load value table, section 24-02-01-16).

1. **Hazardous (classified) locations.** Hazardous areas located in any assemblage occupancy must be installed in accordance with article 500, ~~1987~~ 1990 edition, National Electrical Code, hazardous locations.
2. **Temporary wiring.** In exhibition halls used for display booths, as in trade shows, the temporary wiring must be installed in accordance with article 305, ~~1987~~ 1990 edition, National Electrical Code - temporary wiring, except approved portable cables and cords shall be permitted to be laid on floors where protected from contact by the general public.
3. **Wiring methods.** The fixed wiring method must be metal raceway or nonmetallic raceway encased in not less than two inches [5.08 centimeters] of concrete.

Adjacent areas separated by a firewall must be considered a separate building and may be wired in nonmetallic cable. (For the purpose of this section, a firewall is defined as a wall constructed of solid masonry or of hollow masonry units or of reinforced concrete. The wall shall start at the foundation and extend continuously through all floors to and above the roof, except where the roof is of fire-resistive construction and the wall is carried up tightly against the underside of the roof slab.)

Exception: As provided in article 640, ~~1987~~ 1990 edition, National Electrical Code, sound reproduction and similar equipment; in article 800, ~~1987~~ 1990 edition, National Electrical Code, communication circuits, and in article 725, ~~1987~~ 1990 edition, National Electrical Code, for class 1, class 2, and class 3 remote control and signaling circuits, and in article 760, ~~1987~~ 1990 edition, National Electrical Code, for fire protective signaling systems.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-05. ~~Class II~~ Hazardous locations.

1. Oilfield installations must be classified in accordance with the following American petroleum institute publications.
  - a. Recommended practice for classification of locations for electrical installations at drilling rigs and production facilities on land and on marine fixed and mobile platforms. 500B, third edition, October 1, 1987.
  - b. Classification of locations for electrical installations in petroleum refineries. 500A, fourth edition, December 1987.
  - c. Classification of locations for electrical installations at pipeline transportation facilities. 500C, second edition, July 1984.
2. Electrical wiring in grain elevators must conform with code requirements, class II, division 1 under article 500, ~~1987~~ 1990 edition, National Electrical Code. All enclosures and electrical equipment mounted in rooms containing grinders, cleaners, roller mills, hoppers, open conveyors or spouts, mixers, and other dust producing machinery must be labeled and approved for class II, division 1 location, including motor controllers of the type in which starting and running contractors are oil immersed. General purpose enclosures may only be installed in dustfree locations.
  - ~~1-~~ a. Surge protective capacitors must be provided for all services in grain elevators receiving power from an exterior overhead line. Surge protective capacitors may be located inside or outside a building. If located within a building, each capacitor must be protected with a fuse of proper voltage rating for the circuit and an ampere rating not less than twenty nor more than thirty amperes.
  - ~~2-~~ b. Where necessary to employ flexible connections in grain elevators, dusttight flexible connectors and conduit must be used.
  - ~~3-~~ c. Receptacles and switches installed in grain elevators must be labeled and approved for a class II, division 1 dusty location.
  - ~~4-~~ d. Electrical wiring and equipment installed in a grain elevator which is not used commercially and having a total capacity of less than ten thousand bushels [352.39 cubic meters] and located in a rural district must conform to class II, division 2, under article 500, ~~1987~~ 1990 edition, National Electrical Code.
  - ~~5-~~ e. Electrical wiring and equipment in buildings or rooms other than a grain elevator where grain is handled or

processed on a commercial basis such as rooms containing grinders, augers, open spouts, roller mills, or similar dust producing machinery, must be labeled and approved for class II, division 1 under article 500, ~~1987~~ 1990 edition, National Electrical Code.

- ~~6-~~ f. In buildings or rooms where grain is handled or processed not on a commercial basis, such as rooms containing grinders, augers, open spouts, roller mills, or similar dust producing machinery, the electrical wiring and equipment must conform to class II, division 2, under article 500, ~~1987~~ 1990 edition, National Electrical Code.

Exceptions: Rooms where grain is handled or processed occasionally on a limited basis, general purpose equipment may be used if approved by the local inspection authority.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-06. Grounding. Grounding must conform to article 250, ~~1987~~ 1990 edition, National Electrical Code.

1. The equipment grounding conductor must be spliced in the same manner as branch circuit conductors except that solder may not be used.
2. The neutral conductor may not be used as the equipment grounding conductor and must be insulated except as provided in section 250-60, ~~1987~~ 1990 edition, National Electrical Code.
3. All metal boxes in structures containing metal lath, tinfoil insulation, or other metallic barrier must be grounded.
4. At motor connections, a bonding jumper sized in accordance with table 250-95, ~~1987~~ 1990 edition, National Electrical Code, must be provided around all flexible conduit in sizes one-half inch [12.70 millimeters] and larger. The bonding jumper is not required where a separate grounding conductor is included.
5. Grounding of metal ~~streetlighting~~ lighting standards.
  - a. Circuits run in nonmetallic conduit or buried directly in the ground: the ornamental metal standard must be grounded by use of a grounding conductor, not the neutral conductor. This grounding conductor must be run continuously throughout the system and properly bonded to each standard by use of lugs. It must be connected to a

one-half inch [12.70 millimeters] by ten-foot [3.0-meter] copperweld ground rod at each metal standard. The ten-foot [3.0-meter] ground rod is driven in the center of the metal standard base and projecting slightly above the base. Both ground rod and grounding conductor must be connected to the metal standards. The grounding conductor must be in accordance with the ~~1987~~ 1990 edition, National Electrical Code and in no case smaller than no. 8 copper or no. 6 aluminum.

- b. Because of different characteristics of copper and aluminum, devices such as pressure terminal or pressure splicing connectors and soldering lugs must be suitable for the material of the conductor and must be properly installed and used. Conductors of dissimilar metals may not be intermixed in a terminal or splicing connector where physical contact occurs between dissimilar conductors (such as copper and aluminum, copper and copper-clad aluminum, or aluminum and copper-clad aluminum), unless the device is suitable for the purpose and conditions of use. Consideration must also be given to dissimilar metals when grounding aluminum light standards.
- c. When circuits are run in metal conduit the ornamental metal ~~streetlighting~~ lighting standard must be grounded to the metal conduit. No ground rod is required.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-07. Branch circuits and feeders. Branch circuits and feeders must comply with articles 210 and 215, ~~1987~~ 1990 edition, National Electrical Code.

1. The total connected load must be divided as evenly as practicable, between the two ungrounded conductors of a three-wire system and three conductors of a four-wire wye (120-208 volts) system.
2. A separate circuit with disconnect ~~switch~~ must be provided for the purpose of operating or controlling electrical equipment on heating plants. Wiring requirements for fixed electrical space heating equipment is provided under article 424, ~~1987~~ 1990 edition, National Electrical Code.
3. Dwelling occupancies having built-in baking or cooking units installed separately must have an individual disconnect and overcurrent protective device. Conductors supplying these

units must have a carrying capacity according to nameplate rating.

4. A minimum of six appliance circuits must be installed in kitchens that may be used to serve public gatherings such as schools, churches, lodges, etc.
5. Dwelling type occupancies. Receptacle outlets must be installed in accordance with section 210-52, ~~1987~~ 1990 edition, National Electrical Code.
  - a. Lighting outlets in dwelling type occupancies must be installed in accordance with section 210-70, ~~1987~~ 1990 edition, National Electrical Code.
  - b. A minimum of three circuits must be installed to supply receptacle outlets in kitchen, pantry, dining room, and breakfast room. These circuits may not supply other outlets and must have conductors not smaller than no. 12. Such circuits must be provided with overcurrent devices rated at twenty amperes and must be known as appliance circuits. Two of these circuits must supply receptacle outlets on or near work counter area and so arranged that adjacent receptacles are not on the same circuit.
  - c. In laundry at least one 20-ampere branch circuit must be provided to supply laundry receptacles. See exceptions 1 and 2, section 210-52(e), and 220-4(c), ~~1987~~ 1990 edition, National Electrical Code.
  - d. Ground-fault protection for personnel must comply with section 210-8, ~~1987~~ 1990 edition, National Electrical Code.
6. Branch circuit and feeder calculations must comply with article 220, ~~1987~~ 1990 edition, National Electrical Code. Voltage drop must be taken into consideration when figuring size of feeder or branch circuit.

Formulas for determining voltage drop or conductor size are:

$$\text{Voltage drop} = \frac{21.6 \times L \text{ ft.} \times I}{\text{C.M.A.}}$$

or

$$\text{C.M.A.} = \frac{21.6 \times L \text{ ft.} \times I}{\% \text{ drop} \times \text{voltage}}$$

L = length in ft., one way

I = load in amps

E = volts

C.M.A. = Circular-mil area 21.6 multiplying factor for copper 35 multiplying

factor for aluminum

Percent drop = permissible voltage drop times  
voltage of circuit as follows:

3% of 208 =  $208 \times .03 = 6.24$  volts

3% of 120 =  $120 \times .03 = 3.6$  volts

3% of 240 =  $240 \times .03 = 7.2$  volts

5% of 240 =  $240 \times .05 = 12.0$  volts

Example:

240 volts, 1,000 ft. distance, 10 ampere  
load, 5% drop

$21.6 \times 1,000 = 21,600.0 \times 10 = 216,000$

216,000 divided by 26,250 (C.M.A. of No. 6) =  
8.2 volts (less than 5%)

216,000 divided by 16,510 (C.M.A. of No. 8) =  
13 volts (more than 5%)

120 volts, 8 ampere load, 100 ft. distance,  
3% drop

$21.6 \times 100 = 2,160 \times 8 = 17,280$

17,280 divided by 6,530 (C.M.A. of No. 12) =  
2.64 volts (less than 3%)

17,280 divided by 4,107 (C.M.A. of No. 14) =  
4.2 volts (more than 3%)

or

$21.6 \times 8 \text{ amps} \times 100 \text{ ft.} = 17,280$

17,280 divided by 3.6 (volts representing 3%) =  
5,008 C.M.A. (No. 12)

For 3-phase circuits, use formula, then  
multiply the results by .86

History: Amended effective January 1, 1981; January 1, 1984; October 1,  
1987; January 1, 1990.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-08. Services. Electrical services must comply with  
article 230, ~~1987~~ 1990 edition, National Electrical Code.

1. In general, the point of attachment of a service drop to a building must be not less than ten feet [3.0 meters] above the ground and must be at a height to permit a minimum clearance of service conductors of ten feet [3.0 meters] above walks and eighteen feet [5.48 meters] above driveways or public roads. Where the form of the building will not permit placing the attachment ten feet [3.0 meters] or more above the ground, a mast or other suitable means must be used to obtain the ten feet [3.0 meters] clearance.
2. Perpendicular mast used for support of a service drop to low buildings must be not less than two-inch [5.08-centimeter]

- galvanized rigid steel conduit or intermediate metal conduit fitted with storm collar flashing and offset reducer if needed, at the lower end to accommodate a meter socket.
3. A span of one hundred ten feet [43.48 meters] must be considered a maximum distance for a one hundred amp service drop to a mast unless the mast is substantially guyed.
  4. To eliminate moisture condensation, service raceways must have provisions to prevent circulation of air from a warmer to a colder section of the raceway (see section 300-7, ~~1987~~ 1990 edition, National Electrical Code).
  5. Where the service conduit enters a switch, cabinet, or trough through a knockout, the conduit must be bonded.
  6. Switch location. A service switch or a manually operable circuit breaker must be provided for each set of service entrance conductors and located at a readily accessible point not more than six and one-half feet [1.98 meters] above the floor level and as near as possible to the entrance of the conductors either inside or outside the building or structure. If outside, this equipment must be approved for outside location. In no case may the equipment be mounted lower than two feet [.6096 meters] above grade level. Switch cabinets should preferably be of the dead front type. All service equipment and panels to be mounted on inside of outside walls of buildings housing livestock must be mounted at least two inches [5.08 centimeters] away from such outside walls by means of a substantial backboard or frame. It is recommended that the service entrance switch in residences be located in the basement or on the first floor. In no case may overcurrent devices be located in bathrooms, clothes closets, ~~or~~ stairways, or crawl space.
  7. Rating of service switch. Any new or old dwelling where service is altered, or where the dwelling is rewired, a minimum one hundred amp service and rated panel must be installed.
    - a. A one hundred ampere service must be installed using conductors rated at one hundred amperes. The panel must contain provisions for four double pole two hundred forty volt three-wire circuits, one of which may be used as a disconnect for not less than ten 2-wire one hundred twenty volt circuits.
    - b. A pole top disconnecting means in rural areas is mandatory on all overhead pole top meter installations. Disconnect switches with an overcurrent protective device is optional to the supplier of electric current.

- c. Where a single stack service is used on a yard pole, it must be considered only as a meter loop and the load conductor must be treated as service conductors to buildings.
8. Clearance from ground. Conductors must have a clearance of not less than ten feet [3.0 meters] from the ground or from any platform or projection from which they might be reached. See section 225-18, ~~1987~~ 1990 edition, National Electrical Code.
9. Clearances from buildings for conductors not over six hundred volts. See section 225-19, ~~1987~~ 1990 edition, National Electrical Code. Conductors must have a clearance of not less than thirty-six inches [.914 meters] from windows, doors, porches, fire escapes, or similar locations. Conductors run above the top level of a window are considered out of reach from that window.
10. Temporary service. Temporary service must be granted to any contractor and this temporary service can be moved from place to place with one certificate issued for the first installation and the same certificate will suffice for all future locations. It is the responsibility of the contractor to maintain the temporary service in good condition and electrically safe at all times. If the power supplier finds these conditions not being complied with, the supplier may refuse hookup and notify the inspector covering that area who has full authority to determine whether it be condemned or rebuilt. At the expiration of ninety days it may be considered a permanent service and all wiring connected must comply with the provision pertaining to permanent wiring.
  - a. Each temporary service must be provided with the electrical wiring certificate number, name, and license number of electrician that issued the certificate. This information must be applied in such a manner that it will withstand the elements of weather.
  - b. Minimum requirements for temporary services. Outdoor equipment must be weatherproof. (Wood enclosures are unsatisfactory and should not be used.) Temporary service must be grounded. (Butt pole ground is acceptable.) A minimum clearance of ten feet [3.0 meters] above finished grade must be provided for overhead service conductors.
  - c. Temporary wiring is not permitted without approval from the state electrical board or local inspector, however, this does not apply to a temporary pole service or wiring for construction purposes.

11. Underground services: Underground service must comply with article 230, part D, ~~1987~~ 1990 edition, National Electrical Code.
  - a. Cables or individual conductors on outside of buildings or poles must be protected where subject to mechanical injury. Where rigid metal conduit is used, a bushing must be used on both ends. Sufficient slack conductor must be left to allow for ground settling next to foundations. Past experience indicates that the ground next to a foundation has settled as much as three feet [.914 meters]. Where conduit is used on a pole to protect such conductors, it must terminate just below the ground surface adjacent to the pole comply with the 1990 edition of the National Electrical Code. Metal conduit protecting underground conductors on a pole or building must be grounded.
  - b. Underground service conductors must be protected against physical damage in accordance with section 300-5, ~~1987~~ 1990 edition, National Electrical Code.
12. High voltage installations over six hundred volts. All wiring installations containing circuits and equipment operated at more than six hundred volts must comply with article 710, ~~1987~~ 1990 edition, National Electrical Code, along with the following requirements:
  - a. All ducts, pull boxes, junction boxes, and equipment must be clearly marked with signs having white background and red lettering by the word "DANGER" and value of operating voltage.
  - b. All wiring and equipment must be bonded and grounded as per article 250, ~~1987~~ 1990 edition, National Electrical Code.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-09. Overcurrent protection. Overcurrent protection must comply with article 240, ~~1987~~ 1990 edition, National Electrical Code.

1. Weatherproof sockets, pigtail sockets, or lampholders may not be considered as cutout bases for plug fuses.
2. Overcurrent devices must be located at a height of no less than eighteen inches [45.72 centimeters] above grade level.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-10. Wiring methods. Nonmetallic sheathed cable type NM, NMC, and UF must be supported at intervals not to exceed three feet [.914 meters] for two conductor cable and four feet [1.21 meters] for three conductor cable and within twelve inches [30.48 centimeters] from each cabinet, box, or fitting. For additional installation requirements, see articles 336 or 339, ~~1987~~ 1990 edition, National Electrical Code.

1. Agricultural buildings. This section covers all buildings housing livestock, poultry, and other areas of similar or like nature. All electrical wiring devices and equipment must be installed in accordance with the provisions of article 547, ~~1987~~ 1990 edition, National Electrical Code.
2. Electric metallic tubing may not be used in concrete below grade, in concrete slab or masonry in direct contact with earth. (A vapor barrier, if used, will have no affect on the requirements of the section.) Electric metallic tubing may not be embedded in earth or fill.
3. Aluminum conduit may not be installed in contact with earth or embedded in concrete.
4. Rigid metal conduit may be used under all atmospheric conditions and occupancies, except that ferrous raceways and fittings protected from corrosion solely by enamel may be used only indoors and in occupancies not subject to severe corrosive influences. Conduits and fittings exposed to severe corrosive influences must be of corrosion-resistant material suitable for the conditions. Where practicable, the use of dissimilar metals throughout the system must be avoided to eliminate the possibility of galvanic action.
5. The installation of rigid nonmetallic conduit must comply with the provision of article 347, ~~1987~~ 1990 edition, National Electrical Code.
6. Fertilizer rooms, meatpacking plants, salt processing plants, and similar locations are judged to be occupancies where severe corrosive conditions are likely to be present. It is recommended that nonmetallic conduit with nonmetallic boxes and fittings be used as the wiring method for such occupancies. Ferrous and nonferrous metal raceways may be used providing the raceway, boxes, and fittings are properly protected against corrosion. Wherever rigid nonmetallic conduit is used as the wiring method, provisions must be made for expansion. (Approximately one inch [2.54 centimeters] of

expansion per thirty feet [9.10 meters] of conduit per fifty degrees Fahrenheit [28 degrees Celsius] temperature change.)

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-11. Motors, motor circuits, and controllers. Section 430-1, ~~1987~~ 1990 edition, National Electrical Code, is a guide to general requirements.

1. For motor running protection, all three-phase motors must be provided with three running overcurrent units.
2. The motor branch circuit overcurrent device must be capable of carrying the starting current of the motor but may not exceed two hundred twenty-five percent of the full load current of the motor.

Exception: Where the two hundred twenty-five percent is not sufficient for starting the motor, a higher rating or setting overcurrent device may be used if approved by the state electrical board.

3. All other wiring for motors, motor circuits, and controllers must comply with article 430, ~~1987~~ 1990 edition, National Electrical Code.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-12. Boxes and fittings. Boxes must be of sufficient size to provide free space for all conductors enclosed in the box in accordance with article 370, ~~1987~~ 1990 edition, National Electrical Code.

1. All unused openings must be effectively closed with metal plugs or plates.
2. Not more than one extension ring may be used on outlet boxes unless special permission has been obtained from the electrical inspector having jurisdiction.
3. Boxes must be installed at each opening. Except as provided for in article 604, 1990 National Electrical Code, boxes must be installed at each opening, splice, or connection.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-13. Seasonal dwellings. Electrical wiring installation in all seasonal dwellings must comply with the North Dakota wiring standards and the ~~1987~~ 1990 edition, National Electrical Code, with the following exceptions:

1. Buildings without basements may be wired with a minimum of sixty ampere service providing it is adequate for the load.
2. A minimum of two appliance circuits must be provided to supply outlets in kitchen, dining room, and breakfast room.
3. Receptacle outlets must be installed in accordance with section 210-52(a), ~~1987~~ 1990 edition, National Electrical Code.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-14. Mobile home parks and recreational vehicle parks. The electrical wiring in mobile home parks must comply with part B, article 550, ~~1987~~ 1990 edition, National Electrical Code. Mobile home service equipment may not be mounted in or on the mobile home and must be located at a height of no less than two feet [.6096 meters] above finished grade level.

1. The electrical wiring in recreational vehicle parks must comply with part B, article 551, ~~1987~~ 1990 edition, National Electrical Code. Lot service equipment must be located not less than two feet [.608 meters] nor more than six and one-half feet [1.98 meters] above the ground.
2. Electrical enclosures located outdoors in mobile home parks or recreational vehicle parks that house bare bus bars or terminals must be provided with covers requiring a tool for removal of such covers. Overhead conductors must have a clearance above ground of not less than eighteen feet [5.48 meters] except in areas where it is impractical for movement of vehicles or mobile homes, the clearance above ground may not be less than twelve feet [3.66 meters].

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-15. Athletic field lighting. All lighted athletic and sport fields supplied from a primary system must be provided with a fused disconnect switch on the primary side. The switch must have proper ratings with a lockable manual control handle. The installation of primary conductors installed underground must conform to section 24-02-01-08. The secondary conductors are considered service conductors. For installation of service conductors, see article 230, parts D, E, and F, ~~1987~~ 1990 edition, National Electrical Code. A main disconnect switch on the secondary side is optional. A disconnecting means at each pole or tower is not mandatory. Branch circuit panel boards having a rating of no less than one hundred twenty-five percent of the total connected load must be provided at each tower or pole. The panel may be located at the top of pole or tower. Conductors supplying panel must be calculated on the basis of one hundred twenty-five percent of the total connected load. Wiring installed on pole or tower must be in raceway; except, for flexibility at lamps, approved cable assemblies will be permitted. All metal towers must be grounded to a one-half inch [12.7 millimeter] by ten foot [3.0 meter] ground rod. The grounded conductor on the secondary side must be grounded to the grounding electrode. Metal boxes, raceways, cabinets and fittings, or noncurrent-carrying metal parts of other fixed electrical equipment must be grounded when required. (See article 250, ~~1987~~ 1990 edition, National Electrical Code.)

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-16. Exit marking, illumination of means of egress, and emergency lighting. The purpose of this section is to provide exit and emergency lighting requirements in accordance with Life Safety Code NFPA 101, ~~1985~~ 1988 edition, in simple and condensed form. For occupancies or items not covered in this condensed version, refer to NFPA 101, ~~1985~~ 1988 edition, for complete details. In the wiring of institutional occupancies, governmental agencies may use other codes, which may be more stringent, especially where federal funds are involved.

1. Exit marking. All required exits and access to exits must be marked by readily visible signs with letters not less than six inches [15.24 centimeters] high and arrows indicating direction to exits. Every sign must be suitably illuminated. See section 5-10.3, Life Safety Code NFPA 101, ~~1985~~ 1988 edition.
2. Illumination of means of egress. Illumination of means of egress must provide continuous, dependable, illumination of not less than one foot-candle at floor level for all areas such as corridors, stairways, and exit doorway, providing a lighted path of travel to the outside of the building and public way during all times that the means of egress is available for use. Illumination must be from a source of

reasonable assured reliability and may be supplied from normal lighting circuits or special circuits with switching controlled by authorized personnel. Illumination required for exit marking may also serve for illumination of means of egress and must be so arranged that failure of a single unit such as burning out of a single bulb will not leave any area in darkness.

3. **Emergency lighting.** Emergency lighting systems must be so arranged to provide the required illumination automatically in event of any interruption or failure of the normal power supply. An acceptable alternate source of power may be an electric generator or approved battery. In occupancies where emergency lighting is required, the circuits supplying exit marking and illumination of means of egress must be supplied by the emergency system. Other areas of the facilities only requiring exit marking and illumination of means of egress may be supplied by the normal source.

4. **Classification of occupancy.**

Assembly

- Theaters
- Motion picture theaters
- Assembly halls
- Auditoriums
- Exhibition halls
- Libraries
- Museums
- Skating rinks
- Gymnasiums
- Bowling lanes
- Poolrooms
- Armories
- Conference rooms
- Restaurants
- Churches
- Dancehalls
- Clubrooms
- Passenger stations and terminals of  
air surface, underground, and marine  
public transportation facilities
- Recreation piers
- Courtrooms
- Mortuary chapels
- Drinking establishments
- College and university classrooms,  
fifty persons and over

Educational

- Schools twelfth grade and under
- Instructional building - Business occupancy
- Classrooms under fifty persons - Business occupancy

- Classrooms fifty persons and over - Place of assembly
- Laboratories, instructional - Business occupancy
- Laboratories, Noninstructional - Industrial
- Day care facilities
- Academies
- Nursery schools
- Kindergartens

Health care

- Health care facilities
  - Hospitals
  - Nursing homes
- Residential-custodial care
  - Nurseries
  - Homes for the aged
  - Mentally retarded care institutions

Detention and correctional occupancies

- Residential-restrained care
  - Penal institutions
  - Reformatories
  - Jails
- Detention centers
- Correctional centers

Residential

- Hotels
- Motels
- Apartments
- Dormitories
- Orphanages for age six years and older
- Lodging or roominghouses
- One-family and two-family dwellings

Mercantile

- Supermarkets
- Department stores
- Shopping centers
- Drugstores
- Auction rooms

Business

- Doctors' offices
- Dentists' offices
- City halls
- General offices
- Townhalls
- Courthouses
- Outpatient clinics, ambulatory
- College and university - instructional buildings, classrooms under 50 persons, and instructional laboratories

- Industrial
  - Factories of all kinds
  - Laboratories
  - Drycleaning plants
  - Power plants
  - Pumping stations
  - Smokehouses
  - Laundries
  - Creameries
  - Gas plants
  - Refineries
  - Sawmills
  - College and university
  - Noninstructional laboratories

- Storage
  - Warehouses
  - Cold storage
  - Freight terminals
  - Truck and marine terminals
  - Bulk oil storage
  - Parking garages
  - Hangars
  - Grain elevators
  - Barns
  - Stables

5. Occupant load value table.

Occupancy	Square Feet Per Person
Places of assembly .....	15 net *
Areas of concentrated use	
without fixed seating .....	7 net
Waiting space .....	3 net
Libraries. In stack areas .....	100 net
In reading rooms .....	50 net
Mercantile building, street floor	
and sales below street floor .....	30 gross **
Upper floors .....	60 gross
Mall	
Street level and below .....	30 gross
Upper floor .....	60 gross
Storage, shipping .....	300 gross
Offices only .....	100 gross
Educational occupancies	
Classroom area .....	20 net
Shops and other vocational areas ....	50 net
Day nurseries with sleeping	
facilities .....	35 net

Business, industrial .....	100 gross
Hotels, motels, apartments, and dormitories .....	200 gross
Health care	
Sleeping departments .....	120 gross
Inpatient departments .....	240 gross

\* Net floor area is the actual occupied area, not including accessory unoccupied areas or thickness of walls.

\*\* Gross floor area is the floor area within the inside perimeter of the outside walls of the building under consideration with no deduction for hallways, stairs, closets, thickness of interior walls, columns, or other features.

Notes to occupant load table.

- (a) An assembly area of concentrated use without fixed seats such as an auditorium, church, chapel, dance floor, or lodge room - seven square feet [.65 square meters] per person.
- (b) An assembly area of less concentrated use such as a conference room, dining room, drinking establishment, exhibit room, gymnasium, or lounge - fifteen square feet [1.39 square meters] per person.
- (c) Standing room or waiting space - three square feet [.28 square meters] per person.
- (d) Bleachers, pews, and similar bench type seating - eighteen linear inches [45.72 centimeters] per person.

6. Building classification table.

x - indicates required  
o - indicates not required

Occupancy	Exit Marking	Illumination of Means of Egress	Emergency	Notes
Places of assembly				
Class A-1000 persons or more	x	x	x	6&7
Class B- 300 to 1000 persons	x	x	x	
Class C- 50 to 300 All windowless or underground places of assembly	x	x	x	
Churches - Class C (exclusively for religious worship)				
Class A & B	x	x	x	
Educational <span style="float: right;">Note 4</span>				
All educational occupancies including administrative area, general classrooms, mechanical rooms, and storage rooms	x	x		o
(a) All interior stairs and corridors	x	x		x
(b) Shop and laboratories	x	x		x
(c) In flexible and open plan buildings	x	x		x
(d) In all portions of buildings that are interior or windowless	x	x		x
Day care centers - (More than 12 persons)				
	x	x		x
Group day care homes 7 to including 12 persons				
	x	x		o
Family day care homes Fewer than 7 persons				
	x	x		o

Health care occupancies				
Hospitals and nursing homes (for complete details see article 517 of NEC or NFPA standard 99	x	x	x	Note 1
Detention and correctional occupancies	x	x	x	
These occupancies include residential - restrained care, reformatories, jails, detention centers, and correctional centers				
Residential				
Hotels and motels				
More than 16 and less than 26 rooms	x	x	o	
More than 25 rooms	x	x	x	Note 2
Apartment buildings				
12 or less apartments	x	x	o	Note 3
More than 12 apartments or four or more floors	x	x	x	Note 3
Lodginghouses or roominghouses less than 16	x	x	o	
Dormitories - same as hotels				
Mercantile				
Class A - over 30,000 square feet	x	x	x	
Class B - 3000 to 30,000 square feet	x	x	x	
Class C - under 3000 square feet	x	x	o	
Business				
Under 1000 persons, 1 floor	x	x	o	
2 or more stories above exit discharge	x	x	x	
100 or more persons				

above or below level of exit discharge	x	x	x
1000 or more persons	x	x	x
All windowless, and underground	x	x	x
Industrial			
All	x	x	x
When occupied during daylight hours only with skylights or windows	x	o	o
Storage			
All	x	x	x *
When occupied during daylight hours only with windows	x	o	o
* Storage occupancies do not require emergency lighting when not normally occupied.			
Special provisions			
Underground or windowless buildings or structures	x	x	x
Swimming pools (other than single family residential)	x	x	x
Combined facility			Note 5

NOTES:

- Note 1: Power supply for exit and emergency lighting must conform to ~~chapter 8~~ NFPA 99 110.
- Note 2: Where each guestroom on ground floor has direct exit to outside, no emergency lighting need be provided (motels).
- Note 3: Buildings with only one exit need not be provided with exit signs.
- Note 4: Small schools familiar to occupants need not be provided with exit signs.
- Note 5: Where the same means of egress serve multiple-use or combined occupancies, exit lighting, exit signs, and emergency lighting shall be provided for the occupancy with the most stringent lighting requirements. The occupant load of each type of occupancy shall be added to arrive at the total occupant load.
- Note 6: Exit lighting on floor of motion picture theaters may be reduced to one-fifth foot-candle

during period of performance.  
Note 7: See occupant load value table.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-19. Inspection fees.

1. All electrical installations, including new jobs and additional work on old installations, made in this state, must have an electrical wiring certificate properly executed by the master or class "B" electrician in charge where the installation is made. The state electrical board shall prescribe such form, and shall have on hand a supply of such certificates for distribution to master and class "B" electricians. Such certificate must consist of the original and four copies.
2. Upon completion, use, or occupancy, whichever is foremost, of any electrical installation where a new entrance is installed, an existing entrance is altered, a building is moved, or where the cost of repair work or additional installation exceeds three hundred dollars, the master or class "B" electrician supervising such installation shall execute an electrical wiring certificate and distribute the various copies as directed. The original and duplicate of the certificate must be forwarded at once to the state electrical board, Bismarck, North Dakota. The triplicate copy must be sent to the power company, municipal plant, or to the person or persons or concern providing the electric current for the installation. The fourth copy must be retained by the master or class "B" electrician and the fifth copy must be submitted to the owner.
3. The electric wiring certificates shall be available from the state electrical board at Bismarck, North Dakota, upon request of any master or class "B" electrician holding a current license from the electrical board.
4. A copy of an electrical wiring certificate must be filed with the power supplier before an electrical installation may be energized.
5. Inspection fees shall be as follows:

Job Cost	Inspection Fee
Up to \$300.00	\$15.00 (minimum fee)
\$300.00 to \$2,000.00	\$15.00 for the first \$300.00 plus 2% on balance up to

	\$2,000.00
\$2,000.00 to \$10,000.00	\$49.00 for first \$2,000.00 plus 1.5% on balance up to \$10,000.00
\$10,000.00 to \$15,000.00	\$169.00 for first \$10,000.00 plus 1% on balance up to \$15,000.00
\$15,000.00 to \$100,000.00	\$219.00 for the first \$15,000 plus 1/2 of 1% on balance up to \$100,000.00
Over \$100,000.00	\$644.00 for the first \$100,000.00 plus 1/4 of 1% on balance

Inspection fee must accompany the copies of wiring certificates which must be forwarded to the state electrical board, box 857, Bismarck, North Dakota 58502.

6. Whenever an electrical installation made by or under the supervision of a master or class "B" electrician is connected and in use without the issuance of submitting an electrical wiring certificate, the certificate may be considered late and the normal inspection fee, as required under this section, is increased in the amount of twenty-five dollars. When time and travel is expended by employees of the board to obtain a late certificate, an investigative fee may be charged to cover the costs incurred. Costs to be calculated at a rate of twenty-five dollars per hour and twenty cents per mile of travel.
7. Corrections. Whenever a correction order is written and corrections are not completed within the allotted time, there shall be an administration charge of twenty-five dollars, which must be paid to the board by the master or class "B" electrician.
8. All reinspections must be paid for by the electrical contractors at a cost of twenty-five dollars ~~each~~ per hour with a minimum charge of twenty-five dollars.
9. The electrical inspection fee must be based on the total amount of the electrical contract or total cost to the owner including extras.
10. The following items need not be included in the cost:
  - a. Appliances, including dishwashers, heat pumps, air-conditioners, disposals, etc.

- b. Electric heating panels, including heating and air-conditioning units.
  - c. Electric motors.
  - d. Trenching, concrete basis for streetlighting and traffic signal standards.
11. The electrical contractor is responsible to collect the proper inspection fee on each installation. When the owner furnishes the material and the electrical contractor furnishes the labor, the owner shall provide the electrical contractor with the total amount expended for electrical materials used in connection with the installation, and the electrical contractor shall then calculate and collect the necessary inspection fee from the owner. Whenever electrical materials are removed from an existing installation and placed at another location, the electrical contractor shall estimate the cost of these materials and include the amount in the job cost for the purpose of calculating the proper inspection fee.
12. The inspection fee for all motor-driven passenger or freight elevators and dumbwaiters installed in North Dakota shall be as follows:
- Elevators and dumbwaiters having horsepower rating up to 5 horsepower - \$20.00
  - Elevators and dumbwaiters having horsepower rating 5 horsepower through 15 horsepower - \$40.00
  - Elevators and dumbwaiters having horsepower rating over 15 horsepower - \$60.00
- The master electrician having supervision of elevator or dumbwaiter installations shall obtain electrical wiring certificates from the state electrical board. The certificate form must be completed, signed by the master electrician, and forwarded to the state electrical board, Bismarck, North Dakota, with the inspection fee.
13. Electrically driven irrigation machines. Each center pivot system, a flat fee of fifty dollars. All other types, the fee must be based on cost of electric material and labor (see section 24-02-01-19).
14. Requested inspections. For inspections not covered in this section or special services, the fee must be twenty dollars per man hour, including traveltime, plus twenty cents per mile traveled.
15. For requested inspection by an owner on wiring done by the owner, the inspection fee must be as stated in this section,

except the minimum must be twenty-five dollars. Owner wiring may be done on property occupied by the owner. Certification and inspection is required as stated in subsection 1.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-21. Examination and annual license fees.

1. The examination fees are as follows:

a. Master examination	\$50.00
b. Journeyman examination	\$25.00
c. Class B examination	\$40.00
<del>d. Apprentice registration</del>	<del>\$10.00</del>

2. The annual license fees are as follows:

a. Master license	\$50.00
b. Journeyman license	\$25.00
c. Class B license	\$40.00
d. <u>Apprentice registration</u>	<u>\$10.00</u>

3. Licenses renewed after the expiration date require a reinstatement fee as follows:

a. <u>Master license</u>	<u>\$50.00</u>
b. <u>Journeyman license</u>	<u>\$25.00</u>
c. <u>Class B license</u>	<u>\$40.00</u>
d. <u>Apprentice registration</u>	<u>\$10.00</u>

History: Effective August 1, 1988; amended effective January 1, 1990.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-13

MARCH 1990

24-02-01-19. Inspection fees.

1. All electrical installations, including new jobs and additional work on old installations, made in this state, must have an electrical wiring certificate properly executed by the master or class "B" electrician in charge where the installation is made. The state electrical board shall prescribe such form, and shall have on hand a supply of such certificates for distribution to master and class "B" electricians. Such certificate must consist of the original and four copies.
2. Upon completion, use, or occupancy, whichever is foremost, of any electrical installation where a new entrance is installed, an existing entrance is altered, a building is moved, or where the cost of repair work or additional installation exceeds three hundred dollars, the master or class "B" electrician supervising such installation shall execute an electrical wiring certificate and distribute the various copies as directed. The original and duplicate of the certificate must be forwarded at once to the state electrical board, Bismarck, North Dakota. The triplicate copy must be sent to the power company, municipal plant, or to the person or persons or concern providing the electric current for the installation. The fourth copy must be retained by the master or class "B" electrician and the fifth copy must be submitted to the owner.
3. The electric wiring certificates shall be available from the state electrical board at Bismarck, North Dakota, upon request of any master or class "B" electrician holding a current license from the electrical board.

4. A copy of an electrical wiring certificate must be filed with the power supplier before an electrical installation may be energized.

5. Inspection fees shall be as follows:

Job Cost	Inspection Fee
Up to \$300.00	\$15.00 (minimum fee)
\$300.00 to <del>\$2,000.00</del> <u>\$3,000.00</u>	\$15.00 for the first \$300.00 plus 2% on balance up to <del>\$2,000.00</del> <u>\$3,000.00</u>
<del>\$2,000.00</del> <u>\$3,000.00</u> to \$10,000.00	<del>\$49.00</del> <u>\$69.00</u> for the first <del>\$2,000.00</del> <u>\$3,000.00</u> plus 1.5% on balance up to \$10,000.00
\$10,000.00 to \$15,000.00	<del>\$169.00</del> <u>\$174.00</u> for the first \$10,000.00 plus 1% on balance up to \$15,000.00
\$15,000.00 to \$100,000.00	<del>\$219.00</del> <u>\$224.00</u> for the first \$15,000.00 plus 1/2 of 1% on balance up to \$100,000.00
Over \$100,000.00	<del>\$644.00</del> <u>\$649.00</u> for the first \$100,000.00 plus 1/4 of 1% on balance

Inspection fee must accompany the copies of wiring certificates which must be forwarded to the state electrical board, box 857, Bismarck, North Dakota 58502.

6. Whenever an electrical installation made by or under the supervision of a master or class "B" electrician is connected and in use without submitting an electrical wiring certificate, the certificate may be considered late and the normal inspection fee, as required under this section, is increased in the amount of twenty-five dollars. When time and travel is expended by employees of the board to obtain a late certificate, an investigative fee may be charged to cover the costs incurred. Costs to be calculated at a rate of twenty-five dollars per hour and twenty cents per mile of travel.

7. Corrections. Whenever a correction order is written and corrections are not completed within the allotted time, there shall be an administration charge of twenty-five dollars,

which must be paid to the board by the master or class "B" electrician.

8. All reinspections must be paid for by the electrical contractors at a cost of twenty-five dollars per hour with a minimum charge of twenty-five dollars.
9. The electrical inspection fee must be based on the total amount of the electrical contract or total cost to the owner including extras.
10. The following items need not be included in the cost:
  - a. Appliances, including dishwashers, heat pumps, air-conditioners, disposals, etc.
  - b. Electric heating panels, including heating and air-conditioning units.
  - c. Electric motors.
  - d. Trenching, concrete basis for streetlighting and traffic signal standards.
11. The electrical contractor is responsible to collect the proper inspection fee on each installation. When the owner furnishes the material and the electrical contractor furnishes the labor, the owner shall provide the electrical contractor with the total amount expended for electrical materials used in connection with the installation, and the electrical contractor shall then calculate and collect the necessary inspection fee from the owner. Whenever electrical materials are removed from an existing installation and placed at another location, the electrical contractor shall estimate the cost of these materials and include the amount in the job cost for the purpose of calculating the proper inspection fee.
12. The inspection fee for all motor-driven passenger or freight elevators and dumbwaiters installed in North Dakota shall be as follows:

Elevators and dumbwaiters having horsepower rating  
up to 5 horsepower - \$20.00

Elevators and dumbwaiters having horsepower rating  
5 horsepower through 15 horsepower - \$40.00

Elevators and dumbwaiters having horsepower rating  
over 15 horsepower - \$60.00

The master electrician having supervision of elevator or dumbwaiter installations shall obtain electrical wiring certificates from the state electrical board. The certificate

form must be completed, signed by the master electrician, and forwarded to the state electrical board, Bismarck, North Dakota, with the inspection fee.

13. Electrically driven irrigation machines. Each center pivot system, a flat fee of fifty dollars. All other types, the fee must be based on cost of electric material and labor (see section 24-02-01-19).
14. Requested inspections. For inspections not covered in this section or special services, the fee must be twenty dollars per man hour, including traveltime, plus twenty cents per mile traveled.
15. For requested inspection by an owner on wiring done by the owner, the inspection fee must be as stated in this section, except the minimum must be twenty-five dollars. Owner wiring may be done on property occupied by the owner. Certification and inspection is required as stated in subsection 1.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; March 1, 1990.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

TITLE 33  
Health and Consolidated Laboratories, Department of



JANUARY 1990

33-06-04-06. Rabies.

1. Definitions. As used in this subsection, unless the context otherwise indicates:
  - a. "Bite" means any penetration of the skin of a human by the teeth of a domestic animal.
  - b. "Confinement" separation of the domestic animal from humans, other than the owner and members of the owner's family, and other animals through restriction of the animal in a house, bar, fenced yard or pen; or through use of a leash or tether.
2. How reported. Whenever any physician or other person has knowledge that any person or animal has been bitten or injured by a dog or other animal infected or suspected of being infected with rabies and whenever the physician or person has knowledge of a case of rabies or suspected rabies in animals, the physician or person shall report the fact immediately to the state department of health and consolidated laboratories.
3. Any domestic animal that bites a human where the owner of the animal can produce evidence of adequate rabies immunization must be confined at the owner's residence for a period of at least ten days from the time of bite and be evaluated by a licensed veterinarian prior to release or at the first sign of illness. Evidence of the bite must be confirmed by a physician or other qualified health care professional before confinement of the animal is required.
4. Any domestic animal that bites a human where adequate evidence of rabies vaccination is not available must be confined at the owner's residence or impounded for a period of ten days from

the time of the bite. Judgment regarding impoundment or confinement must be made by a law enforcement officer having appropriate jurisdiction. The officer may consult with a veterinarian, health officer, or physician prior to making such judgment. Such animal must be confined or impounded and observed at the owner's expense and evaluated by a licensed veterinarian at the beginning of confinement, at the first sign of any illness during confinement and prior to release from confinement.

5. Any domestic animal suspected of having rabies, regardless of the animal's immunization history, must be placed in strict isolation under the observation of a licensed veterinarian for ten days at the owner's expense. If the animal shows clinical signs of rabies during the period of isolation, it must be humanely destroyed immediately in a manner that preserves the brain intact, and the brain tissue shall be examined for rabies.
6. Any stray or unwanted domestic animal or wild animal that bites a person, must be humanely destroyed immediately in a manner that preserves the brain intact, and the brain tissue must be examined for rabies.
7. Requests for rabies vaccine and rabies immune globulin must be in writing, must be signed by the attending physician, and must indicate that the patient is indigent. A patient will not be considered indigent if an insurer or governmental agency other than the state department of health and consolidated laboratories would otherwise be obligated to provide or reimburse the cost of the rabies vaccine or rabies immune globulin.

History: Amended effective July 1, 1987; October 1, 1988; May 1, 1989; January 1, 1990.

General Authority: NDCC 23-01-03, ~~23-01-18~~, 28-32-02

Law Implemented: NDCC 23-01-03, 23-01-18

~~33-06-04-10. Venereal diseases. It is required that any infectious venereal disease case shall give information to an authorized public health person concerning the source of infection of the disease. The information obtained from the case will be used in epidemiology to prevent the spread of the disease and locate the source of infection. The information obtained will be confidential and used only in the control of the disease.~~ Sexually transmitted diseases.

1. Contact tracing is appropriate for the following sexually transmitted diseases:
  - a. Human immunodeficiency virus (HIV) infection;
  - b. Acquired immunodeficiency syndrome (AIDS);

- c. Chlamydia;
  - d. Gonorrhea;
  - e. Hepatitis B virus (HBV); and
  - f. Syphilis.
2. Individuals infected with a sexually transmitted disease for which contact tracing is appropriate shall disclose information concerning the source of the infection to their attending physician or public health officer.
  3. Information obtained pursuant to this section will be used solely for epidemiological purposes.

History: Amended effective January 1, 1990.  
General Authority: NDCC 23-01-03  
Law Implemented: NDCC 23-07-07(3), 23-07-07(4)

33-06-04-11. Vaccines. Private physicians, clinics, and hospitals in North Dakota providing vaccinations (immunizations) with vaccine obtained at no cost from the department will limit their charges to one-half the cost incurred by the department in purchasing the vaccine. The vaccine cost per dose appears on the packing slip shipped with every vaccine order.

History: Effective January 1, 1990.  
General Authority: NDCC 23-01-04.2, 28-32-02  
Law Implemented: NDCC 23-01-04.2

#### 33-33-06-01. Definitions.

1. "Approved" means acceptable to the department based on a determination as to conformance with appropriate standards and good public health practice.
2. "Bed and breakfast facility" means a private home which is used to provide accommodations for a charge to the public, with at most two lodging units for up to eight persons per night and in which no more than two family style meals per day are provided.
3. "Corrosion-resistant material" means a material which maintains its original surface characteristics under prolonged influence of the food, cleaning compounds, and sanitizing solutions which may contact it.
4. "Department" means the state department of health and consolidated laboratories or its designated agent.

5. "Easily cleanable" means that surfaces are readily accessible and made of such materials and finish and so fabricated that residue may be effectively removed by normal cleaning methods.
6. "Employee" means the permitholder, individuals having supervisory or management duties, and any other person working in a bed and breakfast facility.
7. "Equipment" means stoves, ovens, ranges, hoods, slicers, mixers, meatblocks, tables, counters, refrigerators, sinks, dishwashing machines, steamtables, and similar items other than utensils, used in the operation of a bed and breakfast facility.
8. "Family style meal" means a meal ordered by persons staying at a bed and breakfast facility which is served from common food service containers, as long as any food not consumed by those persons is not reused or fed to other people if the food is unwrapped.
9. "Food" means any raw, cooked, processed edible substance, or combination of substances, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.
10. "Food contact surfaces" means those surfaces of equipment and utensils with which food normally comes in direct contact, and those surfaces with which food may come in contact and drain back onto surfaces normally in contact with food.
11. "Food processing establishment" means a commercial establishment in which food is manufactured or packaged for human consumption. The term does not include a food service establishment, retail food store, or commissary operation.
12. ~~"Hermetically sealed container" means a container designed and intended to be secure against the entry of micro-organisms and to maintain the commercial sterility of its content after processing.~~
- ~~13.~~ "Kitchenware" means all multiuse utensils other than tableware.
- ~~14.~~ 13. "Perishable food" means any food of such type or in such condition as may spoil.
- ~~15.~~ 14. "Potentially hazardous food" means any perishable food which consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, or other ingredients capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms.

- ~~+6-~~ 15. "Proprietor" means the person in charge of the bed and breakfast facility whether as owner, lessee, manager, or agent.
- ~~+7-~~ 16. "Sanitize" means effective bactericidal treatment of clean surfaces of equipment and utensils by a process which has been approved by the department as being effective in destroying microorganisms, including pathogens.
- ~~+8-~~ 17. "Single-service articles" means cups, containers, lids or closures, plates, knives, forks, spoons, stirrers, paddles, straws, place mats, napkins, doilies, wrapping materials, and all similar articles which are constructed wholly or in part from paper, paperboard, molded pulp, foil, wood, plastic synthetic, or readily destructible materials, and which are intended for one usage only, then to be discarded.
- ~~+9-~~ 18. "Tableware" means multiuse eating and drinking utensils.
- ~~20-~~ 19. "Utensil" means any implement used in the storage, preparation, transportation, or service of food.

History: Effective August 1, 1988; amended effective January 1, 1990.  
 General Authority: NDCC 23-01-03(3), 23-09.1-02  
 Law Implemented: NDCC 23-09.1-02

33-33-06-02. **Water supply.** The water supply must be adequate, of a safe sanitary quality and from a source approved by the department. The water supply may not contain bacteriological, chemical, or physical impurities which affect, or tend to affect public health, must meet the bacteriological standards of the United States public health service for waters used upon public or interstate common carriers, and is subject to examination by the ~~state~~ **department of health and consolidated laboratories**. If it is unfit for drinking under these requirements, it either shall be improved to fulfill the standards or the use thereof shall be discontinued.

1. Each private water source shall be sampled and tested for bacteria initially and every twelve-month period thereafter. Seasonal operations shall be sampled during the peak operating season.
2. Each private water source shall be sampled initially for nitrate analysis ~~and every twelve month period thereafter~~. Seasonal operations shall be sampled during the peak operating season.
3. Additional bacteriological or chemical tests may be required by the department.
4. Initially each private source shall be inspected for location, source protection, and design standards.

5. No ~~backflow connections~~ or cross connections with unapproved water supplies may exist.
6. Adequate hot water heating facilities shall be provided. Hot and cold running water under pressure shall be provided to food preparation areas, and any other areas in which water is required for cleaning.

History: Effective August 1, 1988; amended effective January 1, 1990.

General Authority: NDCC 23-01-03(3), 23-09.1-02

Law Implemented: NDCC 23-09.1-02

33-33-06-03. Sewage. All sewage shall be disposed of in a public sewerage system or in a sewage disposal system approved by the department.

1. An initial inspection shall be made of all existing onsite sewage disposal systems by the department. This inspection shall evaluate system adequacy and if no expansion of existing dwelling facilities is occurring, no expansion of the system may be required as long as the system is not failing or otherwise contaminating surface or ground water.
2. If an expansion of the dwelling facilities occurs, then evaluation of the onsite sewage disposal system shall be completed by the ~~state~~ department of health and consolidated laboratories. If the system is adequate, then no expansion of the system will be required. If the system is not adequate in size, then system expansion shall be required as per local regulations or, the requirements in ND Publication WP-74-1 (Septic Tank and Absorption Field Disposal Systems for the Home). Plans for expansion shall be submitted to the local jurisdiction or, the ~~state~~ department of health and consolidated laboratories, water supply and pollution control division, for review and approval prior to construction.
3. The department may require that the septic tank be opened to check its construction. If the department ~~sanitarian~~ determines that pumping of the tank is necessary, the ~~sanitarian~~ department may require this to occur.
4. If the department determines that the onsite system needs repair or a new system is required, then the system shall be repaired or replaced in accordance with local regulations, or ND Publication WP-74-1 (Septic Tank and Absorption Field Disposal Systems for the Home).

History: Effective August 1, 1988; amended effective January 1, 1990.

General Authority: NDCC 23-01-03(3), 23-09.1-02

Law Implemented: NDCC 23-09.1-02

33-33-06-07. General employee health.

1. No ~~person~~ employee, while infected with a disease in a communicable form that can be transmitted by foods or who is a carrier of organisms that can cause such a disease or while afflicted with a boil, an infected wound, or an acute respiratory infection, may work in a bed and breakfast facility in any capacity in which there is a likelihood of such ~~person~~ employee contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons.
2. Bed and breakfast ~~personnel~~ employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices. ~~Personnel~~ Employees shall thoroughly wash their hands with soap and warm water before preparing or serving food.

History: Effective August 1, 1988; amended effective January 1, 1990.

General Authority: NDCC 23-01-03(3), 23-09.1-02

Law Implemented: NDCC 23-09.1-02

33-33-06-08. Lighting and ventilation. Rooms and areas used in conjunction with bed and breakfast ~~homes~~ facilities shall be lighted and ventilated as needed and shall be effective under actual use conditions. Lighting fixtures and ventilating equipment shall be kept clean and in good repair.

History: Effective August 1, 1988; amended effective January 1, 1990.

General Authority: NDCC 23-01-03(3), 23-09.1-02

Law Implemented: NDCC 23-09.1-02

33-33-06-09. Toilet, handwashing, laundry, and bathing facilities.

1. Bed and breakfast ~~homes~~ facilities shall be provided with approved sanitary toilet, handwashing, and bathing facilities. These facilities, and laundry facilities used in conjunction with bed and breakfast ~~homes~~ facilities, shall be kept clean and in good repair.
2. All lavatories and baths shall be supplied with hot and cold running water. Each person who is provided accommodations shall be provided individual soap and clean individual bath cloths and towels.
3. The temperature of hot water furnished to handwashing sinks (lavatories), showers, and bathtubs may not exceed one hundred twenty degrees Fahrenheit [48.9 degrees Celsius].

4. Clean towels and bath cloths shall be stored and handled in a sanitary manner.

History: Effective August 1, 1988; amended effective January 1, 1990.

General Authority: NDCC 23-01-03(3), 23-09.1-02

Law Implemented: NDCC 23-09.1-02

33-33-06-14. Fire safety. Bed and breakfast facilities shall be in compliance with the requirements of the Uniform Building Code and Uniform Fire Code as adopted and enforced by the state fire marshal. The ~~state department of health and consolidated laboratories and its inspectors~~ shall report to the state fire marshal violations of any provision of the code which might constitute a fire hazard in the premises so inspected.

The requirements for fire/life/safety shall include, but not be limited to, the following:

1. Smoke detectors.
  - a. A smoke detection device in good operating condition shall be mounted on the ceiling or wall at a point centrally located in the corridor or area giving access to rooms used for sleeping purposes. All smoke detectors shall be inspected and listed by underwriters' laboratories or an equivalent. Smoke detectors shall be installed in accordance with the manufacturer's installation instructions.
  - b. A smoke detector shall be installed in the basement of dwelling units having a stairway which opens from the basement into the dwelling. Such detector shall be connected to a sounding device or other detector to provide an alarm which will be audible in the sleeping area.
  - c. The owner of the facility shall test the smoke detectors at least weekly and shall maintain written records which detail the date and results of the test.
2. Every sleeping unit shall provide a minimum of fifty square feet [4.65 square meters] of floor area per guest.
3. Every sleeping unit shall have at least one operable window or exterior door approved for emergency escape or rescue. The units shall be operable from the inside to provide a full clear opening without the use of separate tools. All escapes or rescue windows from sleeping rooms must have a minimum net clear opening of 5.7 square feet [.52 square meters]. The minimum net clear opening height dimension must be twenty-four inches [60.96 centimeters]. The minimum net clear opening width dimensions must be twenty inches [50.8 centimeters].

Where windows are provided as a means of escape or rescue, they must have a finished sill height not more than forty-four inches [111.76 centimeters] above the floor. No sleeping unit in bed and breakfast facilities may be in attic lofts or in basement rooms with a single major means of escape.

4. A fire extinguisher rated 2A and having a BC rating must be conveniently located and accessible in the bed and breakfast facility. The maximum travel distance to the extinguisher must be no more than seventy-five feet [22.86 meters].
5. Emergency numbers shall be posted on the telephones in the bed and breakfast facility.

History: Effective August 1, 1988; amended effective January 1, 1990.

General Authority: NDCC 23-01-03(3), 23-09.1-02

Law Implemented: NDCC 23-09.1-02

33-33-06-15. Inspection - Records kept. Every bed and breakfast facility shall be inspected once in each year by the department. The department and its inspectors may not be denied entrance to any such establishment at reasonable hours to determine whether the facility is in compliance with the provisions of this chapter. The department shall keep a complete set of books for public use and inspection showing the condition of each establishment inspected, the name of the proprietor thereof, and its sanitary condition, the number and condition of its fire escapes, and any other information which may be required for the betterment of the public service.

History: Effective August 1, 1988.

General Authority: NDCC 23-01-03(3), 23-09.1-02

Law Implemented: NDCC 23-09.1-02

Repealed effective January 1, 1990.

33-33-06-16. License - Application. Before any bed and breakfast facility may be operated in this state, it must be licensed by the department. Application for license shall be made to the department during December of every year, or prior to the operating of the bed and breakfast facility. Such application shall be in writing on forms furnished by the department, and shall be accompanied by the required fee.

History: Effective August 1, 1988.

General Authority: NDCC 23-01-03(3), 23-09.1-02

Law Implemented: NDCC 23-09.1-02

Repealed effective January 1, 1990.

33-33-06-17. Failure to comply with provisions of chapter. Any proprietor of any bed and breakfast facility who fails to comply with any of the requirements of this chapter, or chapter 23-09.1 of the North Dakota Century Code, shall be given notice of the violation and of a reasonable time within which to comply with the requirements. The notice shall be in writing and shall be delivered personally by ~~an~~ ~~inspector~~ of the department or shall be sent to the proprietor by any form of mail requiring a signed receipt and resulting in delivery to the proprietor. If the proprietor of the bed and breakfast facility fails to remedy the violations within the time stated within the notice, the department may refuse to grant a new license, or suspend or revoke the license through an administrative hearing held pursuant to chapter 28-32 of the North Dakota Century Code.

History: Effective August 1, 1988; amended effective January 1, 1990.

General Authority: NDCC 23-01-03(3), 23-09.1-02

Law Implemented: NDCC 23-09.1-02



APRIL 1990

33-06-03-04. Disclosure of records. Information contained in disease control records and held by the state department of health and consolidated laboratories is strictly confidential information. Information contained in disease control records must include all information, records of interviews, written reports, statements, notes, memoranda, or other data procured by the department in connection with disease control, or carried on by the department jointly with other persons, agencies, or organizations, or procured by such other persons, agencies, or organizations, for the purpose of disease control or for such purposes of reducing the morbidity or mortality from any cause or condition of health.

No officer or employee of the state department of health and consolidated laboratories may be examined in any judicial, executive, legislative, or other proceeding regarding the existence or content of any individual's report retained by the department for disease control. The information may not be released, shared with any agency or institution, or made public, upon subpoena, search warrant, discovery proceedings, or otherwise, except that:

1. Release may be made of medical or epidemiologic information for statistical purposes in a manner such that no individual person can be identified.
2. Release may be made of medical or epidemiologic information to medical personnel to the extent necessary to protect the health or life of any individual.
3. Release may be made to the patient's attending physician, or the attending physician's designated agent.
4. Release may be made as otherwise provided by statute.

History: Effective April 1, 1990.

General Authority: NDCC 23-01-03, 23-07-01.2  
Law Implemented: NDCC 23-07-02.2, 23-07-20.1

33-07-01-01. General provisions.

1. Institutions covered by the Medical Hospital Licensure Act. The following ~~type~~ types of institutions have been so designated for the purpose of rules and regulations and are deemed to come within the provisions of North Dakota Century Code section 23-16-01 which provides for licensure of any institution which maintains and operates organized facilities for the diagnosis, treatment, or care of two or more nonrelated persons suffering from illness, injury, or deformity or where obstetrical or other care is rendered over a period exceeding twenty-four hours.
  - a. Hospitals, including general, medical, and specialized hospitals.
  - b. Long-term care facilities.
    - (1) Nursing homes.
    - (2) Intermediate care facilities.
  - c. Infirmaries.
  - d. Maternity homes.
  - e. Outpatient facilities, including surgicenters (excluding physicians' clinics).
2. Institutions not covered by the Medical Hospital Licensure Act. The following ~~type~~ types of institutions which provide some medical or nursing service are deemed not to come within the meaning of the Medical Hospital Licensure Act, North Dakota Century Code chapter 23-16.
  - a. ~~Any institutions~~ Institutions which are regularly licensed by the ~~social service board of North Dakota~~ department of human services such as homes for unmarried mothers and homes providing custodial care for the aged. (However, in the case of homes for unmarried mothers and those for the custodial care of the aged, the state department of health and consolidated laboratories has the responsibility for the inspection of these institutions which are licensed by the ~~social service board of North Dakota~~ department of human services. This inspection is to be on the same basis as the inspections made of institutions which are covered by North Dakota Century Code chapter 23-16. Upon the findings of this inspection, recommendations will be

formulated by the state department of health and consolidated laboratories.)

- b. Federal and state institutions. (In the case of state institutions, the primary purpose of which is the provision of medical care, the state department of health and consolidated laboratories has the responsibility for inspection on the same basis as those made of institutions which are covered by North Dakota Century Code chapter 23-16. Upon the findings of such inspections, recommendations will be formulated by the state department of health and consolidated laboratories.)
  - c. Chiropractic hospitals. (These hospitals are licensed under the provisions of North Dakota Century Code chapter 23-17.)
  - d. Homes in which the only persons receiving nursing care are those related to the householder by blood or marriage.
  - e. Homes in which only one person receives care at any one time except maternity homes which receive more than one patient in six months. Such maternity homes are deemed to come under North Dakota Century Code chapter 23-16 and are required to be licensed.
  - f. First-aid stations and emergency care facilities which do not provide accommodations for hospitalization as hereinbefore defined.
3. Definitions. The following terms are defined for purposes of North Dakota Century Code chapter 23-16:
- a. "Bed capacity" is bed space designed for inpatient care, including space originally designed or remodeled for inpatient beds even though temporarily not used for such purposes. The number of beds to be counted in any patient room shall be the maximum number for which adequate floor area is provided. Beds shall be counted as nonconforming if the room contains inadequate floor area.
    - (1) Adequate floor area is defined as:
      - (a) One hundred twenty-five square feet [71.61 square meters] in single rooms.
      - (b) Eighty square feet [7.43 square meters] per bed or pediatric crib in multibed rooms.
      - (c) Forty square feet [3.72 square meters] per bassinet in pediatric nurseries.

In measuring the floor area of patient rooms for the purpose of determining bed capacity, only the net usable space in the room shall be considered. Space in toilet rooms, washrooms, closets, vestibules, and corridors shall not be counted.

- (2) Areas to be included:
  - (a) Bed space in all nursing units, including:
    - [1] Intensive care units, cardiac care unit.
    - [2] Minimal or self-care units.
  - (b) Isolation units.
  - (c) Pediatrics units, including:
    - [1] Pediatric bassinets.
    - [2] Incubators located in the pediatrics department.
  - (d) Observation units equipped and staffed for overnight use.
  - (e) All space designed for inpatient bed care even if currently closed or assigned to easily convertible, nonpatient uses such as storage, or sisters' quarters.
  - (f) Space in areas originally designed as solarium, waiting rooms, offices, conference rooms, and classrooms which have necessary fixed equipment (nurse's call, lighting, etc.) and are accessible to a nurse's station exclusively staffed for inpatient bed care.
  - (g) Bed space under construction if planned for immediate completion (not an unfinished "shell" floor).
- (3) Areas to be excluded:
  - (a) Newborn nurseries in maternity department.
  - (b) Labor rooms.
  - (c) Recovery rooms.
  - (d) Emergency units.
  - (e) Preparation or anesthesia induction rooms.

- (f) Rooms designed for diagnostic or treatment procedures.
  - (g) Hospital staff sleeping quarters including accommodations for on-call staff.
  - (h) Corridors.
  - (i) Solaria, waiting rooms and such, which are not readily equipped and staffed for inpatient bed care.
  - (j) Unfinished space (shell). (An area which is finished except for movable equipment shall not be considered unfinished space.)
- b. "Comprehensive rehabilitation services" means the combined or sequential treatments as ordered by a physician and performed by qualified personnel in a total effort to improve, maintain, or overcome the individual's physical, psychological, and emotional incapacities to the end of achieving the highest level of self-sufficiency of which the individual is capable.
- c. "General hospital" means an establishment with organized medical staffs; with permanent facilities that include inpatient beds; and with medical services including physician services.
- ~~e.~~ d. "Governing body" means the individual or group in whom the ultimate authority and legal responsibility is vested for the conduct of the institution.
- ~~d.~~ e. "Hospital" means an institution, the principal activity or business of which is the reception of a person for diagnosis, care, and treatment of human illness through the maintenance and operation of organized facilities therefor.
- ~~e.~~ f. "Hospitalization" means the reception and care of any person for a continuous period longer than twenty-four hours, for the purpose of consultations, diagnosis, or treatment including rehabilitation bearing on the physical and mental health of such person.
- ~~f.~~ g. "Infirmery" means those special inpatient facilities which are established in connection with an educational or penal institution, or an industrial or commercial establishment for persons who during their attendance, confinement, or employment in such institution or establishment, require nursing service or physician treatment. Applicable requirements of this chapter shall apply.

~~g.~~ h. "Licensee" means the individual, officer, or member of the staff on the governing body of a hospital or related institution.

~~h.~~ i. "Long-term care facilities" are the following:

(1) "Intermediate health care facility" means a health related institution or unit of a health care facility planned, organized, operated, and maintained to provide facilities and services which are supportive, restorative, and preventive in nature with related medical and social care, to individuals who because of physical or mental condition, or both, require less than twenty-four-hour nursing care provided by licensed personnel in an institutional environment.

(2) "Nursing home" means an institution in which nursing care is rendered for compensation at any one time to two or more persons not related to the licensee by blood or marriage. A nursing home shall serve persons suffering from a prolonged physical or mental illness or defect or persons recovering from some injury or disease and requiring twenty-four-hour nursing services provided by licensed personnel. Care given in a nursing home shall provide all of the procedures commonly employed in waiting on the sick, such as administration of medicines, preparation of special diets, giving of bedside care, applications of dressings and bandages, and carrying out of treatments prescribed by a duly licensed practitioner of the healing arts. A nursing home does not provide for the acutely ill or for patients requiring special equipment and facilities such as surgical or obstetrical.

(3) If a facility is established for the provisions of custodial and personal care, but it develops that two or more persons usually served by such institutions require nursing care, such institutions shall be deemed to come within the meaning of North Dakota Century Code chapter 23-16 and such facility shall conform to all appropriate long-term care facility regulations or the institution shall transfer such patients to facilities properly staffed and equipped to care for such persons.

~~i.~~ j. "Maternity home" means an institution of private dwelling type in which care for maternity patients is rendered. Any such home which receives more than one maternity patient (exclusive of those related to the licensee by blood or marriage) within a period of six months is deemed to be a maternity home. A maternity home which regularly provides accommodations for two or more patients at any

one time shall be classified as a maternity hospital and shall be required to meet the requirements for a specialized hospital. Applicable requirements of this chapter shall apply.

~~j~~ k. "Medical hospital" means an establishment with organized medical staff; with permanent facilities that include inpatient beds; and with medical services, including physician services with continuous nursing services, to provide diagnosis; and to provide nonsurgical treatment.

~~k~~ l. "Medical staff" means a formal organization of physicians (and dentists, where appropriate) with the delegated authority and responsibility to maintain proper standards of medical care and to plan for continued improvement of that care.

~~i~~ m. "Nursing services" means those services pertaining to the curative, restorative, or preventive aspects of nursing care that are performed or supervised by a registered professional nurse at the direction of a physician.

~~m~~ n. "Outpatient facility" (including surgicenters - excluding physicians' clinic) means a facility, located in or apart from a hospital, providing community service for the diagnosis or diagnosis and treatment of ambulatory patients (including ambulatory inpatients) in need of physical or mental care (See chapter 33-03-01):

- (1) Which is operated in connection with a hospital; or
- (2) In which patient care is under the professional supervision of persons licensed to practice medicine or surgery in the state or, in the case of dental diagnosis or treatment, under the professional supervision of persons licensed to practice dentistry in the state; or
- (3) Which offers to patients not requiring hospitalization the services of licensed physicians in various medical specialties, and which makes provision for its patients to receive a reasonably full range of diagnostic and treatment services.

o. "Qualified activities coordinator" means a qualified therapeutic recreation specialist who is eligible for registration as a therapeutic recreation specialist by the national therapeutic recreation society (branch of national recreation and park association) under its requirements; or is a qualified occupational therapist as defined in North Dakota Century Code chapter 43-40 or certified occupational therapist assistant.

- p. "Qualified administrator of the rehabilitation hospital" means an individual who has a baccalaureate degree in administration or in a health care discipline and four years of administrative or supervisory experience in a health care facility.
- q. "Qualified occupational therapist" means an individual who through formal accredited education and licensure is qualified to practice occupational therapy in North Dakota under North Dakota Century Code chapter 43-40.
- r. "Qualified physiatrist" means a physician who is certified or eligible for certification by the American board of physical medicine and rehabilitation, inc. or the American osteopathic board of rehabilitation medicine.
- s. "Qualified physical therapist" means an individual who, through formal accredited education and licensure, is qualified to practice physical therapy in North Dakota under North Dakota Century Code chapter 43-26.
- t. "Qualified psychologist" means an individual who has graduated from a university or other institution of higher learning that is accredited by a regional accrediting association offering a full-time graduate course in psychology, and holds a doctorate degree in psychology, and is licensed to practice in North Dakota under North Dakota Century Code chapter 43-32; or is licensed under a grandfather clause exemption under North Dakota Century Code chapter 43-32.
- u. "Qualified respiratory therapist" means an individual who has successfully completed a bona fide respiratory care training program and is registered or certified by the national board for respiratory care in accordance with North Dakota Century Code chapter 43-42.
- v. "Qualified speech and language pathologist" means an individual who holds a graduate degree, minimally at the master's level in speech and language pathology, from an educational institution recognized by the board of examiners on audiology and speech pathology, and is licensed to practice in North Dakota under North Dakota Century Code chapter 43-37.
- w. "Qualified social worker" means a graduate of a program approved by the board of social work examiners, from a college or university accredited by the council on social work education, and is licensed to practice in North Dakota under North Dakota Century Code chapter 43-41; or is licensed under a grandfather provision to practice in North Dakota under North Dakota Century Code chapter 43-41.

- x. "Rehabilitation hospital" means a health care facility licensed by the North Dakota state department of health and consolidated laboratories to provide comprehensive rehabilitation services to patients for the alleviation or amelioration of the disabling effects of illness or injury. Comprehensive rehabilitation services are characterized by the coordinated delivery of multidisciplinary care intended to achieve the goal of maximizing the self-sufficiency of the patient. A rehabilitation hospital is a facility licensed to provide only comprehensive rehabilitation services or is a distinct unit providing only comprehensive rehabilitation services located in a licensed hospital.
- m. y. "Separate license for building on separate premises" means, in the case of a hospital or a related institution where two or more buildings are used in the housing of patients, a separate license for each building if the buildings are on separate premises. Separate licenses are required even though the buildings are operated under the same management. Separate licenses are not required; however, for separate buildings on the same grounds.
- (1) The licensee shall be responsible for maintaining a desirable standard of resident care and environmental sanitation.
  - (2) The licensee must exercise proper precautions in hiring responsible employees.
- o. z. "Specialized hospital" means an institution of hospital character which provides care for persons with a categorical illness or condition such as patients with contagious diseases, patients who are chronically ill, rehabilitation patients, maternity patients, mentally ill patients, and patients suffering with tuberculosis.

History: Amended effective April 1, 1990.  
 General Authority: NDCC 23-01-03(3), 28-32-02  
 Law Implemented: NDCC ~~28-32-02~~ 23-16-06

33-07-01-29. Services provided.

1. The rehabilitation hospital shall provide preventive, diagnostic, therapeutic, and rehabilitative services to patients in accordance with this chapter.
2. The rehabilitation hospital shall provide, or arrange for the provision of, audiology, dental, dietary, driver evaluation, environmental modification, laboratory, medical, nursing, nutritional counseling, occupational therapy, orthotic and prosthetic, pharmaceutical, physiatry, physical therapy,

psychological, radiological, recreational therapy, respiratory therapy, sexual counseling, social work, speech-language pathology, and vocational testing services. These services must be provided on both an inpatient and outpatient basis.

3. Driver training services must be provided.
4. If a health care facility licensed by the department provides comprehensive rehabilitation services in addition to other health care services, the facility shall adhere to this chapter in addition to licensing rules for licensure of facilities providing the other health care services.
5. The rehabilitation hospital shall comply with all applicable federal, state, and local laws, rules, regulations, and requirements.
6. The rehabilitation hospital must be accredited by the commission on accreditation of rehabilitation facilities in the category of comprehensive inpatient rehabilitation.
7. For inpatients, unless contraindicated in writing by the attending physiatrist, the rehabilitation hospital shall provide at a minimum three hours of services per patient per day, which must include one or a combination of the following: physical therapy, occupational therapy, speech-language pathology, prosthetics, and orthotics services.

History: Effective April 1, 1990.

General Authority: NDCC 23-01-03(3), 28-32-02

Law Implemented: NDCC 23-16-06

33-07-01-30. Submission and availability of documents.

1. The rehabilitation hospital, upon receipt, shall submit all commission on accreditation of rehabilitation facilities survey results, recommendations, and plans of correction to the department.
2. The department may, based on the commission on accreditation of rehabilitation facilities survey results, require changes or additions, or both, to the recommendations or plans of corrections, or both, in instances where endangerment to the health, well-being, or safety of patients is involved.
3. Onsite review must be conducted by the department to assess compliance with licensure requirements not included in the commission on accreditation of rehabilitation facilities standards.

History: Effective April 1, 1990.

General Authority: NDCC 23-01-03(3), 28-32-02

Law Implemented: NDCC 23-16-05, 23-16-06

33-07-01-31. Provision for becoming accredited by the commission on accreditation of rehabilitation facilities.

1. Rehabilitation hospitals not having attained commission on accreditation of rehabilitation facilities accreditation in the category of a comprehensive inpatient rehabilitation facility on or prior to licensure as a rehabilitation hospital shall have until January 1, 1991, to attain this accreditation.
2. Rehabilitation hospitals requesting licensure after January 1, 1991, will be required to be commission on accreditation of rehabilitation facilities accredited in the category of comprehensive inpatient rehabilitation prior to licensure as a rehabilitation hospital by the department.

History: Effective April 1, 1990.

General Authority: NDCC 23-01-03(3), 28-32-02

Law Implemented: NDCC 23-16-06

33-07-02-06. Codes and standards.

1. Nothing stated herein shall relieve the sponsor from compliance with building codes, ordinances, and regulations which are enforced by city or county jurisdiction. Where such codes, ordinances, and regulations are not in effect, it shall be the responsibility of the sponsor to consult one of the national building codes generally used in the area for all components of the building type which are not specifically covered by the minimum standards set forth herein provided the requirements of the code are not inconsistent with the minimum standards herein.
2. Specialized rehabilitation hospitals must be constructed to comply with:
  - a. This chapter.
  - b. In addition, the rehabilitation hospital shall comply with the applicable sections of the guidelines for construction and equipment of hospital and medical facilities, 1987 edition, compiled by the American institute of architects committee on architecture for health with assistance from the United States department of health and human services.

History: Amended effective April 1, 1990.

General Authority: NDCC 28-32-02

Law Implemented: NDCC ~~28-32-02~~ 23-01-03(4)

TITLE 52  
Motor Vehicle Department



JANUARY 1990

STAFF COMMENT: Article 52-08 contains all new material but is not underscored so as to improve readability.

ARTICLE 52-08

INSPECTION OF SALVAGE VEHICLES

Chapter  
52-08-01            General Considerations and Requirements

CHAPTER 52-08-01  
GENERAL CONSIDERATIONS AND REQUIREMENTS

Section  
52-08-01-01            Procedure

52-08-01-01. Procedure. A highway patrol officer, when inspecting a salvage vehicle under the provisions of North Dakota Century Code section 39-05-20.2, must inspect the following equipment to determine it is in compliance with the provisions of North Dakota Century Code chapter 39-21 and article 52-04: headlights, turn signals, windshield, mirrors, horn, brakes, exhaust system, taillights, stoplights, license plate lights, clearance lights and reflectors, bumper heights, tires, fenders, steering wheel, steering and suspension, hood latches, door latches, floor pan, and fuel system. In addition to inspecting the listed equipment, a highway patrol officer may require an additional statement from the rebuilder of the salvage vehicle prior to the completion of the certificate of inspection. The additional signed

statement, as a part of form MVD-128, shall require the rebuilder to certify the following:

1. The frame of the salvage vehicle was not in need of repair or has been repaired in such a manner that the repairs will not detract from the overall performance of the vehicle and the frame is now in a condition that would be comparable to the frame of a similar vehicle which had not been damaged in an accident.
2. The wheel alignment is within the tolerances allowed for vehicles of the same make, year model, and style.

Highway patrol officers may require this additional certification when they determine the salvage vehicle may have suffered damage to frame, chassis, or wheel alignment as a result of an accident.

History: Effective January 1, 1990.

General Authority: NDCC 28-32-02, 39-02-03

Law Implemented: NDCC 39-05-20.2

TITLE 54  
Nursing, Board of



MARCH 1990

STAFF COMMENT: Article 54-06 contains all new material but is not underscored so as to improve readability.

ARTICLE 54-06

NURSE AIDE REGISTRY

Chapter	
54-06-01	General Provisions
54-06-02	Nurse Aide Registry
54-06-03	Nurse Assistant Training Program Requirements

CHAPTER 54-06-01  
GENERAL PROVISIONS

Section	
54-06-01-01	Definitions
54-06-01-02	Statement of Intent
54-06-01-03	Advisory Committee
54-06-01-04	Reciprocity

54-06-01-01. Definitions. The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 43-12.1, except:

1. "Certified nurse assistant" means an individual who has successfully completed the requirements for the nurse assistant training program and a national standardized

competency evaluation and is entered on the nurse aide registry. Individuals employed by nursing facilities or home health agencies prior to July 1, 1989, need only complete the national standardized competency evaluation in order to be eligible to be entered on the nurse aide registry and use this title.

2. "Home health agency" means a public or private agency, organization, facility, or subdivision thereof engaged in providing home health services to individuals and families where they are presently residing for the purpose of preventing disease and promoting, maintaining, or restoring health or minimizing the effects of illness or disability licensed to operate in the state of North Dakota.
3. "Nurse aide registry" means a listing of all persons who have completed a board-approved nurse assistant training program and satisfactorily completed a national standardized written and manual skills competency evaluation, and have submitted the required initial or renewal information on forms approved by the board.
4. "Nurse assistant competency evaluation" means a national standardized program consisting of both a written or oral and a manual skills component testing the necessary knowledge needed by a nurse assistant in order to provide safe care in a nursing facility or a home health agency.
5. "Nurse assistant training program" means a program to train nurse assistants offered by a public or private organization that has been approved by the board.
6. "Nursing facility" means skilled nursing facilities and intermediate care facilities licensed to operate in the state of North Dakota and certified as a medicare or medicaid, or both, provider.

History: Effective March 1, 1990.

General Authority: NDCC 43-12.1-08(18)

Law Implemented: NDCC 43-12.1-08(17)

54-06-01-02. Statement of intent. The provisions of this chapter shall provide for the board to establish by administrative rules a nurse aide registry, standards for nurse assistant training programs, and nurse assistant competency evaluation programs as required by federal regulations for medicare or medicaid, or both, certification for nursing facilities and home health agencies.

History: Effective March 1, 1990.

General Authority: NDCC 43-12.1-08(18)

Law Implemented: NDCC 43-12.1-08(17)

54-06-01-03. Advisory committee. An advisory committee consisting of representatives of the state department of health and consolidated laboratories, board of vocational education, long-term and home health care associations, and the state nurses association and the practical nurse association shall meet no less than yearly to provide input into the nurse assistant training and competency evaluation program. The meetings must be open to the general public, and interested persons will be afforded reasonable opportunity to address the committee.

History: Effective March 1, 1990.  
General Authority: NDCC 43-12.1-08(18)  
Law Implemented: NDCC 43-12.1-08(17)

54-06-01-04. Reciprocity. Applicants for the nurse aide registry who submit proof of meeting the requirements of another jurisdiction will be entered on the nurse aide registry and may use the title "certified nurse assistant". The individual must meet North Dakota requirements for active registry status.

History: Effective March 1, 1990.  
General Authority: NDCC 43-12.1-08(18)  
Law Implemented: NDCC 43-12.1-08(17)

#### CHAPTER 54-06-02 NURSE AIDE REGISTRY

Section	
54-06-02-01	Registry Eligibility
54-06-02-02	Registry Renewal
54-06-02-03	Recording of Abuse or Neglect
54-05-02-04	Public Inquiry

54-06-02-01. Registry eligibility. The board shall enter individual names on the nurse aide registry upon receipt of information verifying completion of a board-approved nurse assistant training program and a national standardized nurse assistant competency evaluation program. Information included on the registry must include name, address, social security number, birth date, program provider for both the training program and the competency evaluation program, and place of employment.

History: Effective March 1, 1990.  
General Authority: NDCC 43-12.1-08(18)  
Law Implemented: NDCC 43-12.1-08(17)

54-06-02-02. Registry renewal. Current registry status is limited to twenty-four months. Within four months prior to the expiration date of the registry status, the board shall send an

application for renewal to the certified nurse assistant. Upon receipt of a completed renewal application, verification of employment within the past twenty-four months, and the renewal fee, the certified nurse assistant must be issued a renewal certificate indicating current status. An individual who has not performed at least one hundred sixty hours of nursing or nursing-related services for pay within a continuous twenty-four-month period after completion of a training and competency evaluation program shall complete a board-approved training and national standardized competency evaluation program in order to obtain current registry status.

History: Effective March 1, 1990.  
General Authority: NDCC 43-12.1-08(18)  
Law Implemented: NDCC 43-12.1-08(17)

54-06-02-03. Recording of abuse or neglect. The registry shall include documentation of abuse or neglect by the nurse assistant when verified by the state department of health and consolidated laboratories.

History: Effective March 1, 1990.  
General Authority: NDCC 43-12.1-08(18)  
Law Implemented: NDCC 43-12.1-08(17)

54-06-02-04. Public inquiry. Registry information about a certified nurse assistant must be available to the public upon telephone inquiry or written request.

History: Effective March 1, 1990.  
General Authority: NDCC 43-12.1-08(18)  
Law Implemented: NDCC 43-12.1-08(17)

#### CHAPTER 54-06-03 NURSE ASSISTANT TRAINING PROGRAM REQUIREMENTS

Section  
54-06-03-01 Nurse Assistant Training Program  
Requirements

54-06-03-01. Nurse assistant training program requirements. Nurse assistant training programs must include materials which provide a basic level of both knowledge and demonstrable skills for each individual completing the program. The core curriculum content must include needs of various populations, e.g., persons with alzheimer's disease, dementia, mental illness, or mental retardation, and nonelderly persons with other disabilities that are peculiar to the population of an individual facility. The program must be a minimum of seventy-five hours divided between skills training and classroom instruction. Additional hours may be in either of these areas or both.

Qualifications of instructors, minimum curriculum requirements, and requirements for determination of competency may not be less than the federal requirements for medicare and medicaid certification for nursing facilities and home health agencies.

History: Effective March 1, 1990.

General Authority: NDCC 43-12.1-08(18)

Law Implemented: NDCC 43-12.1-08(17)



TITLE 56  
Optometry, Board of



APRIL 1990

56-02-01-01. Requirements for ~~certification~~ licensure. The board shall provide application forms and set the date, time, place, and content of each examination for an initial ~~certificate of registration~~ license to practice optometry. 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~~ licensure.

History: Amended effective December 1, 1987; April 1, 1990.

General Authority: NDCC 43-13-13

Law Implemented: NDCC 43-13-16, 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~~ license to practice optometry 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; April 1, 1990.

General Authority: NDCC 43-13-13

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

56-02-01-03. Waiver of practical examination. The board may waive the practical examination of an applicant for a ~~certificate of registration~~ license to practice optometry in this state, as provided by North Dakota Century Code section 43-13-18, if all of the following are met:

1. The applicant presents a certified copy or an original certificate of registration or license issued to the applicant by another state where the requirements for registration are equivalent to those of this state and where like privileges are accorded to holders of certificates issued in this state.
2. The applicant holds an original license obtained by examination in the state from which the applicant is applying for reciprocity and has practiced continuously for the immediate past five years in the state in which the applicant is licensed.
3. The applicant's educational requirements were equivalent to those of this state at the time the applicant commenced practice.
4. The applicant must not have previously failed the examination given by this state board.
5. The applicant must furnish a letter from the secretary of the state board of the other state and president of the district or regional optometric association, if such organization exists, attesting to the applicant's character and professional ethics. Each letter shall be transmitted by the

writer directly to the secretary of the North Dakota state board of optometry.

6. The applicant has remitted twenty-five dollars as the examination fee as set forth in North Dakota Century Code section 43-13-18.
7. The applicant has submitted an affidavit to the effect that the applicant intends to practice in this state upon receipt of the license.

History: Amended effective April 1, 1990.

General Authority: NDCC 43-13-13

Law Implemented: NDCC 43-13-18

56-02-01-07. Licensure fees. The following fees must be paid to the board:

1. A fee of one hundred twenty-five dollars must accompany an application for examination for a license to practice optometry.
2. A fee of one hundred twenty-five dollars must be paid by any optometrist to be licensed in this state by reciprocity.
3. A fee of one hundred thirty dollars must be paid annually for renewal of a license to practice optometry.

History: Effective April 1, 1990.

General Authority: NDCC 43-13-13

Law Implemented: NDCC 43-13-17, 43-13-18, 43-13-20

56-02-02-01. Postgraduate educational requirements. As a condition of the annual renewal of the ~~certificate of registration~~ license to practice optometry, every registered optometrist shall have attended during the three-year period preceding the date of renewal ~~the maximum number of~~ thirty-six classroom hours of optometric educational programs ~~permitted to be~~ required by North Dakota Century Code section 43-13-20, hereinafter called educational requirements.

History: Amended effective December 1, 1987; April 1, 1990.

General Authority: NDCC 43-13-13

Law Implemented: NDCC 43-13-20

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~~ license to practice optometry, the board shall provide appropriate identification to be affixed in a prominent place on the ~~certificate of registration~~ license to practice optometry

indicating whether the registered person has been certified to prescribe and use diagnostic or therapeutic pharmaceutical agents, or both.

History: Effective December 1, 1987; amended effective April 1, 1990.  
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. Repealed effective April 1, 1990.

History: Effective December 1, 1987.  
General Authority: ~~NDCC 43-13-13~~  
Law Implemented: ~~NDCC 43-13-13.2~~

56-02-06-01. Disciplinary action. The board may revoke or suspend any certificate of registration or certification granted by it take such disciplinary action as it deems reasonably necessary 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 have been violated.

History: Effective December 1, 1987; amended effective April 1, 1990.  
General Authority: NDCC 43-13-13  
Law Implemented: NDCC 43-13-21.1, 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. Repealed effective April 1, 1990.

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. Repealed effective April 1, 1990.

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 69  
Public Service Commission



MARCH 1990

69-09-03-02. Adoption of regulations. The following parts of title 49, Code of Federal Regulations in effect as of October 1, ~~1987~~ 1989, are adopted by reference:

1. Part 190 - Department of Transportation Pipeline Safety Enforcement Procedures.
2. Part 191 - Department of Transportation Regulations for Transportation of Natural Gas by Pipeline; Reports of Leaks.
3. Part 192 - Transportation of Natural and Other Gas by Pipeline: Minimum Safety Standards.
4. Part 199 - Control of Drug Use in Natural Gas, Liquified Natural Gas and Hazardous Liquids Pipelines.

Copies of these regulations may be obtained from:

Public Service Commission  
State Capitol  
600 East Boulevard  
Bismarck, North Dakota 58505-0480

History: Effective June 1, 1984; amended effective July 1, 1986; January 1, 1988; March 1, 1990.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-01.2



TITLE 69.5

Racing Commission, North Dakota



JANUARY 1990

STAFF COMMENT: Chapters 69.5-01-09 and 69.5-01-10 contain all new material but are not underscored so as to improve readability.

CHAPTER 69.5-01-09  
NORTH DAKOTA BREEDERS FUND

Section	
69.5-01-09-01	Definition of Accredited North Dakota-Bred
69.5-01-09-02	Registration of North Dakota-Bred Horse
69.5-01-09-03	Administration of North Dakota-Bred Program
69.5-01-09-04	Registration Required for North Dakota-Bred Eligibility
69.5-01-09-05	Decision as to Eligibility of North Dakota-Bred
69.5-01-09-06	False Statement Concerning North Dakota-Bred Registration
69.5-01-09-07	North Dakota-Bred Racing Program
69.5-01-09-08	Change of Ownership
69.5-01-09-09	Establishment of North Dakota-Bred Added Money and Award Payments at a Race Meeting
69.5-01-09-10	Distribution of Funds for North Dakota-Bred Parimutuel Races
69.5-01-09-11	Open Company Wins Awards
69.5-01-09-12	Special Interim Clause
69.5-01-09-13	Guidelines of a Major Racing Facility

69.5-01-09-01. Definition of accredited North Dakota-bred.

1. "Breeder" means the owner or lessee of the dam at the time of foaling in North Dakota.
2. "North Dakota-foaled" means a horse foaled in North Dakota.

3. "North Dakota-bred" means:
  - a. A foal born in North Dakota out of a mare registered with a North Dakota racing commission that was in North Dakota:
    - (1) On or before January first of the year foaled;
    - (2) Within six months after her last breeding date; or
    - (3) Within twenty-one days after the date of a bona fide purchase or lease transaction, whichever of those dates is the latest, and providing that mare remained physically within the boundaries of North Dakota until foaling; or
  - b. A foal born within the boundaries of North Dakota out of a mare registered with the North Dakota racing commission that is bred back to a North Dakota-based sire.
4. In a case involving extraordinary circumstances, the North Dakota racing commission or designated registering agency retains the right to allow or disallow the registration of a foal as North Dakota-bred at their sole discretion.
5. The requirements of subsections 1 through 4 apply to all breeds. The breeder of an accredited North Dakota-bred foal is the owner or lessee of the dam at the time of foaling. The owner of an accredited North Dakota-bred stallion, for the purpose of qualifying for stallion awards, is the owner or lessee of record at the time the offspring is conceived.

History: Effective January 1, 1990.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

#### 69.5-01-09-02. Registration of North Dakota-bred horse.

1. The breeder or owner of a North Dakota-bred horse shall register such horse with the North Dakota racing commission. The commission may contract with and designate an official registering agency to implement the registration of North Dakota-bred horses.
2. Any foal born prior to January 1, 1991, may be registered with the North Dakota racing commission and be eligible for North Dakota-bred fund awards if the breed registry papers of the foal show North Dakota as the birth state of said foal. All foals born after January 1, 1991, will have to comply with the complete body of administrative rules for the North Dakota breeders fund.

History: Effective January 1, 1990.

General Authority: NDCC 53-06.2-04, 53-06.2-05  
Law Implemented: NDCC 53-06.2-11

69.5-01-09-03. Administration of North Dakota-bred program.

1. The North Dakota racing commission shall deduct one half of one percent from each parimutuel pool resulting from a licensed race meet or simulcast display for the purpose of providing a North Dakota breeders fund as provided for by North Dakota Century Code section 53-06.2-11. All moneys held in the fund must be separately invested and reinvested in government obligations, certificates of deposit, or bank deposit accounts or trust companies organized under the laws of the United States of America or state thereof; or any combination thereof, provided that such certificates of deposit must be insured by the federal deposit insurance corporation or the federal savings and loan insurance corporation. The executive director of the commission is responsible for the timely deposit of all revenue derived from the breeders fund take out and shall keep accurate records of deposits and disbursements.
2. The management procedure, rules, fee schedules, registration forms, publications, and all other instruments necessary to the operation of the North Dakota-bred program by the official registering agency are subject to the review and approval of the commission. The commission must be provided copies of the completed registration forms for all horses entered in the North Dakota-bred program, or the North Dakota stallion or broodmare registry. The official registering agency shall provide the commission with a financial accounting of the North Dakota-bred program by a certified public accountant within thirty days of the end of the commission's fiscal year. Costs of administering this program will be funded by a deduction of no more than five percent of the yearly accumulated breeders' fund.
3. There is hereby created an advisory committee of seven persons to advise the commission relative to the North Dakota breeders fund. The committee must be composed of members of the North Dakota horse breed associations, the North Dakota licensed racetracks, and one member of the betting public. Committee members shall serve without compensation. Appointments must be made by the commission and terms of office must be for three years, with the initial appointments to be made so that three members serve for three years, two members serve two years, and two members serve for one year. Vacancies, when occurring, must be filled by the commission for the remainder of the term of any said vacancy.
4. Any person who desires to contest the accuracy of the commission's records or accounting of the breed fund

distribution in any one year shall file a written claim with the commission prior to the end of the calendar year. The written claim must state the basis for the claim.

History: Effective January 1, 1990.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

69.5-01-09-04. Registration required for North Dakota-bred eligibility.

1. Broodmare registration. A broodmare must meet the qualifications as outlined in section 69.5-01-09-01. In addition, the broodmare must meet the following conditions:
  - a. The broodmare must be in North Dakota and registered by January first of the year foaled, or within twenty-one days after the date of a bona fide purchase or lease transaction.
  - b. A broodmare brought in to foal and to be bred back to a North Dakota-based stallion will be required to be registered prior to foaling.
  - c. The broodmare's original registration certificate must be received by the North Dakota racing commission or designated official registering agency.
  - d. Failure to properly register the broodmare, as outlined in section 69.5-01-09-01, will disqualify any subsequent claims for breeder award payments, or for the foal to be registered as North Dakota-bred.
  - e. Should it be impossible to breed a mare due to injury or disease, her foal will be registered as North Dakota-bred provided the mare resides in North Dakota for four consecutive months from the time of entering North Dakota for foaling purposes.
  - f. Should it be impossible to breed a mare to the contracted North Dakota-based stallion due to death, injury, disease, or impotency of said stallion, her foal will be registered as North Dakota-bred provided a copy of the stallion contract is filed with the North Dakota racing commission on designated official registering agency.
2. Stallion registration. To be eligible to receive any stallion award payments, the following requirements must be met:
  - a. Stallions must be in North Dakota and registered or the registration renewed with the North Dakota racing commission or official registering agency by January first

of the current breeding year. The stallion's original registration certificate must be received by the North Dakota racing commission or official registering agency. If the stallion is leased, a copy of the lease must accompany the registration application. The lease must include a statement that the lessee is authorized to sign the breeding certificate.

- b. Stallions must remain in North Dakota for the entire breeding season from January first to July thirty-first.
  - c. A newly acquired stallion which has not been in North Dakota for breeding purposes before January first of the current breeding season may be eligible for stallion awards if the stallion has been properly registered with the commission prior to servicing any mare and the stallion has not serviced any mare after December thirty-first of the proceeding year.
3. Foal registration and certification. For a horse foaled in North Dakota to be registered and subsequently certified as a North Dakota-bred, the following requirements must be met:
- a. Within thirty days of the date the horse has foaled in North Dakota, the foal must be registered with the North Dakota racing commission or official registering agency. The registration form must be provided by the commission and must contain the following information: The date, the name and registration number and owner's name of the foaling dam, the date that the foal was born, an owner's statement that the foal was born in North Dakota, four photographs clearly showing front, back, and both sides of the registered foal, and any other information the commission may require.
  - b. Failure to properly register the foal with the North Dakota racing commission within thirty days of foaling will disqualify any subsequent claim to register the foal as North Dakota-bred.
  - c. An investigator appointed by the commission shall have access to the premises on which qualified mares, North Dakota registered stallions, and North Dakota-bred foals or horses are kept. The investigator shall perform random inspections of North Dakota registered foals as required by the commission.
  - d. The original foal certificate must be embossed by the commission or official registering agency prior to entry into any restricted race.

- e. Failure to have foal certificate embossed shall disqualify any claim to enter the horse in a restricted race or to earn any breeder's fund payments.
- f. The owner of a North Dakota registered mare leaving the state prior to ninety days after foaling must notify the registering agency ten days before shipping.
- g. The foal of a mare registered with the North Dakota registry, but owned by an out-of-state individual or corporation, will be required to be inspected by an investigator appointed by the commission at the expense of the owner.

History: Effective January 1, 1990.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

69.5-01-09-05. Decision as to eligibility of North Dakota-bred. Questions as to the registration, eligibility for registration, or breeding of a North Dakota-bred horse must be decided by the North Dakota racing commission or official registering agency. The official registering agency may demand and inspect any registration certificate or record of a North Dakota breeder and may require affidavits in support of any claim for North Dakota-bred registration. Concerning questions as to parentage, the official registering agency may require blood typing of the horse in question, as well as its sire and dam. Such blood typing must be done by an organization approved by the official registering agency. The results of this test may be taken into consideration by the official registering agency in its determination of the horse's parentage. A decision of the official registering agency is subject to review by the commission, which retains the right to make the final decision as any right or liability under this article.

History: Effective January 1, 1990.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

69.5-01-09-06. False statement concerning North Dakota-bred registration. Any person who fails to disclose, or states falsely any information required in the registration process of the North Dakota-bred program, may be subject to penalties at the discretion of the commission. Owners and breeders of certified North Dakota-breds who shall receive an owner's bonus, or breeder's award, shall refund to the North Dakota breeders fund any amount so received in the event it is later determined that any information provided to the association during the certification process which formed the basis for certification as a North Dakota-bred was incorrect or untrue. Such penalties may also include disqualification and exclusion from the North Dakota-bred program of both the horses and persons involved in the dispute.

History: Effective January 1, 1990.  
General Authority: NDCC 53-06.2-04, 53-06.2-05  
Law Implemented: NDCC 53-06.2-11

69.5-01-09-07. North Dakota-bred racing program. Any organization licensed by the commission to conduct a race meeting with parimutuel wagering shall provide a North Dakota-bred program and publish such conditions in the condition book prior to the commencement of the race meeting. Prior to publication and distribution of the condition book, the commission shall review and approve the North Dakota-bred racing program. Any changes thereto must be filed with the commission and none may substantially deviate from the conditions previously published, unless approved by the commission.

The racing secretary at each racetrack shall be required to write and offer no less than an average of one race each day for accredited North Dakota-bred horses. If the race meeting being conducted is a mixed race meeting, there shall be no less than an average of one race each day per major breed racing (thoroughbred, quarter horses, or standard breeds) for accredited North Dakota-bred horses. In the event a race does not fill, a race may be opened up with North Dakota-bred horses preferred. For the purposes of this clause, a full gate shall consist of six or more horses. All entries must be publicly posted in the race office whether the race fills or not.

History: Effective January 1, 1990.  
General Authority: NDCC 53-06.2-04, 53-06.2-05  
Law Implemented: NDCC 53-06.2-11

69.5-01-09-08. Change of ownership. Upon transfer of ownership of a North Dakota-bred horse, it is the responsibility of the current owner (purchaser) to notify the North Dakota-bred registering agency of any change.

History: Effective January 1, 1990.  
General Authority: NDCC 53-06.2-04, 53-06.2-05  
Law Implemented: NDCC 53-06.2-11

69.5-01-09-09. Establishment of North Dakota-bred added money and award payments at a race meeting. The commission shall establish North Dakota-bred added money and award payment levels for accredited North Dakota-bred maiden, claiming, allowance, and stakes races at commission licensed race meetings and authorize increases and decreases in those levels as the commission deems appropriate with respect to funds available in the North Dakota breeders fund.

History: Effective January 1, 1990.  
General Authority: NDCC 53-06.2-04, 53-06.2-05  
Law Implemented: NDCC 53-06.2-11

69.5-01-09-10. Distribution of funds for North Dakota-bred parimutuel races.

1. The distribution of the North Dakota breeders fund must be as follows:
  - a. Sixty-five percent as purse supplements to owners of winning accredited North Dakota-bred horses in certain races established in section 69.5-01-09-09;
  - b. Thirty percent to the breeders of winning accredited North Dakota-bred horses for broodmare awards; and
  - c. Five percent to the owner of the sires of winning accredited North Dakota-bred horses for stallion awards.
2. The official order-of-finish distribution amounts accredited must be as follows:
  - a. Fifty percent total to the winning accredited North Dakota-bred horse and the accredited North Dakota-bred broodmare and sire of such horse, if any;
  - b. Thirty percent of the place accredited North Dakota-bred horse and the accredited North Dakota-bred horse broodmare and sire of such horse, if any;
  - c. Twenty percent of the show accredited North Dakota-bred horse and the accredited North Dakota-bred broodmare and sire of such horse, if any; and
  - d. Classification of races for distribution as provided in this section will be:
    - Class 1 - Futurities, derbies, allowance, handicaps, and stakes.
    - Class 2 - All claiming races over five thousand dollars claiming.
    - Class 3 - Claiming races up to and including five thousand dollars claiming.
    - Class 4 - All trials, maiden, and maiden/claiming races.

Percentages to be allotted to each class will be determined by the North Dakota racing commission which shall seek the advice of and consult with the industry.

Suggested starting percentages are as follows:

- Class 1 - Twenty percent.
- Class 2 - Forty-three percent.
- Class 3 - Twenty-seven percent.
- Class 4 - Ten percent.

3. Award checks must have imprinted on them "This check is void if not cashed within sixty days after date of issuance". This statement is binding and checks not cashed within sixty days of issuance shall revert to the commission to be held over and added to the total amount of award to be distributed to that breed the following year with the following exception: In the event the commission is unable to locate an award recipient by United States first-class mail, the commission shall be given an additional six months beyond the void date of the award check to attempt to locate the payee. If unable to locate the payee within six months, the commission shall revert that money back to the breed fund to be held over and added to the next year's award moneys to be distributed to that respective breed.
4. The money in the North Dakota breeders fund must be distributed to the breeder or owner, or both, awards using the following formula:

The total parimutuel handle on live and simulcast races pursuant to North Dakota Century Code chapter 53-06.2 will be divided by the actual handle generated by each horse breed in order to determine the percentage of handle that each breed generated. These percentages will be used to determine that amount of money in the fund to be distributed to each breed as breeder or owner, or both, awards. In mixed races the breed that is the race winner will be awarded the money earned by the fund in that race.
5. The commission may not make disbursements to any breed not generating a minimum pro rata share of at least one thousand dollars in any one year. That amount which is less than one thousand dollars allocated to a single breed at the end of the year shall revert to a special racing incentive fund to be distributed by the commission.
6. In no event may North Dakota breeder fund money be used to subsidize restricted races, other than those restricted to North Dakota-breds.
7. All broodmare and stallion awards must be calculated at the end of the year for distribution.
8. All owner's awards may be distributed with purse distribution or until such time as sufficient criteria is established may be calculated at yearend for distribution.

History: Effective January 1, 1990.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

69.5-01-09-11. Open company wins awards. Accredited North Dakota-bred horses which win open races at a North Dakota parimutuel track will be eligible to receive owner, breeder, and stallion awards authorized by the commission.

History: Effective January 1, 1990.  
General Authority: NDCC 53-06.2-04, 53-06.2-05  
Law Implemented: NDCC 53-06.2-11

69.5-01-09-12. Special interim clause. Until such time as there exists a major racing facility in the state as described in section 69.5-01-09-13, all or a part of the money accumulated via simulcasting may be held by the commission in an interest drawing account for distribution at that time. All money generated via live racing must be distributed at each year's end.

History: Effective January 1, 1990.  
General Authority: NDCC 53-06.2-04, 53-06.2-05  
Law Implemented: NDCC 53-06.2-11

69.5-01-09-13. Guidelines of a major racing facility. In addition to any other requirements or conditions required by the commission, a major racing facility must:

1. Be recognized by the North Dakota racing commission.
2. Offer a race meeting of no less than thirty racing days.
3. Offer minimum purses of no less than twelve hundred dollars for major breeds racing at this track.
4. Have at least a five-furlong track with properly designed turns and chutes.
5. Have adequate stalling to sustain a thirty-day race meet.

History: Effective January 1, 1990.  
General Authority: NDCC 53-06.2-04, 53-06.2-05  
Law Implemented: NDCC 53-06.2-11

#### CHAPTER 69.5-01-10 NORTH DAKOTA PURSE FUND

Section	
69.5-01-10-01	Deduction From Parimutuel Pool
69.5-01-10-02	Administration of North Dakota Purse Fund
69.5-01-10-03	Investing the Fund
69.5-01-10-04	Deposit of Revenue

69.5-01-10-01. Deduction from parimutuel pool. The North Dakota racing commission shall deduct one-half of one percent from each parimutuel pool resulting from a licensed race meet or simulcast display for the purpose of providing a North Dakota purse fund as provided for by North Dakota Century Code section 53-06.2-11.

History: Effective January 1, 1990.  
General Authority: NDCC 53-06.2-04, 53-06.2-05  
Law Implemented: NDCC 53-06.2-11

69.5-01-10-02. Administration of North Dakota purse fund. The North Dakota purse fund must be administered by the commission and will be used only for the purpose of supplementing horse racing purses at live race meets held within the state of North Dakota.

History: Effective January 1, 1990.  
General Authority: NDCC 53-06.2-04, 53-06.2-05  
Law Implemented: NDCC 53-06.2-11

69.5-01-10-03. Investing the fund. All moneys held in the North Dakota purse fund must be separately invested and reinvested in government obligations, certificates of deposit, or bank deposit accounts or trust companies organized under the laws of the United States of America or state thereof, or in any combination thereof; provided that such certificates of deposit must be insured by the federal deposit insurance corporation or the federal savings and loan insurance corporation.

History: Effective January 1, 1990.  
General Authority: NDCC 53-06.2-04, 53-06.2-05  
Law Implemented: NDCC 53-06.2-11

69.5-01-10-04. Deposit of revenue. The executive director of the racing commission is responsible for the timely deposit of all revenue derived from the purse fund take out and shall keep accurate records of deposits and disbursements.

History: Effective January 1, 1990.  
General Authority: NDCC 53-06.2-04, 53-06.2-05  
Law Implemented: NDCC 53-06.2-11



MARCH 1990

STAFF COMMENT: Chapter 69.5-01-11 contains all new material but is not underscored so as to improve readability.

CHAPTER 69.5-01-11  
SIMULCASTING

Section	
69.5-01-11-01	Definitions
69.5-01-11-02	General Licensing Requirements
69.5-01-11-03	Licensing the Service Provider
69.5-01-11-04	Duties of the Service Provider
69.5-01-11-05	Licensing the Simulcast Operator
69.5-01-11-06	Duties of the Simulcast Operator
69.5-01-11-07	Licensing of Simulcast Employees
69.5-01-11-08	North Dakota Tracks Offering Extended Wagering
69.5-01-11-09	Denial, Suspension, and Revocation of Simulcast Licenses

69.5-01-11-01. Definitions.

1. "Combined parimutuel pool" means the parimutuel wagers received at simulcast sites being contributed into one or more parimutuel pools as required by the commission.
2. "Commission" means the North Dakota racing commission.
3. "Decoder" means a device or means to convert encrypted audiovisual signals or data, or both, into a form recognizable as the original content of the signals.

4. "Downlink" means a receiving antenna coupled with an audiovisual signal receiver compatible with and capable of receiving simultaneous audiovisual signals or data emanating from a sending track, and includes the electronic transfer of received signals from the receiving antenna to television monitors within the satellite facility.
5. "Eligible organization" means an organization eligible to conduct off-track wagering pursuant to North Dakota Century Code section 53-06.2-06.
6. "Encryption" means the scrambling or other manipulation of the audiovisual signals to mask the original content of the signal and so cause such signals to be indecipherable and unrecognizable to any person receiving such signal.
7. "Interstate simulcast wagering" means wagering conducted by a betting system outside the state of North Dakota on the results of one or more races being run at a North Dakota track or wagering conducted by a betting system within the state of North Dakota on the results of one or more races being run at a site outside the state of North Dakota.
8. "Intrastate simulcast wagering" means parimutuel wagering at a North Dakota simulcast site on horse races run at a North Dakota track.
9. "Person" means any person, firm, corporation, association, or organization.
10. "Sending track" means any track from which simulcast signals originate.
11. "Simulcast employee or agent" means any person employed by a simulcast service provider or simulcast operator, but does not include custodial or maintenance personnel not directly involved in wagering and others exempted by the commission.
12. "Simulcast operator" means an eligible organization licensed by the commission to offer, sell, cash, redeem, or exchange parimutuel tickets on races being simulcast from a sending track.
13. "Simulcast service provider" means a person engaged in providing simulcasting services to a simulcast operator and establishing, operating, and maintaining the combined parimutuel pool, but does not include persons authorized by the federal communications commission to provide telephone service or space segment time on satellite transponders.
14. "Simulcast services" means services provided to a simulcast operator including the simulcast signal from a sending track

and the operation of the combined North Dakota parimutuel pool.

15. "Simulcast site" means the physical premises, structure, and equipment utilized by a simulcast operator for the conduct of parimutuel wagering on horse racing events being run elsewhere.
16. "Uplink" means an earth station broadcasting facility, whether mobile or fixed, which is used to transmit audiovisual signals or data, or both, on federal communications commission-controlled frequencies, and includes any electronic transfer of the audiovisual signals from within the racing enclosure to the location of the transmitter at the uplink.

History: Effective March 1, 1990.  
General Authority: NDCC 53-06.2-05  
Law Implemented: NDCC 53-06.2-10.1

#### 69.5-01-11-02. General licensing requirements.

1. Any simulcast operator, simulcast service provider, or simulcast employee desiring to display the simulcast of parimutuel events on which parimutuel wagering shall be permitted in the manner and subject to the conditions provided for under law and by the commission must be licensed by the commission. Applications for licenses must be in such form as may be prescribed by the commission and must contain such information or other material or evidence as the commission may require. All licenses must be for a period of one year commencing January first and ending December thirty-first of each calendar year.
2. The application for renewal of license must be made to the commission no later than thirty days prior to the date of expiration of the license on such form as may be prescribed by the commission. Application for license renewal must include the license fee as prescribed by this chapter.
3. Approval or disapproval of an application for simulcast operator or service provider license must include consideration by the commission of the following:
  - a. The operator or provider's general benefit to the state of North Dakota.
  - b. The operator or provider's general benefit to the state's horse racing industry.
  - c. The operator or provider's integrity.
    - (1) Individual and corporate conduct and reputation.

- (2) Criminal history.
- (3) Betting and gaming industry conduct and reputation.
- d. The operator or provider's credibility.
  - (1) Accuracy of feasibility study.
  - (2) Experience and expertise of the operator or provider in the simulcast industry.
- e. Financial stability.

History: Effective March 1, 1990.  
 General Authority: NDCC 53-06.2-05  
 Law Implemented: NDCC 53-06.2-10.1

69.5-01-11-03. Licensing the service provider.

- 1. A service provider must be licensed by the commission.
- 2. Before the commission may grant such license, it shall review and approve the services to be provided by the applicant. The applicant shall submit such information as required by the commission which must include, but not be limited to:
  - a. The services and equipment to be provided.
  - b. The sources and amounts of revenue expected from said operation.
  - c. A complete financial statement demonstrating adequate capitalization to maintain the intended services.
  - d. A description of the management or management groups responsible for the operation of the services company.
  - e. A complete description of the transmission, totalizer, and data processing equipment to be used.
  - f. A history of the company demonstrating the experience and technical knowledge necessary to supply the intended services.
  - g. Written agreements between the applicant and all parties assisting in providing simulcast services.
  - h. A description of the security measures to be used to protect the propriety of the signal and the integrity of the wagering process.

- i. The system of accounts to be utilized in the collection and distribution of revenues directly or indirectly related to the simulcast operation and the combined parimutuel pool.
  - j. A detailed statement demonstrating individual and corporate conduct, ability, and reputation of the applicant and supervisory personnel.
3. The license fee must be five thousand dollars annually.
4. The licensee shall post with the commission such surety as is required by the commission for the services the applicant will provide.

History: Effective March 1, 1990.  
General Authority: NDCC 53-06.2-05  
Law Implemented: NDCC 53-06.2-10.1

69.5-01-11-04. Duties of the service provider.

1. The service provider shall comply with all state and federal laws, including section 3001, et seq. of title 15 of the United States Code.
2. The service provider intending to make any change not reflected in the original license application submitted to the commission, a supervisory personnel change, or change of sending track must be granted prior approval by the commission and must file with the commission a statement including, but not limited to:
  - a. The changes to be made.
  - b. A statement that the service provider is in compliance with section 3001, et seq. of title 15 of the United States Code and any other applicable federal laws.
  - c. The date and time the service provider intends to commence said changes.
3. A service provider may not be licensed as a simulcast operator.
4. The service provider shall provide:
  - a. Parimutuel terminals, parimutuel odds display, modems or switching units enabling parimutuel data transmissions, and data communication between the service provider and the simulcast operator.

- b. A voice communication system between the state steward and the sending track stewards.
  - c. A telecommunication system available to the state steward for discharge of the steward's duties.
5. The service provider shall, for a period of ninety days, retain the video record of all simulcasts in decoded form, and shall provide a copy of such record on a one-half inch [12.7 millimeters] video home system video cassette to the commission at its request.
  6. Not less than thirty minutes prior to the commencement of transmission of the racing program of each day or night, the service provider shall initiate a test program of its transmitter, encryption and decoding, and data communication system to assure proper operation.
  7. The service provider shall maintain such security controls over its simulcast and communications system as directed by the commission.
  8. The service provider shall provide the commission with a certified report of its operations as directed by the commission.
  9. A licensed service provider may only provide simulcast services to a simulcast operator licensed by the commission.
  10. The service provider shall provide access to the simulcast system to all simulcast operators licensed by the commission on an equal, nondiscriminatory basis. The service provider may require compliance by the simulcast operator with contractual provisions necessary to maintain the integrity of the simulcast and parimutuel systems and to ensure proper operation of off-track wagering.
  11. The service provider shall provide access by the commission or its designated representative to the provider facility and to all records of the provider and any other information as required by the commission or its representative.
  12. Simulcasting may be permitted only on races conducted at approved locations at parimutuel tracks governed by a racing commission, racing board, or governmental agency.
  13. A service provider shall establish and maintain a combined parimutuel pool, ensure its integrity, and establish procedure as approved by the commission for the use of federally insured financial institutions for receipt and disbursement of funds which are part of the combined parimutuel pool.

14. The service provider shall provide a signal from the sending track that will contain in its video content a digital display of the actual time of day, the name of the racetrack from where it emanates, the number of the race being displayed, and the sequential fractional time of the race as the race is being run.
15. The commission may appoint a simulcast steward or stewards as reasonably necessary for the protection of the public interest. The simulcast stewards must be appointed and assigned by the commission, but they must be paid for their services by the service provider.

History: Effective March 1, 1990.  
General Authority: NDCC 53-06.2-05  
Law Implemented: NDCC 53-06.2-10.1

69.5-01-11-05. Licensing the simulcast operator.

1. Before the commission may grant a license to a simulcast operator, it shall review and approve a plan of operation submitted by an applicant including, but not limited to, the following information:
  - a. A feasibility study denoting the revenue earnings expected from the simulcast facility and the costs expected to operate such facility. The feasibility study must include:
    - (1) The number of races to be simulcast.
    - (2) The types of wagering to be offered.
    - (3) The level of attendance expected and the area from which such attendance will be drawn.
    - (4) The level of anticipated wagering activity.
    - (5) The source and amount of revenue expected from other than parimutuel wagering.
    - (6) The cost of operating the simulcast facility and the identification of costs to be amortized and the method of amortization of such costs.
  - b. The security measures to be employed to protect the facility, to control crowds, to safeguard the transmission of the simulcast signal and to control the transmission of wagering data to effectuate common wagering pools.
  - c. The description of the management groups responsible for the operation of the simulcast facility.

- d. The system of accounts to maintain a separate record of revenues collected by the simulcast facility, the distribution of such revenues, and the accounting of costs relative to the simulcast operation.
  - e. The location of each simulcast site, a copy of the lease or site agreement, and a written confirmation from appropriate local officials that the location of such facility and the number of patrons expected to occupy such facility are in compliance with all applicable local ordinances and codes.
  - f. All written agreements or letters of consent between parties to the operation of the simulcast system, including a licensed service provider.
  - g. Proof of eligibility under North Dakota Century Code section 53-06.2-06.
  - h. Applicant's financial information demonstrating adequate capitalization to carry on the duties of a simulcast operator.
  - i. Support or nonsupport of the local jurisdictional government.
  - j. Proof of adequate experience and knowledge necessary to conduct simulcasting and parimutuel wagering operations.
2. The annual license fee must be one thousand dollars. For each additional site over one, the simulcast operator shall pay a site fee of five hundred dollars.
  3. No license as simulcast operator may be granted to:
    - a. Organizations ineligible under North Dakota Century Code section 53-06.2-06.
    - b. A service provider.
  4. The simulcast operator shall post with the commission a surety in an amount and in such form as the commission requires, to ensure payment of distributable amounts of the parimutuel pool, operational costs, salaries, wages, benefits, taxes, North Dakota purse and breeders funds, and related financial obligations.
  5. No simulcasting or parimutuel wagering may be conducted at a simulcast site not approved by the commission.

History: Effective March 1, 1990.  
 General Authority: NDCC 53-06.2-05  
 Law Implemented: NDCC 53-06.2-10.1

69.5-01-11-06. Duties of the simulcast operator.

1. A simulcast operator shall conduct the parimutuel wagering at a simulcast site approved by the commission.
2. The simulcast operator shall provide access to the commission or its designated representative to the simulcast site and to all records of the operator and any other information as required by the commission or its designated representative.
3. If a licensee or an applicant for a live horse race meet license requests a shutdown of a simulcast site, the commission may require such simulcast site to shut down during the hours that the live race meet is run.
4. The simulcast operator is responsible for cash shortages which occur at a simulcast site.
5. The provisions of North Dakota Century Code section 53-06.2-11 are applicable to simulcasting and off-track parimutuel wagering. The simulcast operator is responsible for the payment of the state takeout, the North Dakota breeders fund, and the North Dakota purse fund provided by the commission.
6. A simulcast operator may only take a signal from a service provider licensed by the commission.
7. All wagers are made on the official results of the sending track.
8. No simulcast operator may employ an independent contractor for the conduct of simulcasting or parimutuel wagering. Only an employee of a simulcast operator working for or without compensation may conduct simulcasting or parimutuel wagering, or both.

History: Effective March 1, 1990.  
General Authority: NDCC 53-06.2-05  
Law Implemented: NDCC 53-06.2-10.1

69.5-01-11-07. Licensing of simulcast employees.

1. No person may be a simulcast employee unless that person is the holder of a valid license issued by the North Dakota racing commission.
2. The employment of an unlicensed person by a simulcast operator or service provider is prohibited. Upon discharge of a licensed simulcast employee, the operator or service provider shall report that fact to the commission, including the name and occupation of the discharged licensee and the reason for discharge.

3. The commission will not issue a license to a simulcast employee unless the application includes the prior endorsement of the employer.
4. The initial license fee is twenty-five dollars. The annual renewal fee is ten dollars. For each change of employment, name change, or replacement of a lost or destroyed license, a five dollar fee will be assessed.
5. If the applicant for a simulcast employee license will be working at a gaming site licensed by the attorney general, and provides proof that the applicant is holding a valid gaming work permit, that applicant will be charged a ten dollar initial license fee. Renewal and replacement fees must be the same as subsection 4.
6. Each simulcast employee shall wear a valid license at all times while working in the simulcast site or service provider's site. The license must be worn on the upper one-third of the employee's body. All information on the license or permit must be easily visible. No license may be transferred to any other person.
7. No employee or agent of a service provider may be employed by a simulcast operator. No employee of a simulcast operator may be employed by a service provider.
8. No simulcast employee may wager at a simulcast site while on duty. For purposes of this section, a simulcast employee taking a temporary break is still considered on duty. Furthermore, no simulcast employee may wager at a simulcast site until four hours have elapsed since the simulcast employee went off duty.

History: Effective March 1, 1990.  
General Authority: NDCC 53-06.2-05  
Law Implemented: NDCC 53-06.2-10.1

69.5-01-11-08. North Dakota tracks offering extended wagering.

1. A North Dakota track may authorize use of its simulcast for interstate wagering by out-of-state betting systems provided the North Dakota track files with the commission a copy of the agreement with the out-of-state betting system which sets forth the payment to the North Dakota track for use of its simulcast, and of any agreements required by chapter 57, including section 3001, et seq. of title 15 of the United States Code.
2. Every North Dakota sending track simulcasting its racing program shall contract with a simulcast service provider for the purpose of providing authorized users with its simulcast.

3. The North Dakota sending track is responsible for the content of its simulcast and shall use all reasonable effort to present a simulcast which offers the viewers an exemplary depiction of its racing program, a periodic display of wagering information, and continuity programming between horse racing events.
4. Unless otherwise permitted by the commission, the sending track simulcast will contain in its video content a digital display of the actual time of day, the name of the racetrack from where it emanates, the number of the race being displayed, and the sequential fractional time of the race as the race is being run.

History: Effective March 1, 1990.  
General Authority: NDCC 53-06.2-05  
Law Implemented: NDCC 53-06.2-10.1

69.5-01-11-09. Denial, suspension, and revocation of simulcast licenses.

1. Reasons for denial, suspension, and revocation. The commission may deny, suspend, or revoke licenses for just cause. Actions constituting just cause include:
  - a. Any action or attempted action by a person contrary to any law.
  - b. Corrupt practices, which include:
    - (1) Prearranging or attempting to prearrange the order of finish of a race.
    - (2) Failing to properly pay winnings to a bettor or to properly return change to a bettor purchasing a ticket.
    - (3) Falsifying or manipulating the odds on any entrant in a race.
  - c. Any violation of the rules of racing or simulcasting adopted by the commission.
  - d. Willful falsification or misstatement of facts in an application for simulcasting privileges or a license.
  - e. Material false statement to a racing or simulcast official or to the commission.
  - f. Willful disobedience of a commission order or of a lawful order of an agent of the commission.

- g. Continued failure or inability to meet financial obligations connected with the operation of any part of a simulcast system or simulcast site.
  - h. Failure or inability to properly maintain a simulcast system, simulcast site, or combined parimutuel pool.
  - i. Failure to fulfill contractual obligations to other facets of the simulcast system.
  - j. The suspension or revocation of racing or parimutuel wagering activity of the applicant or licensee by an out-of-state regulatory agency recognized by the commission.
2. The procedures to be followed in denial, suspension, or revocation of simulcast licenses must be as prescribed by North Dakota Century Code section 53-06.2-15.

History: Effective March 1, 1990.  
General Authority: NDCC 53-06.2-05  
Law Implemented: NDCC 53-06.2-10.1

TITLE 74  
Seed Commission



MARCH 1990

74-02-01-01. Seed testing fees - Sample size - Free seed tests. The definition of terms used in this section shall be the same as those defined in North Dakota Century Code section 4-09-01.

The free seed tests provided for in North Dakota Century Code section 4-09-08 shall apply only to seed samples received by the seed department laboratory before the first day of November of each fiscal year of cereals, flax, sunflower, alfalfa, soybean, and edible bean seed received at the state seed department from July first through October thirty-first of each year.

The following schedule of fees shall apply to tests on all samples of seed which are not eligible for free tests. All fees must accompany samples unless previous credit arrangements have been made.

	Germination Test	Seed Purity Test
Alfalfa	\$ <del>5.00</del> 6.00	\$ <del>5.00</del> 8.00
Bluegrass	<del>5.00</del> 8.00	<del>7.00</del> 11.00
<del>Bluestem</del>	<del>10.00</del>	<del>20.00</del>
Bromegrass	<del>5.00</del> 8.00	<del>10.00</del> 11.00
Buckwheat	<del>4.50</del> 6.00	<del>4.00</del> 6.00
Cereals	<del>4.50</del> 6.00	<del>4.00</del> 6.00
Clovers	<del>5.00</del> 6.00	<del>5.00</del> 8.00
Corn	<del>5.50</del> 6.50	<del>4.00</del> 6.00
Edible beans	<del>5.50</del> 6.50	<del>4.00</del> 6.00
Fescues	<del>5.00</del> 8.00	<del>5.50</del> 11.00
Flax	<del>5.00</del> 6.00	<del>7.00</del> 8.00
Green needlegrass	<del>10.00</del> 25.00	<del>7.00</del> 11.00
Indiangrass	<del>10.00</del> 11.00	<del>15.00</del> 21.00
<del>Meadow</del> Creeping foxtail	<del>8.00</del> 9.00	<del>20.00</del> 21.00
Millet	<del>4.50</del> 6.00	<del>4.50</del> 6.00
Mustard and rape	<del>4.50</del> 6.00	<del>4.50</del> 8.00

Orchardgrass	<del>5.00</del>	<u>8.00</u>	<del>5.00</del>	<u>11.00</u>
Peas (field)	<del>5.50</del>	<u>6.50</u>	<del>4.00</del>	<u>6.00</u>
<b>Red top</b>	<del>5.00</del>		<del>10.00</del>	
Reed canarygrass	<del>5.00</del>	<u>8.00</u>	<del>5.00</del>	<u>11.00</u>
Ryegrass	<del>5.00</del>	<u>8.00</u>	<del>5.00</del>	<u>11.00</u>
Sideoats grama	<del>10.00</del>	<u>11.00</u>	<del>10.00</del>	<u>11.00</u>
Sorghum	<del>4.50</del>	<u>6.00</u>	<del>4.00</del>	<u>6.00</u>
Soybeans	<del>5.50</del>	<u>6.50</u>	<del>5.00</del>	<u>6.00</u>
Sudangrass	<del>4.50</del>	<u>6.00</u>	<del>4.00</del>	<u>6.00</u>
Sunflowers	<del>5.50</del>	<u>6.50</u>	<del>4.00</del>	<u>6.00</u>
Switchgrass	<del>10.00</del>	<u>11.00</u>	<del>5.00</del>	<u>11.00</u>
Timothy	<del>5.00</del>	<u>8.00</u>	<del>5.00</del>	<u>8.00</u>
Trefoil	<del>5.00</del>	<u>6.00</u>	<del>5.00</del>	<u>8.00</u>
Western wheatgrass	<del>10.00</del>	<u>11.00</u>	<del>10.00</del>	<u>11.00</u>
Other wheatgrasses	<del>7.00</del>	<u>8.00</u>	<del>10.00</del>	<u>11.00</u>
Trees and shrubs	<del>8.00</del>	<u>11.00</u>	<del>4.00</del>	<u>6.00</u>
<b>Vegetable seeds</b>	<del>4.50</del>		<del>3.50</del>	

#### Charge For Tests on Kinds of Seed Not Listed:

The fees for testing kinds of seeds not listed will be comparable to those listed for a similar kind of seed.

"Rush" service: ~~\$3.00~~ \$5.00 per sample.

Samples which require excessive time - screenings, low-grade, dirty, or unusually difficult sample - \$10.00 per hour.

#### Mixtures:

Mixtures of two or more kinds of seeds shall carry a fee equal to the fees for testing each component in the mixture.

#### Examinations:

For noxious weeds - \$4.00.

150 gram noxious - \$5.00.

Copper sulfate, ammonia for sweet clover - \$2.50.

Weed check: identify weeds present in sample; preconditioning test (not for labeling) - \$3.00.

#### Size of sample:

The minimum weights of samples submitted for tests shall be as follows:

##### 1. Seed purity tests:

- a. Two ounces [56.70 grams] of grass seed, white or alsike clover, or seeds of similar size.

b. Five ounces [141.75 grams] of sweet clover, red clover, alfalfa, grasses, millet, rape, flaxseed, or seeds of similar size.

c. One pound [453.59 grams] of cereals, soybeans, or seeds of similar size.

2. Germination tests:

The minimum size of samples for a germination test shall be at least eight hundred seeds for testing (send one cup of seed to ensure best results).

Samples of uncleaned seed:

A seed purity analysis will not be made on samples of unconditioned seed received for free testing.

Special tests:

Embryo test:	To determine loose smut in barley -	\$12.00
Tetrazolium test:	To give a quick estimate of potential seed viability - (not for labeling)	
	Cereals	\$ 9.00
	Other Seeds	<del>\$11.00</del> \$15.00
<u>Seed Count:</u>	<u>Must have a purity test done at the same time</u>	
	Soybeans	\$ 1.00
	Wheat, Durum, Barley	\$ 2.00
<u>Purity Analysis on a Treated Sample:</u>	<u>additional</u>	<u>\$ 2.00</u>

History: Amended effective September 1, 1981; May 1, 1988; December 18, 1989.

General Authority: NDCC 4-09-03, 4-09-08

Law Implemented: NDCC 4-09-08

74-02-01-05. Labeling of registered and certified seed brought into North Dakota. The definition of terms used in this section shall be the same as those defined in North Dakota Century Code section 4-09-01.

No seed grown outside of North Dakota which is characterized in any way either orally, in writing, or by the use of tags or labels with or by the use of the term "foundation", "registered", "certified", "pedigreed", "elite", or "inspected seed", or any term or terms conveying a meaning substantially equivalent to the meaning of any of these terms, shall be transported into the state or be sold, offered or exposed for sale, stored, transported, or distributed, or held with the intent to sell or plant the same unless such seed is either (1) labeled in accordance with the requirements as set forth in North Dakota Century Code section 4-09-10, or (2) is labeled with the percentage of pure live

seed, the date of test, and the name and address of the person who labels the seed. "Pure live seed" means the product of the percentage of germination plus hard seed and the percentage of pure seed divided by one hundred.

$$\text{Pure live seed} = \frac{\text{Purity} \times \text{germination}}{100}$$

Any seed labeled in this manner shall not be exempt from the labeling requirements for treated seed as required under subsection 11 of North Dakota Century Code section ~~4-09-10~~. Repealed effective December 18, 1989.

General Authority: ~~NDCC 4-09-03~~

Law Implemented: ~~NDCC 4-09-17~~

74-02-01-06. Clarification of pure live seed and how it pertains to germination. "Pure live seed" means the product of the percentage of germination plus hard seed and the percentage of pure seed divided by one hundred.

$$\text{Pure live seed} = \frac{\text{Purity} \times \text{germination}}{100}$$

History: Effective December 18, 1989.

General Authority: NDCC 4-09-03

Law Implemented: NDCC 4-09-17

74-02-02-02. Nonresident seed dealer - License application. The application for license shall be made to the seed commissioner in writing and under oath, and shall set forth:

1. The place or places of business from which the applicant intends to carry on the business for which the license is desired.
2. The full name of the persons constituting the firm if the applicant is a copartnership.
3. The name of the officers of the corporation and where it is incorporated if the applicant is a corporation.
4. A statement showing the applicant's eligibility for a similar license in other states in which the applicant may have operated or is operating at the time of the application.
5. Other pertinent facts regarding the applicant and the business.

~~The~~ When applicable, the fee for the license, twenty-five dollars, shall accompany the application.

History: Amended effective December 18, 1989.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 4-25-04

74-03-01-09. Field inspection.

1. Applications. Applications for field inspection, accompanied by the correct fees, past due accounts, and proof of seed eligibility, must be mailed or received at the state seed department office in Fargo not later than June fifteenth. The penalty fee will apply after that date. Applications may not be accepted after July fifth except for later planted crops. Soybean, millet, field peas, and buckwheat will be accepted until July fifteenth without late penalty. In case of an emergency or unusual circumstances due to weather and crop conditions, the deadline may be extended at the discretion of the seed commissioner. Application blanks are available at all county extension offices and the seed department offices at Fargo, Grand Forks, and Grafton.
2. Information required on application. The application blank shall be filled out by the grower and returned to the office. It is important that all questions be answered completely and correctly. Information is required regarding the variety of the crop, number of acres [hectares] seeded, and source of seed. The location of the farm and field shall be given clearly so that the inspector will be able to find the farm and field readily without waste of time and extra travel. A diagram of the field location shall be made on the bottom of the application blank. If the seed is purchased, an official certified seed tag must accompany the application.
3. Roguing and spraying fields. Roguing fields prior to inspection is desirable to remove undesirable plants from fields which are intended for seed certification. Plants that should be removed include off-type plants, prohibited and restricted noxious weeds, other crop plants such as sweet clover in alfalfa, oats in barley, winter rye in winter wheat, and other impurities which may be growing in the field.

Roguing is usually done by pulling out other crop plants or weeds and removing them from the field. In the case of small grain, roguing should be done after heading as foreign plants are seen most easily at this time. In hybrid seed production, off-type and undesirable plants should be removed before pollen is shed. Roguing is very essential in maintaining the purity of varieties and high standards of certified seed.

Wherever practical and advisable, seed fields should be sprayed with herbicides according to the best recommendations for the control of undesirable weeds.

4. Weeds and diseases.

- a. Prohibited noxious weeds under North Dakota seed laws and rules are: leafy spurge, field bindweed (creeping jenny) Canada thistle, perennial sow thistle, Russian knapweed, and hoary cress (perennial peppergrass)- For purposes of seed certification, musk thistle and absinth wormwood shall be included, absinth wormwood, hemp, musk thistle, and spotted knapweed.
- b. Restricted noxious weeds under North Dakota seed laws and rules are: dodder species, wild mustard, field pennycress (frenchweed), hedge bindweed (wild morning glory), wild oats, and quackgrass.
- c. A field may be rejected if it is the opinion of the field inspector that the amount and kind of common weeds present materially affect its appearance or make it difficult to give adequate inspection, or the condition is such that the quality of the cleaned seed may be questionable.
- d. Objectionable weed seeds are restricted noxious weeds under North Dakota seed laws and rules and some common weeds which cause a specific problem in the conditioning of some individual crops.
- e. Diseases not governed by specific crop standards may be cause for rejection if it is the opinion of the inspector that the quality of the cleaned seed may be affected or if results of tests made on the seed indicate a disease condition which will affect the crop produced from such seed.

5. Cancellation of field inspection. An application may be canceled by the grower before the field inspection is made and the application fee minus ten dollars will be refunded. The request for cancellation, however, must reach the state seed department before the inspector arrives in the general locality of the field or before inspection expense has been incurred. Refunds will not be made after fields are inspected or because fields have been rejected.

6. Appeal inspection of rejected fields will be considered, provided application for appeal allows a reasonable amount of time for reinspection prior to harvest.

History: Amended effective May 1, 1986; May 1, 1988; December 18, 1989.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-10. Fees. Charges for fees and services are subject to change. For current fees contact the state seed department.

1. Field inspection fees.

Each applicant for field seed certification must pay a grower fee of five dollars once annually plus:

	To June 15	After June 15-July 5
Small grains, grasses, legumes, flax, and other annual and perennial crops	\$1.50 per acre for the first 100 acres \$1.25 per acre for additional acreage (per field)	\$2.00 per acre for the first 100 acres \$1.75 per acre for additional acreage (per field)
Sunflower open pollinated hybrids	\$2.25 per acre \$3.50 per acre	\$2.75 per acre \$4.00 per acre
Dry field bean	\$2.50 per acre	\$3.00 per acre
	To July 15	After July 15- August 1
Late crops - soybean, millet, field peas, buckwheat	\$1.50 per acre for the first 100 acres \$1.25 per acre for additional acreage (per field)	\$2.00 per acre for the first 100 acres \$1.75 per acre for additional acreage (per field)

Minimum all crops \$20.00 per farm - \$10.00 per field

EXAMPLE

185-acre wheat field:

100-A x \$1.50 = \$150.00	Grower fee	
85-A x \$1.25 = 106.25	(once annually)	5.00
\$256.25		\$261.25

2. Laboratory fees.

Germination tests: grains ~~four~~ six dollars and ~~fifty cents~~, soybean, sunflower, dry field bean ~~five~~ six dollars and fifty cents, and flax ~~five~~ six dollars.

Seed purity tests: grains, soybean, sunflower, dry field bean ~~four~~ six dollars, and flax ~~seven~~ eight dollars.

Barley embryo test for loose smut: ~~eight~~ twelve dollars and fifty cents (one test required for each lot). ~~Regular fee for noncertified barley twelve dollars.~~

Bacterial bean blight test: ~~fifty~~ forty dollars. Each lot of edible beans passing field inspection must be tested. See current price list for all laboratory charges.

3. Final certification fees.

Minimum fee is two dollars. Two cents per bushel [35.24 liters] plus four cents per tag for annual crops including grains, flax, and row crops.

Six cents per one hundred pounds [45.36 kilograms] plus four cents per tag for alfalfa, clovers, and perennial grasses.

(The two cents for each bushel [35.24 liters] and six cents for each hundred pounds [45.36 kilograms] of alfalfa, clovers, and perennial grasses will be used to promote North Dakota certified seed.)

Bulk certification: ten dollars per lot plus four cents per bushel [35.24 liters].

Organization for economic cooperation and development (OECD) certification fees: a ten dollar processing fee and final certification fees. An additional twelve dollar growout fee on all crops where required by organization for economic cooperation and development (OECD) standards.

4. Carryover seed tagging. New certification tags will be furnished for carryover seed at a cost of four cents per tag. All carryover seed must be retested for germination before new certified tags will be issued.
5. Carryover bulk seed. All carryover bulk seed must be retested for germination before new bulk certificates will be issued at ten dollars per lot ( four certificates - extra copies twenty-five cents per copy). Carryover bulk seed cannot be recertified in bags unless new samples are submitted for analysis.

History: Amended effective May 1, 1986; May 1, 1987; May 1, 1988; December 18, 1989.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16, 28-32-01

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-11. Seed sampling and laboratory inspection.

1. Identification in storage. Field inspected seed must be positively identified by lot number (field inspection number) at all times. Bins of bulk lots of uncleaned or cleaned seed should be marked. Bags should be identified by a stenciled lot number or an identification tag securely sewn or fastened to the bag.
2. Germination sample. To speed up tagging and determine suitability of seed prior to conditioning a representative sample of seed from each field which has passed field inspection may be submitted to the state seed department soon after the crop is harvested. A special seed envelope for this sample is furnished the grower. This sample should be cleaned on a small mill or hand sieve to correspond as nearly as possible to the condition of the entire lot after cleaning or conditioning. Only a germination test and embryo test in the case of susceptible barley varieties is made on this sample. This germination test and embryo test (in the case of barley) can be used in the final tagging of the lot and all sublots. A grower may, however, request a new test on each lot after final conditioning or delay the germination test and embryo test until after conditioning. The labeler is responsible for the germination stated on the seed label.
3. Sampling procedures.
  - a. All seed lots for final certification should be sampled during conditioning by taking samples from the mills at periodic intervals.
  - b. Specific instruction to samplers are found on the reverse side of ~~sampler's~~ the report.
4. Maximum lot size and numbering.
  - a. The maximum size of lot for sampling of cereals and flax is five hundred bushels [176.20 dekaliters] for bagged seed, with no maximum size for bulk seed. For grasses and legumes, the maximum size of lot for sampling shall be two thousand pounds [907.18 kilograms]. When desired, subplot samples can be combined under one lot number in which case, the average analysis of all subplot samples will be used for tagging. Field inspection numbers should not be changed. The maximum size for any bagged lot is two thousand bushels [704.78 dekaliters]. Bulk certified lots do not have a maximum limit except bin capacity. Bulk registered class seed requires one sample per two thousand bushels [704.78 dekaliters] while bulk certified class seed requires one sample per bin.
  - b. The lot number should be preceded by the initials of both the variety and kind of seed. When large lots of seed are broken up into smaller lots and conditioned at different

times, a subplot number should be used. For example, the seed from a field of Larker barley, which has field inspection number eight hundred ninety-seven, will be designated as lot 1b 897. If only a part of the entire lot is conditioned at one time, the subplot will be designated 1b 897-1. When another portion of the lot is conditioned, this subplot will be designated 1b 897-2.

5. **Bulking seed lots.** Seed from different fields of the same kind and variety, which have passed field inspection, may be bulked if the seed is of the same class, generation, or general quality. If the seed of different classes or generations is bulked, the seed becomes eligible for the lowest class only.
6. **Conditioning.**
  - a. All field inspected seed which is to be tagged and sealed must be conditioned and must meet the minimum seed standards and conditioning requirements for the crop and class.
  - b. Field inspected seed may be conditioned either by the grower or at an approved seed conditioning plant.
7. **Conditioning by farmer/grower - Procedure.**
  - a. Condition the seed. A farmer/grower does not need an approved conditioning plant permit if the farmer/grower conditions seed on the farmer's/grower's premises.
  - b. Meets farmer/grower requirements for equipment and management.
  - c. Complete section A of the grower's declaration, and sampler's report, sign, and mail to the state seed department at Fargo.
8. **Conditioning at an approved plant.**
  - a. Growers must fill in grower's declaration - section B or C.
  - b. The completed grower's declaration should be presented to the manager of the approved conditioning plant when the seed is delivered for conditioning.
  - c. After conditioning all seed is sampled by the authorized sampler in the plant.
9. **Regulatory sampling.** The state seed department may resample any lot of seed either before final certification or after the seed is tagged and sealed.

10. Laboratory analysis.

- a. All laboratory testing shall be done by qualified personnel of the state seed department. Analysis and tests of seed samples and definition of analysis terms shall be in accordance with the rules of the association of official seed analysis.
- b. If more than one sample of seed is tested from the same lot without additional conditioning, an average shall be taken of all tests made.

History: Amended effective May 1, 1986; May 1, 1988; December 18, 1989.  
General Authority: NDCC 4-09-03, 4-09-05, 4-09-16  
Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-16. Approved conditioners. Any seed conditioning plant in North Dakota may be designated as an "approved conditioning plant" to condition field inspected seed for final certification if, after inspection, it is the opinion of the inspector for the state seed department that the plant is properly managed and equipped, and facilities are such that seed will, with usual care, not become mixed during conditioning. The managers and the designated samplers in these plants are under agreement to handle all seed and seed records and to draw representative samples of all seed lots for certification according to the certification rules and regulations. Approved conditioners are required to have the following operational equipment: length grading machine - either a disc or indent cylinder or combination machine; width grading - either an air screen machine or precision graders with aspiration in line. Rotary screen scalpers are not allowed unless demonstrated to the inspector that they are routinely cleaned. Permission to operate as an approved conditioning plant to condition field inspected seed, is granted on a yearly basis only. An annual fee is charged for each permit. All approved conditioning plants must condition and complete final certification on at least one lot of certified seed every two years before renewal of a permit will be granted. A twenty-five dollar fee will be charged for each reinspection.

History: Amended effective May 1, 1986; December 18, 1989.  
General Authority: NDCC 4-09-03, 4-09-05, 4-09-16  
Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-02-04. Seed standards (wheat - oats - barley - rye - triticale).

Seed count required on wheat, barley, and durum.

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Standards for Each Class

Factor	Foundation	Registered	Certified
Pure seed (minimum) *.....	99.0 percent	99.0 percent	99.0 percent
Total weed seeds (maximum) .....	2 per pound	5 per pound	10 per pound
Other varieties ** ..	1 per 2 pounds	1 per pound	3 per pound
Other crop seeds (maximum) .....	1 per 2 pounds	1 per pound	3 per pound
Inert matter (maximum) *** .....	1.0 percent	1.0 percent	1.0 percent
Prohibited noxious weed seeds + .....	none	none	none
Objectionable weed seeds (maximum) ++	1 per 4 pounds	1 per 2 pounds	1 per pound
Germination +++ .....	85.0 percent	85.0 percent	85.0 percent

\* The standard for durum and rye shall be 98.0 percent minimum.

\*\* Other varieties shall not include variations which are characteristic of the variety.

\*\*\* For all crops foreign matter other than broken seed shall not exceed 0.2 percent. Durum and rye may contain 2.0 percent maximum inert matter.

+ Prohibited noxious weed seed including the seeds of quackgrass.

++ Objectionable weed seeds shall include the following: dodder, wild mustard, wild oats, hedge bindweed (wild morning glory), field pennycress (frenchweed), giant ragweed (kinghead), falseflax, and dragonhead.

+++ Winter wheat and rye minimum 80.0 percent.

Note: The loose smut content of any class of certified seed of barley shall not exceed four percent unless a special seed treatment has been applied. The percentage of loose smut as determined by the embryo test will be printed on the certification tag or labeled with an approved seed treatment. The foundation class of barley has a zero tolerance for barley stripe mosaic virus.

History: Amended effective May 1, 1986; May 1, 1988; December 18, 1989.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-07-04. Specific seed standards (non-chaffy seeded species).

71-03-07-04. SPECIFIC SEED STANDARDS (NON-CHAFFY SEEDED SPECIES).  
 Foundation 0.1% Registered 1.0% Certified 1.0%

Species	Type of Reproduction	Minimum				Maximum				Objectable weed seeds Per Pound F.A.R.					
		Percent Pure Seed F.A.R.	Percent Germination F.A.R.	Percent Other Crop F.A.R.	Percent Other Grass F.A.R.	Percent Inert F.A.R.	Percent Weed Seeds F.A.R.	Percent F.A.R.							
Smooth Bromegrass	C	90	85	80	80	0.2	0.5	0.1	0.5	10.0	15.0	0.25	0.5	9	13
Timothy	C	99	99	80	80	0.2	0.5	0.1	0.2	1.0	1.0	0.2	0.5	9	13
Crested Wheatgrass	C	90	90	80	80	0.2	1.0	0.1	0.5	10.0	10.0	0.25	0.5	9	13
Intermediate Wheatgrass	C	90	90	80	80	0.2	1.0	0.1	0.5	10.0	10.0	0.25	0.5	9	13
Pulscent Wheatgrass	C	90	90	80	80	0.2	1.0	0.1	0.5	10.0	10.0	0.25	0.5	9	13
Slender Wheatgrass	S	90	90	80	80	0.2	1.0	0.1	0.5	10.0	10.0	0.25	0.5	9	13
Tall Wheatgrass	C	90	90	80	80	0.2	1.0	0.1	0.5	10.0	10.0	0.25	0.5	9	13
Western Wheatgrass	C	85	85	60	60	0.2	1.0	0.2	0.5	15.0	15.0	0.25	0.5	9	13
Canada Wildrye	S	90	85	70	70	0.2	1.0	0.1	0.5	10.0	15.0	0.25	0.5	9	13
Russian Wildrye	C	90	90	80	80	0.2	1.0	0.1	0.5	10.0	10.0	0.25	0.5	9	13
Green Needlegrass	S	90	80	65	65	0.2	1.0	0.1	0.5	10.0	20.0	0.25	0.5	9	13
Creeping Foxtail	C	80	80	80	80	0.2	1.0	0.1	0.5	20.0	20.0	0.25	0.5	9	13
Switchgrass	C	95	90	50	60	0.2	1.0	0.2	0.5	5.0	10.0	0.50	1.0	9	13

74-03-07-01. SPECIFIC SEED STANDARDS (CHAFFY SEEDED SPECIES).

Species	Type of Reproduction	Other varieties (maximum) .....										Certified 1.0%					
		Foundation 0.1%					Registered 1.0%										
		Minimum					Maximum										
Percent Pure Seed F & R C	Percent Germination F & R C	Percent Other Crop F & R C	Percent Other Grass F & R C	Percent Inert F & R C	Percent Weed Seeds F & R C	Percent Weed Seeds F & R C	Percent Inert F & R C	Percent Other Grass F & R C	Percent Other Crop F & R C	Percent Germination F & R C	Percent Pure Seed F & R C						
Sideoats Grama	C & A	50*	30*	—	—	0.2	1.0	0.1	0.50	—	—	—	—	0.50	1.0	9	1.1
Big Bluestem	C	50*	25*	—	—	0.2	1.0	0.1	0.50	—	—	—	—	0.50	1.0	9	1.1
Sand Bluestem	C	40*	20*	—	—	0.2	1.0	0.1	0.50	—	—	—	—	0.50	1.0	9	1.1
Little Bluestem	C	12*	12*	—	—	0.2	1.0	0.1	0.50	—	—	—	—	0.50	1.0	9	1.1
Indiangrass	C	50*	25*	—	—	0.2	1.0	0.1	0.50	—	—	—	—	0.50	1.0	9	1.1

\*Pure Live Seed Index  
 \*Prohibited noxious weed seeds including seeds of Quackgrass, Hornsuckle, Johnsongrass, Wild Garlic and Dodder, are not allowed.  
 \*Objectionable weed seeds shall contain the following:  
 Wild Mustard  
 Wild Oats  
 Field Pennygrass (Frenchweed)  
 Hedge Bindweed (Wild Morningglory)  
 Giant Ragweed (Kinghead)  
 Dragonhead  
 Buckhorn Plantain

Percent germination or pure live seed includes percent germination plus percent dormant for North Dakota certification purposes on those kinds of grasses where the association of official seed analysts (AOSA) rules specifically prescribe that dormancy be determined.

History: Amended effective December 18, 1989.  
 General Authority: NDCC 4-09-03, 4-09-05, 4-09-16  
 Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-09-01. Land requirements. Foundation seed of mustard, crambe, and rape shall be on land which did not produce mustard, crambe, or rapeseed rape during the previous five years. Certified seed of mustard and rape shall be on land which did not produce mustard or rapeseed rape during the previous three years. Registered and certified seed of crambe must be on land which did not produce crambe during the previous three years.

History: Amended effective December 18, 1989.  
 General Authority: NDCC 4-09-03, 4-09-05, 4-09-16  
 Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-09-03. Field standards.

1. General.

a. Isolation. A field producing any class of certified seed must have the minimum isolation distance from fields of any other variety of the same kind, or from a noncertified crop of the same variety or from any variety of rapeseed as follows:

- (1) Producing foundation seed - one thousand three hundred twenty feet [402.34 meters]. All foundation fields of mustard or rape must be isolated by three hundred thirty feet [100.58 meters] from fields of the other kind (rape from mustard or mustard from rape).
- (2) Producing registered crambe seed - six hundred sixty feet [201.17 meters].
- (3) Producing certified seed - six hundred sixty feet [201.17 meters].

Required isolation between classes of the same variety - ten feet [3.05 meters].

b. Unit of certification. The field shall be considered the unit of certification. A portion of a field may be accepted for certification provided that the rejected portion in no way impairs the genetic purity of the portion accepted.

2. Specific field standards.

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Factor	Maximum Permitted in Each Class		
	Foundation	<u>Registered Crambe only</u>	Certified

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Other varieties *	1:2000	<u>1:2000</u>	1:500
Inseparable other crops **	1:2000	<u>1:2000</u>	1:500
Prohibited noxious weeds ***	none		none

\* Other varieties shall include off-type plants that can be differentiated from the variety being inspected.

\*\* Inseparable crops are any other crops of similar size which are difficult to remove in the usual cleaning process.

\*\*\* ~~All prohibited noxious weeds.~~

History: Amended effective May 1, 1986; December 18, 1989.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-09-04. Seed standards ~~(mustard)~~.

Factor	Foundation	<u>Registered Crambe only</u>	Certified
Pure seed			
(minimum) .....	99.00 percent	<u>99.00 percent</u>	99.00 percent
Inert matter			
(maximum) .....	1.00 percent	<u>1.00 percent</u>	1.00 percent
Prohibitive noxious			
weed seeds .....	none	<u>none</u>	none
Objectionable weed			
seeds * .....	1 per pound	<u>3 per pound</u>	5 per pound
Other weeds .....	5 per pound	<u>10 per pound</u>	15 per pound
Total other crop			
seeds (maximum) .....	0.05 percent	<u>0.10 percent</u>	0.25 percent
Other varieties			
(maximum) .....	0.05 percent	<u>0.10 percent</u>	0.25 percent
Other kinds **			
(maximum) .....	0.01 percent	<u>0.01 percent</u>	0.01 percent
Germination			
(minimum) .....	85.00 percent	<u>85.00 percent</u>	85.00 percent
Sclerotia (maximum) *** ..	1 per pound	<u>1 per pound</u>	1 per pound

\* Objectionable weed seeds are: dodder, wild mustard, wild oats, quackgrass, field pennycress (frenchweed), hedge bindweed (wild morning glory), ~~nightflowering catchfly, giant foxtail, hoary alyssum, wild radish, wild vetch species, buckhorn plantain,~~

**horsenettle.**

\*\* Shall not exceed one per pound for foundation, and six per pound for certified.

\*\*\* One sclerotium per pound is all that is allowed in North Dakota certified seed to prevent the dissemination to areas not previously infected with sclerotia (sclerotinia sclerotiorum).

History: Amended effective May 1, 1986; May 1, 1988; December 18, 1989.  
 General Authority: NDCC 4-09-03, 4-09-05, 4-09-16  
 Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

**74-03-12-04. Seed standard (soybean and field peas).**

Seed count required on soybean.

Factor	Standard for Each Class		
	Foundation	Registered	Certified
Pure seed (minimum) .	98.0 percent	98.0 percent	98.0 percent
Total weed seeds (maximum) .....	none	1 per pound	2 per pound
Other varieties (maximum) * .....	0.1 percent	0.2 percent	0.2 percent
Other crop seeds (maximum) .....	none	none	1 per pound
Inert matter .....	2.0 percent	2.0 percent	2.0 percent
Prohibited noxious weed seeds .....	none	none	none
Objectionable weed seeds ** .....	none	none	none
Germination and hard seeds .....	85.0 percent	85.0 percent	85.0 percent

\* Other varieties shall not include variations which are characteristic of the variety.

\*\* Objectionable weed seeds are: dodder, wild mustard, field pennycress (frenchweed), hedge bindweed (wild morning glory), wild oats, buckhorn, hoary alyssum, horsenettle, quackgrass, wild vetch species, giant foxtail, wild radish, nightshade species, and cocklebur.

History: Amended effective May 1, 1986; May 1, 1988; December 18, 1989.  
 General Authority: NDCC 4-09-03, 4-09-05, 4-09-16  
 Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-13-03. Specific field standards (dry field beans).

Factor	Maximum Tolerance		
	Foundation	Registered	Certified
Other varieties or classes *	0.03 percent	0.05 percent	0.1 percent
Inseparable other crops ..	none	none	none
Bacterial bean blights (leaves) .....	.005 percent	.005 percent	.005 percent
(pods) ** .....	none	none	none
Anthracnose .....	none	none	none
Wilt .....	none	none	none
Common bean mosaic .....	none	0.5 percent	1.0 percent

\* Other varieties shall not include variations which are characteristic of variety.

\*\* During second inspection, the inspector will stake (flag) any area found with a bacterial blighted pod. The grower shall isolate and not harvest within a one hundred-foot [30.5-meter] radius of all staked (flagged) areas. One blight-infected pod or staked area is allowed per ten acres [4 hectares] of production. If any staked areas are harvested with the production field, the entire field is rejected.

History: Amended effective May 1, 1986; May 1, 1988; December 18, 1989.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-13-04. Seed standards (dry field beans).

Factor	Standards for Each Class		
	Foundation	Registered	Certified
Pure seed (minimum) *	98.5 percent	98.5 percent	98.5 percent
Inert matter (maximum) ** .....	1.5 percent	1.5 percent	1.5 percent
Total weed seeds (maximum) .....	none	none	2 per pound
Other varieties or classes .....	0.01 percent	0.05 percent	0.1 percent
Other crops (maximum) .....	none	none	1 per 2 pounds
Prohibited noxious weed seeds *** .....	none	none	none

Objectionable weed seeds ***	..... none	none	none
Germination (minimum)	..... no standard	85.0 percent	85.0 percent
Bacterial blight test ****	..... pass	pass	pass

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\* Foreign matter other than broken seed may not exceed 0.50 percent.

\*\* Splits and cracks cannot exceed 1.0 percent.

\*\*\* Prohibited noxious weeds include those of Canada thistle, field bindweed, leafy spurge, perennial peppergrass, perennial sow thistle, and Russian knapweed.

\*\*\* Objectionable weed seeds include those of buckhorn, dodder, hedge bindweed (wild morning glory), field pennycress, (frenchweed), hoary alyssum, horsenettle, quackgrass, wild oats, wild mustard, wild vetch species, giant foxtail, wild radish, nightshade species, and cocklebur.

\*\*\*\* The grower shall be responsible for having a bacterial blight test on the harvested seed of each field of dry field beans.

A seed treatment to reduce surface bacterial contamination of the seed coat is recommended.

History: Amended effective May 1, 1986; December 18, 1989.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-06-01-07. Inspection fees and types of analysis on rapeseed.

1. Grade determination - Official samples.

(Form CI-1) samples taken by North Dakota state seed department authorized inspectors or samplers licensed by the federal grain inspection service.

Grading - not including sampling - ~~12.00~~ \$20.00

2. Grade determination - Submitted samples.

(Form CI-2) samples not officially taken under North Dakota state seed department supervision.

Grading - ~~12.00~~ \$20.00

3. Percentage of Admixtures.

(Form - Seed Analysis Report)  
Percentage by weight, reported to the  
nearest one-tenth of one percent of  
the following:

Mustard including all wild and  
domestic species, combined;  
Other seeds - all seeds other than  
the mustard group.

Analysis of five grams - ~~5.00~~ \$10.00

4. Percentage of Mustard Seed.

(Form - Seed Analysis Report)

Total mustard seed, reported to the  
nearest one-tenth of one percent  
by weight.

Analysis of five grams - ~~5.00~~ \$10.00

5. Factor Analysis.

Per factor - ~~2.00~~ \$ 6.00

Completely rimed seed	Infestation
Conspicuous admixture	Moisture
Distinctly green seed	Odor
Dockage	Sclerotina
Heat-damaged seed	Stones
Inconspicuous admixture	Total damaged seed

History: Effective September 1, 1979; amended effective May 1, 1988;  
December 18, 1989.

General Authority: NDCC 4-09.1-03

Law Implemented: NDCC 4-09.1-03

74-06-02-06. Inspection fees and types of analysis on buckwheat.

1. Grade determination for official samples.

(Form CI-1) samples taken by North Dakota  
state seed department authorized inspectors  
or samplers licensed by the federal grain  
inspection service.

Grading - not including sampling - ~~8.00~~ \$14.00

2. Grade determination for submitted samples.

(Form CI-2) samples not officially taken under North Dakota state seed department supervision.

Grading -

~~8.00~~ \$14.00

History: Effective September 1, 1979; amended effective May 1, 1988; December 18, 1989.

General Authority: NDCC 4-09.1-03

Law Implemented: NDCC 4-09.1-03

74-06-03-09. Grading and factor analysis fees.

1. Grade determination for official samples.

(Form CI-1) samples taken by North Dakota state seed department authorized inspectors or samplers licensed by the federal grain inspection service.

Grading not including sampling - ~~10.00~~ \$18.00

2. Grade determination for submitted samples.

(Form CI-2) samples not officially taken under North Dakota state seed department supervision.

Grading - ~~10.00~~ \$18.00

3. Factor analysis.

Per factor - ~~2.00~~ \$ 6.00

Dockage  
Distinctly green seed  
Moisture

Heat damaged seed  
Total damaged seed  
Foreign material

History: Effective May 1, 1980; amended effective May 1, 1988; December 18, 1989.

General Authority: NDCC 4-09.1-03

Law Implemented: NDCC 4-09.1-03



TITLE 75  
Department of Human Services



JANUARY 1990

75-02-08-15. General building requirements. The home shall be operated in conformance with all state and local laws, rules, and ordinances concerning fire safety and sanitation, including, but not limited to, the Food Service Sanitation Manual of the North Dakota state department of health, 1962 edition, and the 1964 fire protection standards of the fire marshal department. The facility shall comply with the National Fire Protection Association Life Safety Code 1985 edition, chapter 21, Residential Board and Occupancy.

1. Lounge and activity area. Space shall be provided with a minimum of fifteen square feet [1.40 square meters] per licensed bed of the facility for recreation, visiting, and an activity program. The lounge and activity area may be used to accommodate religious services and activities.
2. Dining area. A minimum of twelve square feet [1.11 square meters] per licensed bed shall be provided for dining.
3. Resident bedrooms.
  - a. All bedrooms used for residents shall be rooms with an outside wall, dry, well ventilated, naturally lighted, and otherwise suitable for occupancy. Each room shall have direct access to a hall.
  - b. The glazed area of the window shall not be less than one-tenth of the floor area of the room. Windows shall be easily opened and shall be provided with screens.
  - c. Room size will vary depending on number of beds, but minimum floor dimension shall not be less than ten feet [3.05 meters]. In computing floor area, only usable floor space shall be included. Single rooms shall provide at least one hundred square feet [9.29 square meters] per

bed. Double rooms shall provide at least eighty square feet [7.43 square meters] per bed. Rooms for three or more persons shall provide at least seventy square feet [6.50 square meters] per bed.

- d. Each resident shall have a standard bed. The bed shall have at least a four and one-half-inch [11.43-centimeter] innerspring or a five-inch [12.75-centimeter] standard mattress.
- e. Each resident shall have a bedside table and a comfortable chair.
- f. Each resident shall have separate drawer space and closet space for the resident's personal use in the bedroom.

4. Sanitation.

- a. An ample number of lavatories and toilets shall be provided according to the number of residents. At least one toilet for every eight residents, or fraction thereof, shall be provided. Toilets for public use shall be provided.
- b. A bathtub or shower shall be provided in a ratio of one for each twenty residents.

5. Fire drills.

- a. Fire drills shall be held monthly with a minimum of twelve per year, alternating with the different work shifts.
- b. Fire evacuation plans shall be posted in a conspicuous place in the facility.
- c. Written records of fire drills shall be maintained.
- d. Each resident shall receive an individual fire drill practice within five days of admission.

History: Effective June 1, 1983; amended effective January 1, 1990.

General Authority: NDCC ~~50-18-02~~, ~~50-18-06~~, ~~50-18-06.2~~ 23-09.3-09, 28-32-02

Law Implemented: NDCC ~~50-18-02~~ 23-09.3-04

TITLE 81  
Tax Commissioner



MARCH 1990

81-01.1-03-01. Public notice and hearing on proposed rules. The tax commissioner must give public notice of intent to amend or create rules.

1. The tax commissioner must schedule a public hearing and notify the public of the date, time, and place of such hearing by publishing a legal notice twice in all daily newspapers of North Dakota ~~no later than thirty days before the date set for hearing~~. The first notice must be at least thirty days prior to the date scheduled for the hearing. In addition, the tax commissioner will supply copies of the proposed rules to any person whose name is on a permanent mailing list. Any person who wishes to be placed on the permanent mailing list for rules, must notify the tax commissioner in writing.
2. The hearing must be held at the office of the tax commissioner, state capitol, Bismarck, North Dakota.
3. Any member of the public may obtain a copy of the proposed rules free of cost by contacting the office of the tax commissioner.
4. Any member of the public may attend the hearing and may testify for or against the proposed rules.
5. The tax commissioner may appoint a hearing officer to preside at the hearing.
6. A record must be made of the public hearing by use of an electronic recording device or by a qualified court reporter, and the testimony will be transcribed for the purpose of permanent record.

History: Effective July 1, 1985; amended effective March 1, 1990.

General Authority: NDCC 28-32-02  
Law Implemented: NDCC 57-01-02

81-03-01.1-04. Computation of interest on refunds.

1. For any return having a due date before July 1, 1987:
  - a. Interest on a refund must be computed at nine percent per annum for the entire accrual period, and does not start accruing until sixty days after the due date of the return, the date the return is filed, or the date the tax is fully paid, whichever date is later.
  - b. If a refund is due to a carryback of a net operating loss or net capital loss, interest at the rate of nine percent per annum must be computed on the refund if the due date of the return for that carryback year was before July 1, 1987, and does not start accruing until the first day of the taxable year following the taxable year in which the net operating loss or net capital loss was incurred.
2. For any return having a due date after June 30, 1987:
  - a. The rate of interest used in computing interest on a refund must be equal to the rate established under section 6621(a)(2) of the Internal Revenue Code. The rate of interest used in computing interest on a refund is the federal rate assigned to the calendar quarter wherein the interest began to accrue, and interest starts to accrue sixty days after the due date of the return, the date the return is filed, or the date the tax is fully paid, whichever date is later.
  - b. If a refund is due to a carryback of a net operating loss or net capital loss, the rate established under section 6621(a)(2) of the Internal Revenue Code must be used to compute interest on the refund if the due date of the return filed for that carryback year is after June 30, 1987, and does not start to accrue until sixty days after the date the amended return claiming the refund is filed.
  - c. The applicable federal rate is applied on a per annum basis over the entire accrual period.
3. As used in this section, the due date of a return is the date prescribed by law for filing that return, excluding extensions, and refers only to the original return for any tax year.
4. The federal rate established under section 6621(a)(2) of the Internal Revenue Code for each calendar quarter must be monitored by the tax commissioner. A schedule must be

prepared and maintained listing the established federal rates, the calendar quarters to which they apply, and references to the final authority announcing the rates publicly. Repealed effective March 1, 1990.

History: Effective November 1, 1987.  
General Authority: NDCC 57-38-56  
Law Implemented: NDCC 57-38-35.2

81-03-01.1-05. Computation of interest on an extension, a late payment, underpayment, and additional tax found due through audit or mathematical verification.

1. For any return having a due date before July 1, 1987, interest must be charged at the rate of twelve percent per annum in the case of an extension, and the rate of one percent per month or fraction thereof in the case of a late payment, underpayment, and additional tax found due through audit or mathematical verification.
2. For any return having a due date after June 30, 1987, the rate of interest applicable to an extension, late payment, underpayment, and additional tax found due through audit or mathematical verification is equal to the rate established under section 6621(a)(2) of the Internal Revenue Code.
  - a. The rate of interest charged is the federal rate assigned to the calendar quarter that includes the due date of the return.
  - b. For an extension, the appropriate federal rate is applied on a per annum basis over the entire extension period.
  - c. For a late payment, underpayment, and additional tax found due through audit or mathematical verification, the appropriate federal rate is divided by twelve to determine the interest rate to be charged per month or fraction thereof.
  - d. The applicable federal rate determined for a return is used in all instances where interest is computed on tax due under the return.
3. As used in this section, the due date of a return is the date prescribed by law for filing that return, excluding extensions, and refers only to the original return for any tax year.
4. The federal rate established under section 6621(a)(2) of the Internal Revenue Code for each calendar quarter must be monitored by the tax commissioner. A schedule must be prepared and maintained listing the established federal rates,

the calendar quarters to which they apply, and references to the federal authority announcing the rates publicly.

1. All interest additions computed on filing extensions after June 30, 1989, will be charged at the rate of twelve percent per annum. Interest additions computed after June 30, 1989, on late payments, underpayments, and additional tax found due through audit or mathematical verification will be charged at the rate of one percent per month or fraction thereof.
2. All interest additions to liabilities owed to the state prior to July 1, 1989, which are made after June 30, 1989, will be charged at the rate of one percent per month or fraction thereof.

History: Effective November 1, 1987; amended effective March 1, 1990.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38-45

81-03-01.1-06. Income tax exemption for new industry.

1. When a taxpayer is granted an exemption from income tax pursuant to North Dakota Century Code chapter 40-57.1, the exemption must be prorated, when necessary, in the first and last years in order to exempt income for a period not to exceed sixty months.
2. The amount of the yearly income tax exemption for new industry is limited to income earned from the new industry in each tax year reduced by the amount of federal tax assignable to the North Dakota exempt income which was included in federal taxable income.
3. When the project operator is a partnership or S corporation, the income tax exemption flows through to the partners and shareholders.
4. When reapplication for a property tax exemption is required pursuant to North Dakota Century Code chapter 40-57.1, reapplication is also required for the income tax exemption.
5. Termination of the property tax exemption terminates the income tax exemption.
6. The office of the state tax commissioner must be notified of any changes in ownership of a new industry which has been granted an income tax exemption. A change of ownership includes transfer of a partnership interest or of a stock interest in a subchapter S corporation.
7. The income tax exemption may be claimed by an individual taxpayer on North Dakota form 37.

8. A taxpayer with both exempt and nonexempt activities shall prorate its income pursuant to the provisions of North Dakota Century Code chapter 57-38.1.

a. If the taxpayer has only North Dakota activity, exempt income must be determined by multiplying income from all activities, exempt and nonexempt, by a fraction, the numerator of which is the sum of its exempt property, sales, and payroll factors and the denominator of which is three.

EXAMPLE:

<u>Facts:</u>	<u>Exempt Plant</u>	<u>Other North Dakota Activity</u>	<u>Total North Dakota Activity</u>
Property	\$ 5,000,000	\$10,000,000	\$15,000,000
Payroll	750,000	1,000,000	1,750,000
Sales	20,000,000	35,000,000	55,000,000

Apportionable income \$50,000,000

Computing North Dakota exempt income

Apportionment factor relating to exempt activities:

$$\begin{array}{l}
 \text{Property factor} = \$ 5,000,000 \div \$15,000,000 = .333333 \\
 \text{Payroll factor} = \$ 750,000 \div \$ 1,750,000 = .428571 \\
 \text{Sales factor} = \$20,000,000 \div \$55,000,000 = .363636 \\
 \hline
 1.12554 \div 3 = .37518
 \end{array}$$

.37518 Apportionment factor of exempt activities  
\$50,000,000 Apportionable income  
\$18,759,000 Exempt income

b. Computing North Dakota exempt income of multistate business requires two steps.

(1) Compute North Dakota income including both exempt and nonexempt activities in the apportionment factor and in apportionable income.

EXAMPLE:

Multistate corporation

Facts: Utilize the same facts in the above example, and add:

<u>Total activity within and without North Dakota</u>	
Property	\$100,000,000
Payroll	\$ 5,000,000
Sales	\$200,000,000

Apportionment factor, including tax exempt activity

$$\begin{aligned} \text{Property Factor} &= \$ 15,000,000 \div \$100,000,000 = .15 \\ \text{Payroll Factor} &= \$ 1,750,000 \div \$ 5,000,000 = .35 \\ \text{Sales Factor} &= \$ 55,000,000 \div \$200,000,000 = .275 \\ &\qquad\qquad\qquad .775 \div 3 = .258333 \end{aligned}$$

$$\begin{array}{r} \$50,000,000 \\ \times .25833 \\ \hline \$12,916,650 \end{array} \text{ North Dakota income}$$

(2) Apply a second factor to North Dakota income computed in the first step. The second factor is computed in the same way as in subdivision a, as a ratio of exempt North Dakota activity to total North Dakota activity.

$$\begin{array}{r} \$12,916,650 \text{ North Dakota income} \\ \times .37518 \text{ Apportionment factor of exempt activities} \\ \hline \$ 4,846,069 \text{ North Dakota exempt income} \end{array}$$

c. When a partial exemption on a project or plant has been granted, the percentage of the project's nonexempt property, payroll, and sales would be added to the other North Dakota taxable activity's factors. For instance, a twenty percent exemption would mean eighty percent of the project's property, payroll, and sales would be added to the other North Dakota factors creating a taxable activity.

d. When a company has only one operating facility which has been granted a partial exemption, North Dakota taxable income shall be computed based on total income of the operation, and a percentage of the income which is equal to the percentage of the exemption shall be deducted from the total.

History: Effective March 1, 1990.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 40-57.1

81-03-01.1-07. Venture capital corporation. An individual, estate, trust, or corporation that has purchased stock in a venture capital corporation may not sell any or all of the stock back to the venture capital corporation and then purchase new stock in the same venture capital corporation to qualify for the income tax deduction and the tax credits provided for in North Dakota Century Code chapter 10-30.1.

History: Effective March 1, 1990.

General Authority: NDCC 57-38-56  
Law Implemented: NDCC 10-30.1

81-03-04-02. Individual, estate, and trust required to file a declaration and make payment of estimated income tax, penalty, and interest Payments of estimated taxes by individuals, estates, and trusts.

1. Except as otherwise provided, an individual, estate, or trust subject to section 6654 of the Internal Revenue Code, relating to failure to pay estimated income taxes, shall file a declaration and make payment payments of estimated state income tax if all three of the following conditions exist:
  - a. There is a requirement to make payment of estimated federal income tax.
  - b. The estimated state income tax for the current year exceeds two hundred dollars.
  - c. The state income tax liability for the previous year exceeded two hundred dollars.
2. A resident individual, estate, or trust that was not required to file a return for the previous year, and therefore had no state income tax liability for the previous year, does not have to file a declaration and make payment of estimated state income tax.
3. A nonresident individual, estate, or trust that was not required to file a return for the previous year, and therefore had no state income tax liability for the previous year, shall file a declaration and make payment of state income tax if there is a requirement to make payment of estimated federal income tax and the estimated state income tax for the current year exceeds two hundred dollars. The form filed with each payment of estimated income tax constitutes a declaration.
4. 2. Penalty and interest for failure to make payments of estimated state income tax must be waived by the tax commissioner in the following situations:
  - a. If When an individual derives over two-thirds of gross income from farming, files a federal income tax return by March first of the following tax year, and pays the federal tax in full by that same date, the individual but does not have to file a declaration and make payment payments of estimated state income tax. The individual does not have to file a state income tax return or pay any state income tax due on or before March first of the following tax year to qualify for this exception waiver of penalty and interest.

5. b. ~~If~~ When an individual derives over two-thirds of gross income from farming, makes the one required estimated federal tax installment on January fifteenth of the following tax year, and files a federal income tax return after March first of the following tax year, ~~the individual is required to file a declaration and pay~~ pays the estimated state income tax due on January fifteenth of the following tax year. The first three payments due on April fifteenth, June fifteenth, and September fifteenth of the current tax year are not required to qualify for this waiver of penalty and interest.
6. Any individual, estate, or trust that is not required to file a declaration and make payment of estimated state income tax may elect to do so.
7. An individual shall use form 400-ES to file a declaration and make payment of estimated state income tax.
8. An estate and trust shall use form 401-ES to file a declaration and make payment of estimated state income tax.
9. An individual, estate, or trust required to file a declaration and make payment of estimated state income tax shall pay the estimated tax in four equal installments due on the fifteenth day of the fourth, sixth, and ninth months of the current tax year and the fifteenth day of the first month of the following tax year. As an alternative, the entire estimated state income tax may be paid on the fifteenth day of the fourth month of the current tax year.
10. Penalty and interest must be computed and added in the following situations:
- a. An individual, estate, or trust did not timely file a declaration on or before the quarterly due date.
- b. An individual, estate, or trust did not pay the required estimate on or before the quarterly due date.
11. Penalty and interest will not be applied in the following situations:
- a. c. An When an individual, estate, or trust utilizes the annualized income installment method as provided in section 6654 of the Internal Revenue Code, and makes the required estimated state income tax payment based thereon.
- b. The quarterly payment of estimated state income tax equals or exceeds the state income tax liability for the previous year, as defined in subdivision c of subsection 1, divided by four.

- ~~c. The quarterly payment of estimated state income tax equals ninety percent of the state income tax liability for the current year, as defined in subdivision b of subsection 1, divided by four.~~
  - d. When an individual, estate, or trust has a current year tax liability which exceeds the taxpayer's withholding by less than two hundred dollars, and the taxpayer does not make payments of estimated state income tax. The two hundred dollar limitation applies per return.
3. To determine tax liability for the immediately preceding year, married taxpayers who filed separate returns in the prior year, but who plan to file a joint return for the current year, shall combine the tax liabilities reflected on their prior year returns. Joint estimated tax payments for the current year must equal or exceed one hundred percent of the couple's total tax liability for the prior year if the prior year test is applicable.

History: Effective November 1, 1987; amended effective July 1, 1989; March 1, 1990.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38-45, 57-38-62, 57-38-63, 57-38-64

#### 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.
  - g. Credit for purchase of memberships, payment of dues, or contributions to certified nonprofit development corporations.
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; amended effective March 1, 1990.

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, 57-38-01.17

81-03-05.2-01. Definitions. As used in these sections and for the administration of North Dakota Century Code chapter 57-38.4, unless the context otherwise requires:

- ~~1.~~ 1. "Affiliated corporation" means a United States parent corporation and any corporation more than fifty percent of the voting stock of which is owned directly or indirectly by the parent corporation or another member of the water's edge group.
- ~~2.~~ 1. "Assets" means both tangible and intangible property valued at original cost less depreciation, amortization, or depletion as reflected on the corporation's balance sheet prepared according to generally accepted accounting principles.
- ~~3.~~ 2. "Average of property and payroll" means average of property and payroll as defined pursuant to chapter 81-03-09 and North Dakota Century Code chapters 57-38.1 and 57-59.
- ~~4.~~ 3. "Commissioner" means the tax commissioner of the state of North Dakota.
- ~~5.~~ 4. "80/20 corporation" means a corporation that:
  - a. Is incorporated in the United States.
  - b. Is eligible to be included in a federal consolidated return as defined in subsection 5 of North Dakota Century Code section 57-38.4-01.
  - c. Has eighty percent or more of the average of its property and payroll assigned to locations in foreign countries.
- ~~6.~~ 5. "Foreign corporation" means a corporation incorporated outside the United States.
- ~~7.~~ 6. "Foreign country" means a country other than the United States or a possession of the United States.

- ~~8.~~ 7. "Income from an 80/20 corporation" means net book income for financial statement purposes. However, a corporation's net book income cannot be offset by a net book loss from another 80/20 corporation. In addition, when calculating net book income, an expense cannot be taken for federal income taxes that are eliminated through the application of foreign tax credits.
- ~~9.~~ 8. "Joint election" means that the water's edge election form was executed on behalf of more than one taxpayer. Provided, however, that the taxpayer executing the election form must be authorized to bind the other taxpayers.
- ~~10.~~ 9. "New corporation" means a corporation that either has not filed or was not required to file an income tax return after the 1979 tax year.
- ~~11.~~ 10. "Property, payroll, and sales" means property, payroll, and sales as defined in chapter 81-03-09 and North Dakota Century Code chapters 57-38.1 and 57-59.
- ~~12.~~ 11. "Required to file a worldwide combined report" means that the taxpayer filed its original North Dakota income tax return for the tax year immediately preceding the first year to which the water's edge election applies on the basis of the worldwide method of apportionment.
- ~~13.~~ 12. "State" means each of the fifty states and the District of Columbia.
- ~~14.~~ 13. "Taxpayer" means a corporation that is required to file an income tax return in North Dakota.
- ~~15.~~ 14. "Transaction" means an event that causes a change in a corporation's assets, liabilities, or owner's equity.
- ~~16.~~ 15. "United States" means the fifty states and the District of Columbia.

History: Effective July 1, 1989; amended effective March 1, 1990.  
 General Authority: NDCC 57-38-56  
 Law Implemented: NDCC 57-38.4

81-03-05.2-05. Domestic disclosure spreadsheet.

1. A taxpayer electing to use the water's edge method must file a domestic disclosure spreadsheet if the affiliated corporations as a group have:
  - a. Property, payroll, or sales in foreign countries exceeding ten million dollars.

- b. Assets exceeding two hundred fifty million dollars.
2. A domestic disclosure spreadsheet must include the following:
- a. A list of the corporations in the water's edge group and any corporation in which more than twenty percent of the voting stock is, either directly or indirectly, owned or controlled by a member of the water's edge group.
  - b. The following identifying information for each corporation listed in subdivision a:
    - (1) Federal identification number.
    - (2) Address.
    - (3) Percentage of voting stock, that is either directly or indirectly owned or controlled by each member of the water's edge group.
  - c. The following information for each corporation in the water's edge group:
    - (1) Primary business locations.
    - (2) Primary business activities.
    - (3) Country of incorporation.
    - (4) Dates of acquisition or disposition of the ownership interest.
    - (5) For each state which assesses a tax on, according to, or measured by net income, a schedule detailing the tax liability and the computations used to allocate or apportion the corporation's income to each state in which the corporation is taxable. The details which must be disclosed on the aforementioned schedule include:
      - (a) Whether the liability was computed on a single entity basis or pursuant to a combined report.
      - (b) The entities included in the combined report.
      - (c) The federal taxable income for each entity whose income was included in determining the amount of income that was allocated and apportioned to the state.
      - (d) The amount of income apportioned to the state, the formula used to apportion the income, and the amount of property, payroll, and sales

included in the formula used to apportion the income.

- (e) The amount of income allocated to the state.
  - (f) The total amount of income not subject to apportionment by formula under the rules of the state.
  - (g) The amount of tangible personal property sales made or delivered to customers within the state.
- (6) For each state which does not assess a tax on, according to, or measured by income, a schedule disclosing the following information for each corporation which has a taxable presence in the state:
- (a) The federal taxable income for the corporation or for the federal consolidated filing group of which the corporation is a member.
  - (b) The amount of property, payroll, and sales that would be assigned to the state under North Dakota Century Code chapter 57-38.1 and the rules adopted pursuant thereto.
  - (c) The amount of tangible personal property sales made or delivered to customers within the state.
- d. A copy of pages one through four of the federal income tax return that was filed with the Internal Revenue Service for each corporation listed in subdivision c of **subsection 2.**
3. The spreadsheet information must be filed on the forms provided by the commissioner. Data not submitted on the preapproved forms will be deemed incomplete.
4. **A spreadsheet must be filed by a taxpayer with its North Dakota income tax return. However, if** If the information required to be reported on the spreadsheet is not available when the return is filed, a taxpayer may file the spreadsheet within six months after the due date of the return, including any extensions. If the aforementioned time deadlines cannot be met, a taxpayer shall file a written request for an extension of time with the commissioner within six months after the due date of the return, including any extensions. This request which will be deemed filed on the date it is sent by certified mail must state the grounds for the request. Within a reasonable time after receiving the request, the commissioner shall notify the taxpayer as to whether the request for additional time is granted. ~~Provided, however,~~

~~that~~ However, the commissioner will not grant an extension of time that exceeds one hundred twenty days.

5. A spreadsheet will be deemed complete when filed unless the commissioner notifies the taxpayer, within one hundred eighty days after the spreadsheet was filed, that the spreadsheet requirements have not been met. This notice must be sent by certified mail and it must inform the taxpayer as to why the spreadsheet was not properly completed. A taxpayer shall correct the deficiencies in its spreadsheet within ninety days after receiving the aforementioned notice of deficiency. If the ninety-day deadline cannot be met, a taxpayer shall file a written request for an extension of time with the commissioner within ninety days after receiving the notice of deficiency. This request which will be deemed filed on the date it is sent by certified mail must state the grounds for the request. Within a reasonable time after receiving the request, the commissioner shall notify the taxpayer as to whether the request for additional time is granted.

History: Effective July 1, 1989; amended effective March 1, 1990.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38.4-02

STAFF COMMENT: Chapter 81-03-05.3 contains all new material but is not underscored so as to improve readability.

#### CHAPTER 81-03-05.3 WORLDWIDE METHOD OF REPORTING

Section

81-03-05.3-01	Definitions
81-03-05.3-02	Method of Filing
81-03-05.3-03	Elements of Worldwide Combined Report

81-03-05.3-01. Definitions. As used in these sections, unless the context otherwise requires:

1. "Commissioner" means the tax commissioner of the state of North Dakota.
2. "Ownership interest" means voting interest.
3. "Taxpayer" means any corporation that is required to file an income tax return in North Dakota.
4. "Transaction" means an event that causes a change in a corporation's assets, liabilities, or owner's equity.

5. "Unitary business" means a group of corporations carrying on activities the component parts of which transfer value among themselves through the unities of ownership, operation, and use. Whether a group of corporations is engaged in a unitary business depends on the facts and circumstances of each case. However, if unity of ownership exists, any or all of the following facts and circumstances will create a presumption that the unities of operation and use exist and, therefore, that the corporations are engaged in a unitary business:
  - a. All activities of the corporations in the group are in the same general line or type of business.
  - b. The activities of the corporations in the group constitute different steps in a vertically structured enterprise.
  - c. The group of corporations is characterized by centralized management.
6. "United States" means the fifty states and the District of Columbia.
7. "Unity of operation" means that the group of corporations contributes to or receives benefits from functional integration or economies of scale.
8. "Unity of ownership" means that the corporations in the group are under the common control of a single corporation, which is also a member of the worldwide group. Control is presumed to exist when the single corporation owns, directly or indirectly, more than fifty percent of the ownership interest of another corporation.
9. "Unity of use" means that the group of corporations contributes to or receives benefits from centralized management and policy formation.
10. "Worldwide combined report" means a method of determining the amount of income which should be assigned to North Dakota on behalf of each member of the worldwide group.
11. "Worldwide group" means the group of corporations engaged in a unitary business. This group of corporations may be engaged in business activity both within and without the United States or the group may be engaged solely in business activity within the United States.

History: Effective March 1, 1990.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38, 57-38.1

81-03-05.3-02. Method of filing. A taxpayer that is a member of a worldwide group shall file its North Dakota income tax return using a worldwide combined report.

History: Effective March 1, 1990.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38, 57-38.1, 57-59

81-03-05.3-03. Elements of worldwide combined report.

1. A taxpayer that is required to file using the worldwide method of reporting shall include the income and apportionment factors of the following unitary corporations in its combined report:
  - a. A parent corporation.
  - b. Any corporation incorporated in the United States.
  - c. Any corporation incorporated in a possession of the United States as described in Internal Revenue Code sections 931 through 936.
  - d. Any domestic international sales corporation as described in Internal Revenue Code sections 991 through 994.
  - e. Any foreign sales corporation as described in Internal Revenue Code sections 921 through 927.
  - f. Any export trade corporation as described in Internal Revenue Code sections 970 through 972.
  - g. Any foreign corporation which derived gain or loss from disposing of a United States real property interest but only to the extent the gain or loss was recognized under Internal Revenue Code section 897.
  - h. Any foreign corporation.
2. The factors used to apportion the income of the worldwide group must be determined pursuant to chapter 81-03-09 and North Dakota Century Code chapters 57-38.1 and 57-59, and the following subdivisions:
  - a. Transactions between members of the worldwide group must be eliminated.
  - b. Transactions between any member of the worldwide group and a corporation that has been excluded from the group must be included.

- c. The property, payroll, and sales of a corporation that has been excluded from the worldwide combined report must not be included in the apportionment factors of the group.
  - d. When apportionable income includes income from a corporation's ownership interest in a general partnership, the corporate partner's share of the partnership's property, payroll, and sales must be included in the group's apportionment factors.
3. Income for the worldwide group must be computed using one of the following methods:
- a. Method one.
    - (1) Begin with federal taxable income of the corporations included in the combined report which are required to file a federal income tax return.
    - (2) Add book income adjusted to conform to the provisions of the Internal Revenue Code of the corporations included in the combined report which are not required to file a federal income tax return.
    - (3) Eliminate transactions between members of the worldwide group.
    - (4) Add or subtract the adjustments provided for in North Dakota Century Code section 57-38-01.3. However, the deduction provided for in subdivision c of subsection 1 of North Dakota Century Code section 57-38-01.3 should not be made if the taxpayer elects to compute its federal income tax deduction pursuant to chapter 81-03-05.4.
    - (5) Add or subtract nonbusiness income and nonbusiness losses net of related expenses, unless allocable to North Dakota.
  - b. Method two.
    - (1) Begin with federal taxable income of the corporations included in the combined report which are required to file a federal income tax return.
    - (2) Add book income of those corporations included in the combined report which are not required to file a federal income tax return.
    - (3) Eliminate transactions between members of the worldwide group.

- (4) Add or subtract the adjustments provided for in North Dakota Century Code section 57-38-01.3. However, the deduction provided for in subdivision c of subsection 1 of North Dakota Century Code section 57-38-01.3 should not be made if the taxpayer elects to compute its federal income tax deduction pursuant to chapter 81-03-05.4.
- (5) Add or subtract nonbusiness income and nonbusiness losses net of related expenses, unless allocable to North Dakota.

History: Effective March 1, 1990.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38, 57-38.1, 57-59

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; amended effective March 1, 1990.

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

81-04.1-01-22. Services. Personal and professional services are not subject to sales tax, but materials and supplies used solely in rendering services are subject to sales tax when purchased. Materials

and supplies which may be used either in rendering service or sold at retail may be purchased for resale, and sales tax must be collected when these items are sold at retail. The portion of these materials and supplies sold separately to the customer is subject to sales tax and must be included in the sales and use tax report as gross sales. The portion of these materials and supplies used and consumed in rendering service is taxable. The purchase cost must be included as use tax on the sales and use tax return of the person rendering the service.

If taxable materials and supplies are purchased from a supplier holding a North Dakota sales and use tax permit, sales tax must be paid to the supplier, but if taxable materials and supplies are purchased from an out-of-state supplier who does not collect North Dakota sales tax, the use tax must be remitted to the tax commissioner by the purchaser.

If a service charge for installation of tangible personal property and the property remains personal is included in the price, sales tax applies to the entire price, but if the installation charge is separate from the price of the personal property, sales tax does not apply to the installation charge. If the lump sum selling price of tangible personal property includes a charge for installation of the personal property and the property remains personal after installation, sales tax applies to the entire charge. However, if the installation charge is separate from the price of the personal property, sales tax does not apply to the installation charge.

Persons engaged in the business of repairing, altering, restoring, or cleaning of tangible personal property belonging to others render a service, which is not subject to sales tax. If the repairer also sells tangible personal property at retail which is similar to the property used and consumed in rendering the services, the repairer must hold a retail sales tax permit. A repairer making an An additional itemized charge to the customer for supplies and materials used and consumed by the repairer must charge sales tax on the additional charge is not subject to tax because the tax is to be paid by the repairer when purchasing the goods.

History: Effective June 1, 1984; amended effective March 1, 1990.

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, 57-39.2-14, 57-40.2-01, 57-40.2-02.1, 57-40.2-05, 57-40.2-06, 57-40.2-13

81-04.1-01-23. Manufacturers. Sales tax applies to the sale of tangible personal property to persons who purchase it for use in manufacturing, producing, or processing tangible personal property and not for physically incorporating it into the manufactured article.

Items which are consumed or destroyed in the manufacturing process but which do not become a part of the finished product are subject to sales tax. Purchase of these items by a manufacturer is taxable, and suppliers must charge sales tax on these consumable items. If the items

are purchased from an out-of-state supplier, or if a North Dakota supplier fails to charge the tax, the North Dakota manufacturer must report the use tax directly to the North Dakota tax commissioner.

For purposes of implementing chapter 716 of the 1989 Session Laws, manufacturing or agricultural processing is a process which produces a new article with a different form, use, and name. The modification of articles of tangible personal property is not manufacturing or processing. For example, the creation of steel ducts or I-beams is manufacturing whereas the modification of steel ducts or I-beams to meet the specifications of a particular real property construction contract is not manufacturing or processing. To be considered manufacturing or processing, the raw materials must be materially altered.

By way of illustration and not of limitation, the following are manufacturers or agricultural processors: food, beverage, confectionary plants; grain mills; bakeries; textile mills; apparel makers; wood and lumber plants; furniture and fixture makers; paper product makers; printers and publishers (includes newspapers); chemical producers; leather good plants; stone, clay, glass, concrete product makers; cement and asphalt plants; metal ware makers; auto/aircraft makers; dairy processors (not producers); photo finishers (not photographers); and dental, medical, ophthalmologic labs.

By way of illustration and not of limitation, the following are not manufacturers or agricultural processors: farmers or ranchers, construction contractors, refining companies, artists, utilities, nurseries, restaurants, pharmacists, drycleaners, photographers, advertisement agencies, secretarial services, computer programmers, auto body shops, repair shops, radio and television stations, architects, jewelers, grain elevators, and tire retreaders or recappers.

Machinery and equipment used directly in the manufacturing process includes molds and dies that determine the physical characteristics of the finished product or its packaging material, and computers and related peripheral equipment that directly control or measure the manufacturing process.

Items which are consumed or destroyed in the manufacturing process but which do not become a part of the finished product cannot be considered machinery and equipment and consequently are subject to the general sales and use tax. Purchase of these items by a manufacturer is taxable, and suppliers shall charge sales or use tax on these consumable items. If the items are purchased from an out-of-state supplier or if a North Dakota supplier fails to charge the tax, the North Dakota manufacturer shall report the sales or use tax directly to the North Dakota tax commissioner.

Machinery and equipment not used directly in the manufacturing process or in agricultural processing include repair parts, equipment used for storage, delivery to and from the plant, repairing or maintaining facilities, research and development, or environmental

control equipment required to maintain certain levels of humidity and temperature in a manufacturing or agricultural processing plant.

For purposes of administering chapter 716 of the 1989 Session Laws, requests for approval to buy goods at the reduced rate or for refunds of tax paid on goods which qualify for the reduced rate must be made on forms prescribed or approved by the tax commissioner. The tax commissioner reserves the right to make an onsite inspection prior to granting permission to purchase qualifying goods or to receiving a refund. The tax commissioner's approval to purchase goods at a reduced rate or to grant a refund is binding unless a further review or additional information indicates that the decision was made upon misrepresentation by the applicant. An onsite inspection by the tax commissioner does not preclude an audit of the taxpayer's books and records.

History: Effective June 1, 1984; amended effective March 1, 1990.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.5,  
57-39.2-04, 57-39.2-07, 57-40.2-02.1, 57-40.2-03.4

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~~ fifteen 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 5 1/2 percent	-05
Subtotal	-80
Credit for coupon	-07
Amount due from purchaser	-73

Regular price	.99
Sales tax at 5 percent	.05
Subtotal	1.04
Credit for coupon	.15
Amount due from purchaser	.89

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~~ fifteen 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 5 1/2 percent	.04
Amount due from purchaser	.72

Regular price	.99
Credit for coupon	.15
Subtotal	.84
Sales tax at 5 percent	.05
Amount due from purchaser	.89

Manufacturer's rebates are not cash discounts and may not be used to reduce the taxable gross receipts derived from sales of taxable products. Manufacturer's rebates subject to tax include those paid by the manufacturer directly to the purchaser of taxable goods as well as those assigned by the purchaser to the seller of the goods.

Sales of coupons, coupon books, and other certificates which entitle the holder to a discount or other price advantage on the purchase of goods or services, whether or not the goods or services are subject to sales or use tax, are taxable as sales of tangible personal property.

Sales of gift certificates or other forms of credit which may be redeemed by the holder for equivalent cash value are deposits or prepayments and are not subject to tax when sold. However, the value of these certificates is taxable when redeemed if they are redeemed for taxable goods or services.

History: Effective October 1, 1986; amended effective March 1, 1988; July 1, 1989; March 1, 1990.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01(3), 57-39.2-01(7), 57-39.2-02.1

81-04.1-01-29. Bracket system. The following brackets must be used by all North Dakota retailers to calculate applicable North Dakota sales and use tax:

Amount of Sale	3 1/2 %	Tax
0.01 - 0.15		No tax
0.16 - 0.29		1¢
0.30 - 0.58		2¢
0.59 - 0.86		3¢
0.87 - 1.15		4¢
1.16 - 1.43		5¢
1.44 - 1.72		6¢
1.73 - 2.00		7¢
2.01 - 2.29		8¢
2.30 - 2.58		9¢
Repeat established brackets		

4 1/2 %

Amount of Sale	No tax	Tax
0.01 - 0.15	1¢	
0.16 - 0.23	2¢	
0.24 - 0.45	3¢	
0.46 - 0.67	4¢	
0.68 - 0.89	5¢	
0.90 - 1.12	6¢	
1.13 - 1.34	7¢	
1.35 - 1.56	8¢	
1.57 - 1.78	9¢	
1.79 - 2.00	10¢	
2.01 - 2.23	11¢	
2.24 - 2.45	12¢	
2.46 - 2.67		

Repeat established brackets

5 1/2 %

Amount of Sale	No tax	xTax
0.01 - 0.15	1¢	
0.16 - 0.19	2¢	
0.20 - 0.37	3¢	
0.38 - 0.55	4¢	
0.56 - 0.73	5¢	
0.74 - 0.91	6¢	
0.92 - 1.10	7¢	
1.11 - 1.28	8¢	
1.29 - 1.46	9¢	
1.47 - 1.64	10¢	
1.65 - 1.82	11¢	
1.83 - 2.00	12¢	
2.01 - 2.19	13¢	
2.20 - 2.37	14¢	
2.38 - 2.55		

Repeat established brackets

6 1/2 %

Amount of Sale	No tax	Tax
0.01 - 0.15	2¢	
0.16 - 0.31	3¢	
0.32 - 0.47	4¢	
0.48 - 0.62	5¢	
0.63 - 0.77	6¢	
0.78 - 0.93	7¢	
0.94 - 1.08	8¢	
1.09 - 1.24	9¢	
1.25 - 1.39	10¢	
1.40 - 1.54	11¢	
1.55 - 1.70	12¢	
1.71 - 1.85	13¢	
1.86 - 2.00	14¢	
2.01 - 2.16		

2.17 - 2.31 15¢  
 2.32 - 2.47 16¢  
 2.48 - 2.62 17¢

Repeat established brackets

7 1/2 %

Amount of Sale	Tax
	No tax
0.01 - 0.15	2¢
0.16 - 0.27	3¢
0.28 - 0.40	4¢
0.41 - 0.54	5¢
0.55 - 0.67	6¢
0.68 - 0.80	7¢
0.81 - 0.94	8¢
0.95 - 1.07	9¢
1.08 - 1.20	10¢
1.21 - 1.34	11¢
1.35 - 1.47	12¢
1.48 - 1.60	13¢
1.61 - 1.74	14¢
1.75 - 1.87	15¢
1.88 - 2.00	16¢
2.01 - 2.14	17¢
2.15 - 2.27	18¢
2.28 - 2.40	19¢
2.41 - 2.54	

Repeat established brackets

8 1/2 %

Amount of Sale	Tax
	No tax
0.01 - 0.15	2¢
0.16 - 0.24	3¢
0.25 - 0.36	4¢
0.37 - 0.48	5¢
0.49 - 0.59	6¢
0.60 - 0.71	7¢
0.72 - 0.83	8¢
0.84 - 0.95	9¢
0.96 - 1.06	10¢
1.07 - 1.18	11¢
1.19 - 1.30	12¢
1.31 - 1.42	13¢
1.43 - 1.53	14¢
1.54 - 1.65	15¢
1.66 - 1.77	16¢
1.78 - 1.89	17¢
1.90 - 2.00	18¢
2.01 - 2.12	19¢
2.13 - 2.24	20¢
2.25 - 2.36	21¢
2.37 - 2.48	

Repeat established brackets

9 1/2 %

<u>Amount of Sale</u>	<u>Tax</u>
0.01 - 0.15	No tax
0.16 - 0.22	2¢
0.23 - 0.32	3¢
0.33 - 0.43	4¢
0.44 - 0.53	5¢
0.54 - 0.64	6¢
0.65 - 0.74	7¢
0.75 - 0.85	8¢
0.86 - 0.95	9¢
0.96 - 1.06	10¢
1.07 - 1.16	11¢
1.17 - 1.27	12¢
1.28 - 1.37	13¢
1.38 - 1.48	14¢
1.49 - 1.58	15¢
1.59 - 1.69	16¢
1.70 - 1.79	17¢
1.80 - 1.90	18¢
1.91 - 2.00	19¢
2.01 - 2.11	20¢
2.12 - 2.22	21¢
2.23 - 2.32	22¢
2.33 - 2.43	23¢

Repeat established brackets

3%

<u>Amount of Sale</u>	<u>Tax</u>
0.01 - 0.15	No tax
0.16 - 0.34	1¢
0.35 - 0.67	2¢
0.68 - 1.00	3¢
1.01 - 1.34	4¢
1.35 - 1.67	5¢
1.68 - 2.00	6¢

Repeat established brackets

3 1/2%

<u>Amount of Sale</u>	<u>Tax</u>
0.01 - 0.15	No tax
0.16 - 0.29	1¢
0.30 - 0.58	2¢
0.59 - 0.86	3¢
0.87 - 1.15	4¢
1.16 - 1.43	5¢
1.44 - 1.72	6¢
1.73 - 2.00	7¢
2.01 - 2.29	8¢

Repeat established brackets

4%

<u>Amount of Sale</u>	<u>Tax</u>
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0.01 - 0.15	No tax
0.16 - 0.25	1¢
0.26 - 0.50	2¢
0.51 - 0.75	3¢
0.76 - 1.00	4¢
1.01 - 1.25	5¢
1.26 - 1.50	6¢
1.51 - 1.75	7¢
1.76 - 2.00	8¢
<u>Repeat established brackets</u>	

	<u>5%</u>	
<u>Amount of Sale</u>		<u>Tax</u>
0.01 - 0.15	No tax	
0.16 - 0.20	1¢	
0.21 - 0.40	2¢	
0.41 - 0.60	3¢	
0.61 - 0.80	4¢	
0.81 - 1.00	5¢	
1.01 - 1.20	6¢	
1.21 - 1.40	7¢	
1.41 - 1.60	8¢	
1.61 - 1.80	9¢	
1.81 - 2.00	10¢	
<u>Repeat established brackets</u>		

	<u>5 1/2%</u>	
<u>Amount of Sale</u>		<u>Tax</u>
0.01 - 0.15	No tax	
0.16 - 0.19	1¢	
0.20 - 0.37	2¢	
0.38 - 0.55	3¢	
0.56 - 0.73	4¢	
0.74 - 0.91	5¢	
0.92 - 1.10	6¢	
1.11 - 1.28	7¢	
1.29 - 1.46	8¢	
1.47 - 1.64	9¢	
1.65 - 1.82	10¢	
1.83 - 2.00	11¢	
2.01 - 2.19	12¢	
<u>Repeat established brackets</u>		

	<u>6%</u>	
<u>Amount of Sale</u>		<u>Tax</u>
0.01 - 0.15	No tax	
0.16 - 0.17	1¢	
0.18 - 0.34	2¢	
0.35 - 0.50	3¢	
0.51 - 0.67	4¢	
0.68 - 0.84	5¢	
0.85 - 1.00	6¢	
1.01 - 1.17	7¢	

1.18 - 1.34	8¢
1.35 - 1.50	9¢
1.51 - 1.67	10¢
1.68 - 1.84	11¢
1.85 - 2.00	12¢
<u>Repeat established brackets</u>	

	<u>6 1/2%</u>	
<u>Amount of Sale</u>		<u>Tax</u>
0.01 - 0.15		No tax
0.16 - 0.31		2¢
0.32 - 0.47		3¢
0.48 - 0.62		4¢
0.63 - 0.77		5¢
0.78 - 0.93		6¢
0.94 - 1.08		7¢
1.09 - 1.24		8¢
1.25 - 1.39		9¢
1.40 - 1.54		10¢
1.55 - 1.70		11¢
1.71 - 1.85		12¢
1.86 - 2.00		13¢
2.01 - 2.16		14¢
2.17 - 2.31		15¢
<u>Repeat established brackets</u>		

	<u>7%</u>	
<u>Amount of Sale</u>		<u>Tax</u>
0.01 - 0.15		No tax
0.16 - 0.29		2¢
0.30 - 0.43		3¢
0.44 - 0.58		4¢
0.59 - 0.72		5¢
0.73 - 0.86		6¢
0.87 - 1.00		7¢
1.01 - 1.15		8¢
1.16 - 1.29		9¢
1.30 - 1.43		10¢
1.44 - 1.58		11¢
1.59 - 1.72		12¢
1.73 - 1.86		13¢
1.87 - 2.00		14¢
<u>Repeat established brackets</u>		

	<u>7 1/2%</u>	
<u>Amount of Sale</u>		<u>Tax</u>
0.01 - 0.15		No tax
0.16 - 0.27		2¢
0.28 - 0.40		3¢
0.41 - 0.54		4¢
0.55 - 0.67		5¢
0.68 - 0.80		6¢
0.81 - 0.94		7¢

0.95 - 1.07	8¢
1.08 - 1.20	9¢
1.21 - 1.34	10¢
1.35 - 1.47	11¢
1.48 - 1.60	12¢
1.61 - 1.74	13¢
1.75 - 1.87	14¢
1.88 - 2.00	15¢
2.01 - 2.14	16¢
2.15 - 2.27	17¢
<u>Repeat established brackets</u>	

<u>Amount of Sale</u>	<u>8%</u> <u>Tax</u>
0.01 - 0.15	No tax
0.16 - 0.25	2¢
0.26 - 0.38	3¢
0.39 - 0.50	4¢
0.51 - 0.63	5¢
0.64 - 0.75	6¢
0.76 - 0.88	7¢
0.89 - 1.00	8¢
1.01 - 1.13	9¢
1.14 - 1.25	10¢
1.26 - 1.38	11¢
1.39 - 1.50	12¢
1.51 - 1.63	13¢
1.64 - 1.75	14¢
1.76 - 1.88	15¢
1.89 - 2.00	16¢
<u>Repeat established brackets</u>	

<u>Amount of Sale</u>	<u>9%</u> <u>Tax</u>
0.01 - 0.15	No tax
0.16 - 0.23	2¢
0.24 - 0.34	3¢
0.35 - 0.45	4¢
0.46 - 0.56	5¢
0.57 - 0.67	6¢
0.68 - 0.78	7¢
0.79 - 0.89	8¢
0.90 - 1.00	9¢
1.01 - 1.12	10¢
1.13 - 1.23	11¢
1.24 - 1.34	12¢
1.35 - 1.45	13¢
1.46 - 1.56	14¢
1.57 - 1.67	15¢
1.68 - 1.78	16¢
1.79 - 1.89	17¢
1.90 - 2.00	18¢
<u>Repeat established brackets</u>	

History: Effective November 1, 1987; amended effective March 1, 1990.  
General Authority: NDCC 57-39.2-19  
Law Implemented: NDCC 57-39.2-08.2

81-04.1-03-03. Food and food products for human consumption. Candy, soft drinks, breath mints, and chewing gum are not exempt from sales tax when purchased in North Dakota.

Sales of food products prepared for immediate consumption on or near the premises of the seller are subject to sales tax even though they are sold on a "take out" or "to go" order by restaurants and drive-ins and are actually packaged or wrapped and taken from the premises.

The exemption for food and food products given, or to be given, as samples to consumers for consumption on the premises of a food store does not apply to food given away by restaurants or other businesses which regularly and primarily sell prepared food and beverages.

When a package contains food and nonfood products, if the value of the nonfood items exceeds fifty percent of the total selling price, the entire sale is subject to ~~the~~ sales tax.

~~Effective October 1, 1987, all food or food products, including otherwise taxable soft drinks and candy, purchased for human consumption with food stamps issued by the United States department of agriculture are exempt from tax.~~

History: Effective June 1, 1984; amended effective July 1, 1985; November 1, 1987; March 1, 1990.  
General Authority: NDCC 57-39.2-19  
Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04.1

81-04.1-03-13. Sales to residents of Montana. Sales of meals, onsale beverages, lodging accommodations, entertainment, and similar goods and services consumed in North Dakota are not exempt when sold to residents of Montana.

Sales and installation of goods into personal property owned by residents of Montana are not taxable provided the goods are removed from North Dakota for use exclusively outside this state. Use which is incidental to removing the goods from North Dakota does not subject the goods to North Dakota use tax.

History: Effective March 1, 1990.  
General Authority: NDCC 57-39.2-19  
Law Implemented: NDCC 57-39.2-04(12)

81-04.1-03-14. Sales to residents of Canada. Canadian residents are subject to sales and use tax on purchases made in North Dakota. Canadian residents may apply on forms prescribed by the tax commissioner for a refund of North Dakota sales tax.

Sales tax paid by residents of Canada is not refundable unless the goods are removed from North Dakota within thirty days of purchase and will be used permanently outside North Dakota. Sales tax paid on meals, onsale beverages, lodging accommodations, entertainment, and similar goods and services which are consumed in North Dakota is not refundable.

Requests for refunds of sales tax paid by Canadian residents must be accompanied by original sales receipts. The receipt must contain a description of the purchase, including the seller's name, the amount paid for the goods, and the date the goods were purchased.

A joint refund request is allowed for married couples, married couples and their dependents, and individuals and their dependents. A joint refund request by unrelated individuals is allowed only if the sales receipt contains the names of all parties and a letter explaining the joint refund request accompanies the request form.

History: Effective March 1, 1990.  
General Authority: NDCC 57-39.2-19  
Law Implemented: NDCC 57-39.2-04, 57-39.2-28

81-04.1-04-06. Amusement - Games of chance. Receipts from games of chance operated by nonprofit organizations are exempt from sales tax. Instruments for gambling purchased by these organizations are subject to sales and use tax unless the organization is exempt from sales and use tax.

An organization furnishing bingo cards may choose to add tax to the selling price of the bingo cards or may include tax in the selling price of the bingo cards. If the tax is included in the selling price of the bingo cards, the organization shall post a notice advising purchasers that the selling price includes sales tax. The notice must contain the language "bingo card sales price includes applicable sales tax" and must indicate the net taxable sale, tax, and gross sales price.

EXAMPLE: Net taxable sale	\$19.04
North Dakota sales tax	.96
Gross sale	\$20.00

When sales tax is included in the selling price of bingo cards, the tax must be deducted from the gross sales receipts to arrive at net taxable sales. Net taxable sales are calculated as follows: Gross receipts divided by 105% (1.05) equals net taxable sales.

History: Effective June 1, 1984; amended effective March 1, 1990.  
General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.3,  
57-39.2-04, 57-39.2-20, 57-40.2-02.1

81-04.1-04-10. Vending machines. Gross receipts derived from coin-operated vending machines are subject to sales tax if the price per article exceeds fifteen cents. In the absence of a written agreement stipulating division of gross receipts between the vending machine owner and the location operator, the vending machine owner is responsible for sales tax on gross receipts derived from the vending machine.

Sales tax is included in the gross receipts from coin-operated vending machines and must be deducted to arrive at gross receipts subject to sales tax (taxable sales). Taxable sales are calculated as follows: taxable sales = gross receipts divided by ~~105.5% (1.055)~~ 105% (1.05).

The purchaser of a vending machine is liable for sales tax on a vending machine purchased in this state or for use tax on a vending machine purchased outside of this state regardless of whether a license fee is paid to any governmental authority for operating the vending machine.

History: Effective June 1, 1984; amended effective November 1, 1987; March 1, 1990.

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

81-04.1-04-10.1. 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)~~ 105% (1.05)] multiplied by 80% (.80). Taxable sales may also be calculated in a single step as follows: taxable sales = gross receipts multiplied by ~~75.83% (0.7583)~~ 76.19% (.7619).

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; March 1, 1990.

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

81-04.1-04-13. Automobiles - Sales. The gross receipts from the sale of motor vehicles, including trailers and semitrailers, are exempt from sales tax. Vehicles such as all-terrain vehicles, trail bikes, minibikes, snowmobiles, and go-carts are not considered motor vehicles because they are not equipped for highway use and are subject to sales tax. Motor vehicles, including snowmobiles and all-terrain vehicles, purchased or acquired in or outside of the state of North Dakota for use on the streets and highways of this state are required to be registered with the North Dakota department of transportation and are subject to motor vehicle excise tax in lieu of sales and use tax.

Motor vehicles which are not legal for use on the streets and highways of this state or which are not registered for use on the streets and highways of this state are subject to sales and use tax.

North Dakota dealers of snowmobiles and all-terrain vehicles may be required to provide lists of purchasers to the office of state tax commissioner. Such information may be used to verify the proper payment of motor vehicle excise tax or sales and use tax.

History: Effective June 1, 1984; amended effective March 1, 1990.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 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

81-04.1-04-16. Banks - Federal and state credit unions. Any credit union organized under North Dakota Century Code chapter 6-06 or under the Federal Credit Union Act is exempt from North Dakota sales tax on purchases of tangible personal property for its own use. Any credit union organized under the Federal Credit Union Act [12 U.S.C.A. 1751] is exempt from North Dakota sales tax on purchases of tangible personal property for its own use.

Credit unions organized under North Dakota Century Code chapter 6-06 are subject to North Dakota sales and use tax.

History: Effective June 1, 1984; amended effective March 1, 1990.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 6-06-29, 57-39.2-01, 57-39.2-02.1, 57-39.2-04

81-04.1-04-20. Contractors. A contractor or subcontractor installing materials into real property located in North Dakota must pay sales or use tax on those materials regardless of who owns them. If the materials are sold for installation into real property located outside

of this state, sales or use tax must be paid if such sales would be subject to tax in the state of attachment. For example, delivery of possession of tangible personal property within this state to a South Dakota contractor for installation in South Dakota is subject to tax because the delivery of possession to a North Dakota contractor in South Dakota would be subject to tax there. This also applies to a contractor or subcontractor engaged in retail sales who removes all or part of the machinery, equipment, material, or supplies used in carrying out a contract from stock purchased for resale.

A contractor or subcontractor is ~~liable for~~ subject to sales tax on the cost of any items incorporated into or used in assembling articles used or consumed in carrying out a construction contract.

A contractor not engaged in retail sales who purchases carpeting, drapery, or drapery hardware and installs them into a home is required to pay tax on the selling price or to offer the seller a contractor's certificate of resale.

A business which holds a contractor's license issued by the North Dakota secretary of state may not contract with itself to install material into real property. A contractor who purchases or takes possession of construction material in North Dakota for its own use in another state must pay North Dakota sales or use tax on the goods.

History: Effective June 1, 1984; amended effective March 1, 1990.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1

81-04.1-04-41. Telephone companies. ~~Mutual or cooperative telephone companies are subject to payment of sales or use taxes on purchases made for final use or consumption. They must collect and remit sales tax on gross receipts derived from all retail sales.~~

~~Exchange companies must collect and remit sales tax upon their gross receipts. The exchange must pay the tax on the total receipts of a pay station. The gross receipts of an exchange must include assessments made to subscribers as well as regular periodic billings for telephone service. Exchange companies which receive switching fees from rural telephone lines must include the fees in gross receipts.~~

~~An exchange company owning service station lines, but which does not operate switchboards, must collect sales tax from its subscribers. The company operating the switchboard and performing the switching service will collect the switching charge without tax, unless special authority for billing switching charges with tax added is requested jointly by the companies and authorized by the tax commissioner.~~

~~When toll services are furnished to subscribers of a service station or exchange company on a line switched by another exchange company, the company operating the switchboard over which the toll~~

service call is placed must collect tax from the service station company.

Switching charges made to service station companies are taxable. There is no additional tax upon assessments to rural users for the switching charge. A telephone company provides communication service to retail customers or users and shall pay sales or use tax on purchases of supplies and equipment for final use or consumption. The company shall also collect and remit sales tax on the gross receipts derived from the sale of communication service except those receipts derived from interstate communication service. Interstate communication includes service originating or terminating outside of North Dakota.

End user federal access charges are subject to sales tax as part of the basic communication subscription service.

Sales charges between telephone companies, such as those commonly referred to as switching charges or access charges, are sales for resale and are not subject to sales tax.

Charges for telephone calls or telegrams beginning within North Dakota and completed outside the state or beginning outside North Dakota and completed within this state are not subject to sales or use tax if such charges are clearly indicated on a statement given to the customer. Federal excise taxes separately stated may be excluded.

Telegrams subject to sales tax charged to the account of telephone subscribers and billed by the telephone company must appear on the toll bill with the sales tax added.

A telephone system includes several components. These components include wiring, cables, plug-ins, jacks, installation labor, telephone instruments, and switchboard modules.

A telephone system includes both material and equipment which are installed into real property and material and equipment which remain tangible personal property.

The retailer of a telephone system is usually also responsible for the installation of all material and equipment necessary for the system to function. The wiring, cables, plug-ins, and jacks are installed into real property. An installer of these items is regarded as a contractor who is subject to sales or use tax on the cost of the installed material and equipment.

A telephone instrument or a switchboard module is regarded as tangible personal property and the gross receipts from the sale of these items are subject to sales tax.

Since the completed system will include both material and equipment which are installed into real property and material and equipment which remain tangible personal property, all material, equipment, and installation charges must be separately stated on the

billing. The portion of the billing representing material and equipment which remain tangible personal property is subject to sales tax and the portion of the billing representing the installation of material and equipment into real estate is subject to sales or use tax based on the cost of the material and equipment to the installer, with no tax appearing on the billing.

If a lump sum amount is billed to the purchaser of a telephone system, the total gross receipts, including labor charges, are subject to sales tax.

History: Effective June 1, 1984; amended effective October 1, 1986; March 1, 1990.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-11, 57-39.2-19, 57-39.2-20

81-06.1-02-01. Motor vehicle fuel tax imposed. Motor vehicle fuel sold or used in this state is taxed at the rate of ~~seventeen cents per gallon {3.79 liters}~~ imposed under North Dakota Century Code section 57-43.1-02.

1. ~~Qualifying alcohol-blended motor vehicle fuels are taxed as follows:~~
  - a. ~~From July 1, 1985, through June 30, 1987, eight cents per gallon {3.79 liters} less than the above-stated tax.~~
  - b. ~~From July 1, 1987, through December 31, 1992, four cents per gallon {3.79 liters} less than the above-stated tax.~~
  - c. ~~After December 31, 1992, at the same rate as the tax stated in the first paragraph of this section.~~
2. ~~Banks, trust companies, building and loan associations, credit unions, and public and private educational facilities are subject to the motor vehicle fuel tax. Federal credit unions organized under the Federal Credit Union Act are exempt.~~
2. Motor vehicle fuel used to operate auxiliary ~~drilling, testing and servicing~~ equipment which is fueled from the same supply tank as the vehicle itself is subject to motor vehicle fuel tax. The tax may be refunded pursuant to section 81-06.1-03-01.
- ~~3.~~ 3. The licensed motor vehicle fuel dealer is responsible for the tax. A monthly dealer's report is required and the tax must be remitted upon filing the report.
- ~~4.~~ 4. Motor vehicle fuel used for an industrial purpose is subject to the motor vehicle fuel tax. The motor vehicle fuel user

may be eligible for a refund pursuant to section 81-06.1-03-01.

History: Effective June 1, 1984; amended effective July 1, 1985; November 1, 1987; March 1, 1990.

General Authority: NDCC 57-43.1-30

Law Implemented: NDCC 57-43.1-02, 57-43.1-16, 57-43.1-23, 57-43.1-33

81-06.1-02-02. Importer for use tax imposed. Importer for use tax on all motor vehicle fuel and special fuels used in the propulsion of motor vehicles upon the public highways in this state is imposed at the rate provided for motor vehicle fuels in North Dakota Century Code section ~~81-06.1-02-01~~ 57-43.1-02 and special fuels in North Dakota Century Code section ~~81-06.1-02-03~~ 57-43.2-02.

1. The formula used to compute the average miles per gallon [kilometers per liter] of fuel used in interstate fleet operations is total miles [kilometers] traveled in all states and Canadian provinces, divided by total gallons [liters] of fuel used in all states and Canadian provinces. Liters and kilometers must be converted to gallons and miles for purposes of the formula. The average miles per gallon [kilometers per liter] determined by this formula must be used to determine total gallons [liters] of fuel used in North Dakota.
2. The user may request a refund or a credit for North Dakota fuel tax paid when more fuel is purchased in North Dakota than necessary to cover miles [kilometers] traveled in this state.

History: Effective June 1, 1984; amended effective November 1, 1987; March 1, 1990.

General Authority: NDCC 57-43.1-30, 57-43.2-22

Law Implemented: NDCC 57-43.1-02, 57-43.1-33, 57-43.1-34, 57-43.1-42, 57-43.2-02, 57-43.2-26, 57-43.2-27, 57-43.2-35

81-06.1-02-03. Special fuels tax imposed - Exemptions. Special fuels sold, used, or delivered in this state are taxed at the rate of seventeen cents per gallon [3.79 liters] imposed under North Dakota Century Code section 57-43.2-02.

1. Special fuels used for heating, agricultural, industrial other than as set out in subsection 2, or railroad purposes are subject to an excise tax of two percent in lieu of seventeen cents per gallon [3.78 liters]. If the sale price is discounted by the special fuels dealer, the tax applies on the discounted price. The sale price on which the tax is computed must include freight or related charges if those charges are paid by the purchaser.
2. Special fuels sold to construction contractors and subcontractors, including sand and gravel processors, and to

well drilling, testing, and servicing companies for use in auxiliary equipment, is taxed at ~~seventeen cents~~ the per gallon [3.78 liters] rate imposed under North Dakota Century Code section 57-43.2-02. A qualifying user may request a refund of the tax pursuant to section 81-06.1-03-03.

3. Banks, trust companies, building and loan associations, credit unions, and public and private educational facilities are subject to the special fuels tax. A federal credit union organized under the Federal Credit Union Act is exempt.
4. The licensed special fuels dealer is responsible for the tax. A monthly dealer's report is required and the tax must be remitted upon filing the report.
5. The state of North Dakota and all political subdivisions are subject to the special fuels tax but may obtain a full refund when the fuel is used for construction, reconstruction, or maintenance of public highways pursuant to section 81-06.1-03-03.

History: Effective June 1, 1984; amended effective November 1, 1987; March 1, 1990.

General Authority: NDCC 57-43.2-22

Law Implemented: NDCC 57-43.2-02, 57-43.2-03, 57-43.2-04

81-06.1-03-01. Motor vehicle fuel tax refunds. Motor vehicle fuel tax refunds may be obtained upon application to and approval by the tax commissioner. Refunds may be issued for:

1. Tax paid by any person on motor vehicle fuel used for agricultural or privately funded industrial purposes, except fuel used in motor vehicles operated or intended to be operated on public highways in this state.
2. Motor vehicle fuel tax paid by the state of North Dakota or any of its political subdivisions on fuel used in publicly owned vehicles for construction, reconstruction, or maintenance of any public road, highway, street, or airport. The tax imposed may be fully refunded.
3. Motor vehicle fuel tax imposed on fuel used in the operation of auxiliary well drilling, testing, and servicing equipment which is fueled from the same supply tank as the vehicle itself, provided:
  - a. The user keeps complete and accurate daily records of the time during which the equipment is operated.
  - b. The records reflect miles [kilometers] traveled in each individual unit.

- c. The user obtains certified figures from the manufacturer of the equipment as to standard fuel consumption.
  - d. The user complies with all provisions of North Dakota Century Code chapter 57-43.1 in applying for the refund.
4. Motor vehicle fuel tax imposed on fuel which was thereafter removed from this state to a state which requires payment of a tax upon the use of the fuel in that state.

~~One-half cent~~ Two cents per gallon [3.79 liters] for deposit in the agriculturally derived fuel tax fund and one cent per gallon [3.79 liters] for deposit in the township highway aid fund is deducted from refunds issued under subsections 1, 3, and 4. No refund claim for less than five dollars is allowed.

History: Effective June 1, 1984; amended effective November 1, 1987; March 1, 1990.

General Authority: NDCC 57-43.1-30

Law Implemented: NDCC 54-27-19.1, 57-43.1-03, 57-43.1-03.1, 57-43.1-06, 57-43.1-08

81-06.1-03-03. Special fuels tax refunds. Special fuels tax refunds may be obtained upon application to and approval by the tax commissioner. Refunds may be issued for:

1. Tax paid by any person on special fuels used for heating, agricultural, privately funded industrial, and railroad purposes, except fuel used in motor vehicles operated or intended to be operated on public highways in this state.
2. Special fuels tax paid by the state of North Dakota or any of its political subdivisions on fuel used in publicly owned vehicles for construction, reconstruction, or maintenance of any public road, highway, street, or airport.
3. Special fuels tax paid on fuel used in the operation of auxiliary well drilling, testing and servicing equipment which is fueled from the same supply tank as the vehicle itself, provided:
  - a. The user keeps complete and accurate daily records of the time during which the equipment is operated.
  - b. The records reflect miles [kilometers] traveled in each individual unit.
  - c. The user obtains certified figures from the manufacturer of the equipment as to standard fuel consumption.
  - d. The user complies with all provisions of North Dakota Century Code chapter 57-43.1 in applying for the refund.

One cent per gallon [3.79 liters] for deposit in the township highway aid fund and an excise tax of two percent of the purchase price of the fuel is deducted from all refunds issued under subsections 1, 2, and 3. No refund claim for less than five dollars is allowed.

History: Effective June 1, 1984; amended effective November 1, 1987; March 1, 1990.

General Authority: NDCC 57-43.2-22

Law Implemented: NDCC 57-43.2-02, 57-43.2-03

81-06.1-03-06. Assignment of tax on agricultural and industrial purchases of motor vehicle fuel. Any person who has purchased motor vehicle fuel on account and who is eligible for a refund may assign that person's claim for a refund to the dealer who has paid the refundable tax, provided a valid tax assignment agreement is attached to the refund claim form.

1. Dealers may take assignments on agricultural fuel sales for credit on their tax returns in April, May, June, July, August, and September. Tickets must be thirty days old before credit can be allowed on dealers' returns. Before any person is allowed to assign a motor vehicle fuel tax refund to the dealer during this period, the person must have a valid permit issued by the tax commissioner authorizing such assignment. Application forms may be obtained from the tax commissioner. There is no fee for a permit.
2. Those persons who have a valid tax assignment permit issued by the tax commissioner will be charged ~~one half cent~~ three and nine-fortieths cents per gallon [3.79 liters] by the dealer and that charge will be remitted to the tax commissioner by the dealer when the dealer submits the tax assigned invoices for credit. The tax of two cents per gallon [3.79 liters] will be deposited in the agriculturally derived fuel tax fund and one cent per gallon [3.79 liters] will be deposited in the township highway aid fund and nine-fortieths of one cent will be deposited in the petroleum release compensation fund.
3. All tickets must include the following:
  - a. The amount of the tax.
  - b. The purchaser's tax assignment permit number.
  - c. The purchaser's address.
  - d. A tax assignment agreement stamp.
  - e. Two signatures, one as the assignor and one verifying goods received. If the signature of the assignor is missing from the ticket, the tax commissioner will send the dealer a form upon which the purchases are listed and

which the dealer and the purchaser must sign verifying that those purchases were intended to be assigned. The signed certifications must be submitted to the tax commissioner by the dealer by the date specified on the form.

4. All tax assignments must meet the following conditions:
  - a. Custom combine tickets are not acceptable for assignment credit on monthly tax returns.
  - b. Assignments will be accepted on agricultural fuel only in bulk deliveries of fifty gallons [189.27 liters] or more.
  - c. ~~All invoices must have the carbon imprint on the reverse side.~~
  - ~~d.~~ Tickets must be tax assigned by the purchaser.
  - ~~e.~~ d. Sales of special fuels are not acceptable for assignment credit on the dealer's report.
  - ~~f.~~ e. Assignment stamps should be placed where they least interfere with other items and signatures on the ticket.
  - ~~g.~~ f. If more than one item appears on the ticket, the gallonage on which tax is being assigned must be clearly indicated.
  - ~~h.~~ g. Only original tickets will be acceptable.
5. Tickets issued to a partnership must be assigned as follows:

If issued to "Brown Brothers", the assignment agreement must be signed "Brown Brothers by John Brown, partner". If issued in individual names as "Bob and John Brown", the assignment agreement should be signed "Bob and John Brown by John Brown, partner".
6. In the case of a husband and wife, either spouse may sign the ticket even though it is issued to one spouse only, provided both parties signed the tax assignment permit application.

History: Effective June 1, 1984; amended effective March 1, 1990.

General Authority: NDCC 57-43.1-30

Law Implemented: NDCC 54-27-19.1, 57-43.1-03, 57-43.1-03.1, 57-43.1-11, 57-43.1-12

81-09-02-08. Determination of gross value. To determine whether oil has been reported at its fair market value, the commissioner will compare the reported value of the oil with the price prevailing for comparable oil in the field in which the oil was produced. If purchases of oil in a field are limited to or dominated by a single purchaser, the

commissioner may test the reasonableness of the reported value by comparing it with the price of comparable oil in other fields in the state. The commissioner may also use any other method which is reasonable to determine whether the reported value is indicative of fair market value, including, but not limited to, comparing the reported value with the oil's value upon disposition at downstream points.

To determine whether gas has been reported at its fair market value, the commissioner may use a workback method, a comparable sales method, or any other method which would reasonably ascertain fair market value at the time of production. In applying the workback method, reasonable expenses incurred in gathering and processing the gas, excluding however any expenses relating to exempt gas products that are returned to the lease, will be deducted from the market value of the gas products derived from the wet gas and the resulting value will be compared to the reported gas value. In applying the comparable sales method, the reported gas value will be compared to the sales value of comparable gas in the field in which the gas was produced. If purchases of gas in a field are limited to or dominated by a single purchaser, the commissioner may test the reasonableness of the reported value by comparing it with the price of comparable gas in other fields in the state.

If the commissioner determines pursuant to any reasonable method that the reported value of oil or gas is not equivalent to fair market value, an assessment will be levied for additional tax on the basis of the fair market value of the oil or gas.

History: Effective March 1, 1990.

General Authority: NDCC 57-51-21, 57-51.1-05

Law Implemented: NDCC 57-51-02

#### 81-09-02-15. Exempt royalty interests.

1. A royalty interest in oil or gas is exempt from the gross production tax if the royalty interest is owned by any of the following entities and that entity's immunity from taxation has not been waived by the appropriate governmental authority:
  - a. The federal government or an instrumentality of the federal government.
  - b. The state of North Dakota or its political subdivisions.
  - c. An organized Indian tribe, whose land cannot be alienated without consent of the federal government.
2. A royalty interest in production which is owned by a private or charitable organization, whether profit or nonprofit, is not exempt from the gross production tax.

3. The value of an exempt royalty interest is limited to the lesser of the following:
  - a. The amount of any royalty payments made to the entities listed in subdivisions a, b, and c of subsection 1.
  - b. The royalty percentage attributable to the entities listed in subdivisions a, b, and c of subsection 1 times the total amount reported as the gross value at the well.

History: Effective August 1, 1986; amended effective July 1, 1989; March 1, 1990.

General Authority: NDCon X, 5; NDCC 57-51-21

Law Implemented: NDCC 57-51-02

81-09-03-02. Definitions. As used in these sections and for the administration of North Dakota Century Code chapter 57-51.1, unless the context requires otherwise, the following definitions apply:

1. "Completion" or "completed" means an oil well ~~shall~~ will be considered completed when the first oil is produced through wellhead equipment ~~into lease tanks from the ultimate producing interval~~ after production casing has been run.
2. "Drilled" means the ~~following~~ spudding of a well.
  - a. ~~The point at which the drill bit of the rig used to complete the well bore began boring; or~~
  - b. ~~The point at which the drill bit was used to deepen an existing well bore to a separate reservoir.~~
3. ~~"Lease tanks" means tanks used to store oil.~~
4. ~~"New well" means a well initially drilled and originally completed after April 27, 1987, to a separate and distinct reservoir as recognized by the industrial commission. A multiple completion well, which produces oil from separate reservoirs, may be considered a new well as to the portion of the well bore drilled to and completed in the new reservoir after April 27, 1987.~~
4. "Reservoir" means a common source of supply as defined by the industrial commission.
5. "Test oil" means oil recovered during and after drilling but before normal completion of a well.
7. ~~"Ultimate producing interval" means an interval within a reservoir or pool as defined by the industrial commission.~~

~~8-~~ 6. "Unit" means the total area of land that results from the combining of interests in all or parts of two or more leases or fee interests in order to operate the reservoir as a single production unit subject to a single operating interest. A unit may be formed by an agreement between the mineral interest owners (voluntary unitization) or by order of an agency of the state or federal government (compulsory unitization). A unit does not include "poolings" resulting from the enforcement of spacing requirements. This definition is only effective for periods prior to April 27, 1987.

History: Effective August 1, 1986; amended effective October 1, 1987; March 1, 1990.

General Authority: NDCC 57-51-21, 57-51.1-05

Law Implemented: NDCC 57-51.1-01(3)(4)(5)(8), 57-51.1-03(3)

81-09-03-06. New well exemption. Oil produced from a new well during the first fifteen consecutive months ~~from~~ starting with the date of the well completion was completed is exempt from the oil extraction tax. Test oil is also exempt from the oil extraction tax. Only one new well exemption is allowed per well bore.

To be eligible for this exemption, a producer must submit a new well qualification letter signed by a representative of the industrial commission. This qualification letter must state the date the well was spudded ~~or deepened~~, the date the well was completed, and the total volume of test oil recovered prior to completion. The tax commissioner will accept the information provided in the qualification letter subject to confirmation upon audit.

If the average price of a barrel of crude oil, as defined in subsection 2 of North Dakota Century Code section 57-51.1-01, between June first and October thirty-first of any year is thirty-three dollars or more, the exemption is eliminated for any well as of November first of that year. The exemption cannot be reinstated except by legislative action. However, oil produced from a new well after the exemption is eliminated is eligible for a reduction in the oil extraction tax rate. This reduction, from six and one-half percent of gross value to four percent of gross value, is effective for only the months of November and December of the year in question. Beginning January first of the year following the year in question and continuing through December thirty-first of that year, the oil extraction tax rate applicable to new wells is six and one-half percent of gross value.

History: Effective October 1, 1987; amended effective March 1, 1990.

General Authority: NDCC 57-51-21, 57-51.1-05

Law Implemented: NDCC 57-51.1-03(3)

81-09-03-08. Work-over exemption. Oil produced from a qualifying well that has been worked over is exempt from the oil extraction tax for

a consecutive twelve-month period starting with the first day of the third month after completion of the work-over project.

To be eligible for this exemption, a taxpayer shall submit a work-over qualification letter signed by a representative of the industrial commission. This qualification letter must state that the work-over project meets the requirements set forth in North Dakota Century Code section 57-51.1-03. The letter must also provide the following information:

1. The name of the lease.
2. The location of the well.
3. The name of the party entitled to the tax exemption.
4. The date the notice of intention was filed.
5. The average daily production of the well during the latest six calendar months of continuous production.
6. The cost of the work-over project.
7. The average daily production of the well during the first sixty days after completion of the work-over project, if applicable.
8. The dates on which the work-over project was performed.

The commissioner will accept the information provided in the qualification letter subject to confirmation upon audit.

If the average price of a barrel of crude oil, as defined in subsection 2 of North Dakota Century Code section 57-51.1-01, between June first and October thirty-first of any year is thirty-three dollars or more, the exemption is eliminated for any well as of November first of that year. The exemption cannot be reinstated except by legislative action.

History: Effective March 1, 1990.

General Authority: NDCC 57-51-21, 57-51.1-05

Law Implemented: NDCC 57-51.1-03

TITLE 84  
Treasurer, State



FEBRUARY 1990

84-02-01-01. Penalty. ~~Any wholesaler may have the~~ A wholesaler's license may be suspended or revoked by the state treasurer for violation of any of the provisions of this chapter after a hearing as provided by North Dakota Century Code section 5-03-06.

History: Amended effective February 1, 1990.

General Authority: NDCC 5-03-05

Law Implemented: NDCC 5-03-01, 05-03-05, 5-03-06

84-02-01-11. Commercial credit for liquor. The normal commercial credit between liquor wholesalers and retailers is thirty days. Any wholesaler receiving a check from a retailer which is returned by the bank due to insufficient funds which was given for merchandise received ~~more than thirty days prior to the return of the check~~ shall immediately notify the retailer. If the check is not made good within forty-eight hours, the wholesaler shall notify the wholesaler's competitors and the state treasurer. Any wholesaler having an unpaid retail account for merchandise received which is in excess of thirty days shall notify the wholesaler's competitors and the state treasurer. No sale shall be made by any wholesaler to ~~such retailer~~ a retail account who has or had possession of such merchandise until said delinquent account is paid in full and permitted by the state treasurer. A retail account may not be deemed delinquent for any alleged sale in any instance where there exists a bona fide dispute between the licensee and the wholesaler as to the amount owing as a result of the alleged sale.

History: Amended effective February 1, 1990.

General Authority: NDCC 5-03-05

Law Implemented: NDCC 5-01-11, 5-03-01, 5-03-04, 5-03-05, 5-03-06



TITLE 93

Private Investigative and Security Board



MARCH 1990

STAFF COMMENT: Articles 93-01 and 93-02 contain all new material but are not underscored so as to improve readability.

ARTICLE 93-01

GENERAL ADMINISTRATION

Chapter  
93-01-01            Organization of Board [Reserved]

CHAPTER 93-01-01  
ORGANIZATION OF BOARD

[Reserved]

ARTICLE 93-02

PRIVATE INVESTIGATIVE AND SECURITY SERVICES

Chapter  
93-02-01            Private Investigative Services  
93-02-02            Private Security Services  
93-02-03            General Rules

CHAPTER 93-02-01  
PRIVATE INVESTIGATIVE SERVICES

Section	
93-02-01-01	Qualifications for Private Investigator's License
93-02-01-02	Qualifications for Detective Agency License
93-02-01-03	Qualifications of Detective Agency Personnel
93-02-01-04	Application for Private Investigator License
93-02-01-05	Application Form for Detective Agency License
93-02-01-06	Criminal Records and Background Investigation Check
93-02-01-07	Prohibitions
93-02-01-08	Bonding
93-02-01-09	Contents of License - Posting
93-02-01-10	Issuance of Pocket Cards
93-02-01-11	Change of Ownership or Location
93-02-01-12	Out-of-State Private Investigators
93-02-01-13	Private Investigator Examination Restriction
93-02-01-14	Carrying of Firearms in the Course of Providing Private Investigative Service

93-02-01-01. Qualifications for private investigator's license.  
A person is qualified to receive a license as a private investigator:

1. Who can show by certified birth certificate or naturalization certificate proof of being at least eighteen years of age.
2. Who is a high school graduate or holder of the equivalent of a high school diploma, or who has at least three years training and experience in a public law enforcement agency or in providing private investigative services.
3. Who has not been convicted in any jurisdiction of a felony or a class A misdemeanor involving an act of violence or intimidation as defined in North Dakota Century Code chapters 12.1-16 through 12.1-25; prostitution as set forth in North Dakota Century Code chapter 1.1-29, and applicable federal and local laws; obscenity as set forth in North Dakota Century Code chapter 12.1-27.1, and applicable federal and local laws; controlled substances as set forth in North Dakota Century Code chapter 19-03.1, and applicable federal and local laws; or any other felony offense; unless the board determines that the offense does not have a direct bearing upon the person's ability to serve the public as a private investigator and the person has been sufficiently rehabilitated pursuant to the provisions of North Dakota Century Code section 12.1-33-02.1, or a full pardon has been granted.
4. Who is not and never has been confined or committed as a mentally ill person, as defined by North Dakota Century Code chapter 25-03.1, to a hospital or other institution, unless

the person is no longer suffering from disability as a mentally ill person.

5. Who has passed an examination conducted by or under the supervision of the board, to determine competency to receive a license as a private investigator.
6. Who has filed with the board a bond as required by section 93-02-01-08.

History: Effective March 1, 1990.  
General Authority: NDCC 43-30-04  
Law Implemented: NDCC 43-30-04

93-02-01-02. Qualifications for detective agency license. Any person hiring another person to perform private investigative services must obtain a detective agency license. Any individual who applies for a detective agency license must be licensed as a private investigator in this state and have at least two consecutive years of experience as an investigator in any jurisdiction or the United States. A corporation, partnership, or association which applies for a detective agency license must have at least one member of the partnership or corporate officers of the corporation who is a licensed private investigator in this state with at least two consecutive years experience as an investigator in any jurisdiction of the United States.

History: Effective March 1, 1990.  
General Authority: NDCC 43-30-04  
Law Implemented: NDCC 43-30-09

93-02-01-03. Qualifications of detective agency personnel.

1. For the purposes of this chapter, employee includes any person performing any private investigative services for a detective agency on a contractual basis.
2. A detective agency may only employ a person, who is licensed as a private investigator or registered as a provider of private investigative services, to assist in the work of the detective agency and the conduct of its business in any capacity of performing private investigative service work.
3. Any employee performing any private investigative service work for a detective agency in this state, except those specifically exempted by statute, must meet the qualifications specified to obtain a private investigator's license found in subsections 1, 2, 3, and 4 of section 93-02-01-01.
4. Any person employed by a detective agency to provide on a full-time, or substantially full-time basis private investigative services for the detective agency must also be individually licensed as a private investigator. Any person

employed by a detective agency to provide private investigative services on less than a substantially full-time basis, need only be registered as a provider of private investigative services as required in this section. Any person employed by a detective agency who does not provide any private investigative services need not be registered or licensed.

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

History: Effective March 1, 1990.  
General Authority: NDCC 43-30-04  
Law Implemented: NDCC 43-30-04

93-02-01-04. Application for private investigator license. The information on the application form of any person applying for a license as a private investigator must be the same as the information contained on the registration form of registered employees of detective agencies. This form differs from the employee registration form only in that it will not require the name and license number of the detective agency or dates of employment with that agency.

History: Effective March 1, 1990.

General Authority: NDCC 43-30-04  
Law Implemented: NDCC 43-30-06

93-02-01-05. Application form for detective agency license. Any individual making application for or renewal of a detective agency license shall file with the board the individual's own private investigator's license number, the address of the detective agency, and the telephone number of the detective agency. Any corporation or partnership making application for or renewal of a detective agency license shall file with the board the corporation or partnership's principal business address and telephone number, as well as the names, addresses, and telephone numbers of each principal officer, director, or partner, and the name, address, and telephone number of each person serving in any managerial capacity for the detective agency's operation in the state. Each corporation or partnership shall also provide the board with the appropriate articles of incorporation certificate number, or other appropriate reference number showing proper registration or certification by the secretary of state, if applicable, the name, address, and telephone number of an individual, licensed as a private investigator, responsible for the actions of detective agency personnel, and any other information the board may require.

History: Effective March 1, 1990.  
General Authority: NDCC 43-30-04  
Law Implemented: NDCC 43-30-09

93-02-01-06. Criminal records and background investigation check. Before issuing a license to an applicant for a private investigator's license, or before approving the registration of employees of a detective agency, the board may conduct or cause to be conducted a criminal records and background investigation check on the applicant.

History: Effective March 1, 1990.  
General Authority: NDCC 43-30-04  
Law Implemented: NDCC 43-30-04

93-02-01-07. Prohibitions.

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

which is marked or identified by any sign, insignia, decal, equipment, device, or contrivance, that could or might reasonably lead the general public to believe or assume that the vehicle has some or any official designation or is a vehicle of or belonging to any governmental law enforcement agency.

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

History: Effective March 1, 1990.  
General Authority: NDCC 43-30-04

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

93-02-01-08. Bonding.

1. Before a private investigator's license can be issued to any applicant, that applicant must file with the board a bond executed by the applicant and by a surety company to be approved by the board in the sum of five thousand dollars, in a form prescribed by the board.
2. Before a detective agency license can be issued, the applicant must file with the board a bond executed by the applicant and a surety company to be approved by the board in an amount determined by the number of persons employed or hired to do private investigative service work for the detective agency, in a form prescribed by the board.

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

1 - 5 employees .....	\$ 7,500.
6 - 10 employees .....	\$10,000.
11 - 20 employees .....	\$15,000.
21 or more employees.....	\$20,000.

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

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

History: Effective March 1, 1990.  
General Authority: NDCC 43-30-04  
Law Implemented: NDCC 43-30-04

93-02-01-09. Contents of license - Posting. To each qualified and approved applicant, the board shall issue a license as a private investigator or detective agency. The license must show the name and business location of each licenseholder, the date on which it was issued, and the date of expiration, and such other matter as shall be prescribed by the board. Each licensee shall conspicuously display that license at all times in the licensee's place of business. If the licensee has more than one office as a place of business, the licensee shall display a duplicate license at each office. A detective agency need not display the licenses of all the private investigators employed by the agency. If the board revokes, suspends, or disapproves renewal of any private investigator or detective agency license, the board may request the holder of the license to return the license to the board within fourteen days of the request.

History: Effective March 1, 1990.  
General Authority: NDCC 43-30-04  
Law Implemented: NDCC 43-30-05

93-02-01-10. Issuance of pocket cards.

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

the detective agency license stating the date the registered employee was terminated and the date the agency received the terminated individual's card.

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

History: Effective March 1, 1990.

General Authority: NDCC 43-30-04

Law Implemented: NDCC 43-30-05

93-02-01-11. Change of ownership or location. If a licensed detective agency is transferred to new ownership at any time, the detective agency shall notify the board within fourteen days of the date of the transfer and a new license application form must be submitted by the new owner to the board. Payment of license fees is nontransferable.

Also, each licensed detective agency shall notify the board about any changes in information provided in the application form, required by section 93-02-01-05, within fourteen days of the change.

History: Effective March 1, 1990.

General Authority: NDCC 43-30-04

Law Implemented: NDCC 43-30-05

93-02-01-12. Out-of-state private investigators.

1. Any agency or individual who solicits or provides private investigative services within the boundaries of this state must be licensed by the board of this state.
2. Any ongoing investigation that originates outside of this state can be continued in this state providing it can be concluded within thirty calendar days. Under these conditions no license or registration will be required.

History: Effective March 1, 1990.

General Authority: NDCC 43-30-04

Law Implemented: NDCC 43-30-05

93-02-01-13. Private investigator examination restriction. Any applicant for a private investigator's license or employee of a detective agency who fails to pass the first examination required by the board may apply for retesting no sooner than thirty days after notice of failure. Upon failure of second and subsequent examination, the applicant may apply for retesting again after a one-year waiting period.

History: Effective March 1, 1990.  
General Authority: NDCC 43-30-04  
Law Implemented: NDCC 43-30-04, 43-30-16

93-02-01-14. Carrying of firearms in the course of providing private investigative service. Carrying and the use of firearms by private investigators and registered employees of detective agencies must be in accordance with all existing state and federal laws, including certification and licensing when necessary. It is unlawful for any person while providing private investigative services to carry a firearm unless the individual carrying the firearm has completed the same requirements for firearms training as is required for North Dakota peace officers.

History: Effective March 1, 1990.  
General Authority: NDCC 43-30-04  
Law Implemented: NDCC 43-30-04

#### CHAPTER 93-02-02 PRIVATE SECURITY SERVICES

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93-02-02-01. Qualifications for private security service personnel. A person is qualified to register as an apprentice private security officer, security officer, or commissioned security officer:

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

History: Effective March 1, 1990.  
General Authority: NDCC 43-30-04  
Law Implemented: NDCC 43-30-05

93-02-02-02. Qualifications as an apprentice security officer. To qualify for registration as an apprentice private security officer, a person:

1. Must complete a minimum of sixteen hours of classroom instruction, relating to the provision of private security services before being uniformed and assigned to duty. This instruction must include the apprentice security officer

training curricula contained in appendix A plus first aid training as required by the board, and other instruction as determined by the employer for the particular assignment intended. However, a person may be employed by a private security agency for up to thirty days within any calendar year without having received the training required by this subsection, provided that the person is directly supervised onsite by a security officer or commissioned security officer employed by the private security agency.

2. Must receive a minimum of sixteen hours of field training, under the supervision of a security officer who has a minimum of two thousand hours of active service in that grade or equivalent combination of training and experience as defined in section 93-02-02-07, or under the supervision of a commissioned security officer, before being allowed to perform duties without direct supervision.

History: Effective March 1, 1990.

General Authority: NDCC 43-30-04

Law Implemented: NDCC 43-30-04

93-02-02-03. Qualifications for security officer. To qualify for registration as a security officer, an individual:

1. After one thousand hours as an active apprentice security officer, an individual may make application with the board for registration as a private security officer.
2. Must complete an additional thirty-two hours of classroom instruction as required by the board. This instruction must include the security officer training curriculum contained in appendix B required by the board, and other instruction as determined by the employer for the particular assignment intended.

History: Effective March 1, 1990.

General Authority: NDCC 43-30-04

Law Implemented: NDCC 43-30-04

93-02-02-04. Qualifications for commissioned security officer. To qualify for registration as a commissioned security officer, an individual:

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

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

History: Effective March 1, 1990.  
General Authority: NDCC 43-30-04  
Law Implemented: NDCC 43-30-04

93-02-02-05. Qualifications for armed security personnel. It is unlawful for any person while providing private security services to carry a firearm, unless the individual carrying the firearm:

1. Has achieved at least the rank of security officer as defined in section 93-02-02-03;
2. Has completed the same requirements for firearms training as is required for North Dakota peace officers; and
3. Has been issued the armed private security certificate required by subsection 5 of North Dakota Century Code section 43-30-16. Armed private security certificates expire on September thirtieth of each year.

History: Effective March 1, 1990.  
General Authority: NDCC 43-30-04  
Law Implemented: NDCC 43-30-04

93-02-02-06. Qualifications for trainers. Classroom instruction required of apprentice security officers, security officers, or commissioned security officers must be conducted by trainers certified by the attorney general or the board. Minimum requirements for certification as a trainer are:

1. Two thousand hours of active service as a security officer;
2. Equivalent combination of training and experience as defined in section 93-02-02-07;
3. One-year experience as an instructor in a relevant discipline at an education institution or educational agency; or
4. A degree from any educational institution in a nonrelevant discipline plus at least a minor in a relevant discipline.

History: Effective March 1, 1990.  
General Authority: NDCC 43-30-04  
Law Implemented: NDCC 43-30-04

93-02-02-07. Equivalency. The board may waive part of or all of any training or experience requirements for apprentice security officers, security officers, or commissioned security officers based

upon any combination of the following; provided, that the information necessary to make a determination regarding waiver of training or experience requirements is forwarded to the board's office by the registrant or applicant:

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

History: Effective March 1, 1990.

General Authority: NDCC 43-30-04

Law Implemented: NDCC 43-30-04

93-02-02-08. Licensing of persons providing private security. Any person providing private security services shall obtain a private security license from the board unless the person is registered as an employee of a licensed private security agency. To be eligible for this license, the person must be a commissioned security officer, either by registration or by the equivalency provisions as defined in section 93-02-02-07, and have passed an examination conducted by or under the supervision of the board.

History: Effective March 1, 1990.

General Authority: NDCC 43-30-04

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

93-02-02-09. Qualifications and licensing for private security agency. Any person hiring another person to perform private security services shall obtain a private security agency license. Any individual who applies for a private security agency license must themselves be licensed to perform private security services in this state and have at least two consecutive years of experience as a person providing private security services in any jurisdiction of the United States or have met the equivalency requirements of section 93-02-02-07. A corporation or partnership which applies for a private security agency license must have at least one member of the partnership or corporate officers of the corporation who is licensed to perform private security services in this state and who has at least two consecutive years of experience as a person providing private security services in any jurisdiction of the

United States or has met the equivalency requirements of section 93-02-02-07.

History: Effective March 1, 1990.

General Authority: NDCC 43-30-04

Law Implemented: NDCC 43-30-04

93-02-02-10. Registration of private security service personnel.

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

History: Effective March 1, 1990.

General Authority: NDCC 43-30-04

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

93-02-02-11. Application form for private security agency license. Any individual making application for or renewal of a private security agency license shall file with the board the individual's own private security license number, the address of the agency, and the telephone number of the agency. Any corporation or partnership making

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

History: Effective March 1, 1990.

General Authority: NDCC 43-30-04

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

93-02-02-12. Application for private security license. The information for the application form for any person applying for a private security license must include the applicant's name, any alias, date and place of birth, current address and telephone number, history of formal education, all residences during the immediately preceding five years, all employment or occupations engaged in during the immediately preceding five years, history of military service (including branch, dates of service, and type of discharge), a list of all arrests, convictions (felony and misdemeanor), and pending criminal actions in any jurisdiction, an acceptable color photograph taken within the immediately preceding six months, and general physical description (including height, weight, and color of eyes and hair). The registration form must also include a signed authorization by the applicant for a criminal records and background investigation check (waiver clause), and any other information as the board may require.

History: Effective March 1, 1990.

General Authority: NDCC 43-30-04

Law Implemented: NDCC 43-30-06

93-02-02-13. Criminal records and background investigation check. Before issuing a license to an applicant for a private security license or private security agency license, or before approving the registration of an employee as a provider of private security services, the board may conduct or cause to be conducted a criminal records and background investigation check on the applicant or registrant.

History: Effective March 1, 1990.

General Authority: NDCC 43-30-04

Law Implemented: NDCC 43-30-04

93-02-02-14. Prohibitions.

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

membership in the national guard, reserve, or regular armed forces of the United States, but do include positions or membership in the military police, security police, or similar police functions of the regular armed forces of the United States.

History: Effective March 1, 1990.  
General Authority: NDCC 43-30-04  
Law Implemented: NDCC 12.1-13-04, 37-01-26

93-02-02-15. Bonding.

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

1 - 5 employees . . . . .	\$ 7,500.
6 - 10 employees . . . . .	.\$10,000.
11 - 20 employees . . . . .	.\$15,000.
21 or more employees . . . . .	.\$20,000.

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

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

History: Effective March 1, 1990.  
General Authority: NDCC 43-30-04  
Law Implemented: NDCC 43-30-04

93-02-02-16. Contents of license - Posting. To each qualified and approved applicant, the board shall issue a private security license or a license as a private security agency. The license must show the name and business location of each licenseholder, the date on which it was issued, and the date of expiration, and such other matter as is prescribed by the board. Each licensee shall conspicuously display that license at all times in the licensee's place of business. If the licensee has more than one office as a place of business, the licensee shall display a duplicate license at each office. If the board revokes, suspends, or disapproves renewal of any private security license or private security agency license, the board may request the holder of the license to return the license to the board within fourteen days of the request.

History: Effective March 1, 1990.  
General Authority: NDCC 43-30-04  
Law Implemented: NDCC 43-30-05

93-02-02-17. Change of ownership or location. If a licensed private security agency is transferred to new ownership at any time, the agency shall notify the board within fourteen days of the date of the transfer and a new license application form must be submitted by the new owner to the board. Payment of license fees is nontransferable. Also, each licensed private security agency shall notify the board about any changes in information provided in the application form required by section 93-02-02-11, within fourteen days of the change.

History: Effective March 1, 1990.  
General Authority: NDCC 43-30-04  
Law Implemented: NDCC 43-30-05

93-02-02-18. Out-of-state private security services. Any agency or individual who solicits or provides private security services within the boundaries of this state must be licensed or registered by the board of this state.

History: Effective March 1, 1990.  
General Authority: NDCC 43-30-04  
Law Implemented: NDCC 43-30-05

93-02-02-19. Private security examination restrictions. An applicant for a license as a provider of private security services, who fails to pass the first examination required by the board, may apply for retesting no sooner than thirty days after notice of failure. Upon

failure of second and subsequent examination, the applicant may apply for retesting again after a one-year waiting period.

History: Effective March 1, 1990.  
General Authority: NDCC 43-30-04  
Law Implemented: NDCC 43-30-16

93-02-02-20. Carrying firearms by private security personnel. Carrying and the use of firearms by anyone providing private security services, including private security agency personnel, must be in accordance with all existing state and federal laws, including certification and licensing when necessary.

History: Effective March 1, 1990.  
General Authority: NDCC 43-30-04  
Law Implemented: NDCC 43-30-04

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

SECTION I. SECURITY ORIENTATION/OVERVIEW:

- A. Introduction and overview.
  - 1. To the course.
  - 2. To the employing organization.
- B. Role of private security.
  - 1. Brief history of private security.
  - 2. Overview of organization's security operations.
  - 3. Role of security in crime prevention and assets.
  - 4. Protection.
  - 5. Components of private security services.
  - 6. Primary functions/activities of security personnel.
- C. Ethical standards for security personnel.
  - 1. Code of ethics for private security personnel.
- D. Qualities essential to security personnel.

1. Attitude/public relations.
2. Appearance.
3. Personal hygiene.
4. Physical fitness.
5. Personal conduct/deportment.
6. Discipline.
7. Knowledge of responsibilities.

## SECTION II. CRIMINAL JUSTICE AND SECURITY PERSONNEL:

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

## SECTION III. GENERAL DUTIES:

- A. Patrol techniques.
  1. Functions of patrol.
  2. Types of patrol.
  3. Preparing for patrol.
  4. Dealing with juveniles.
  5. Personal safety on the job.

6. Traffic control.
- B. Access control.
1. Why access control.
  2. Types of access control systems.
  3. Controlling an entrance or exit.
- C. Notetaking/report writing.
1. Importance of notetaking/report preparation.
  2. Daily/shift reports.
  3. Incident/special reports.

#### SECTION IV. EMERGENCIES:

- A. Fire prevention and control.
1. What is fire.
  2. Causes of fire.
  3. Classes of fire.
  4. Recognition and identification of fire hazards.
  5. Firefighting, control, and detection equipment.
  6. Role in fire prevention.
  7. What to do in case of fire.
- B. Handling emergencies.
1. Bomb threats and explosions.
  2. Natural disasters.
  3. Mentally disturbed persons.
  4. Medical emergencies.
  5. First aid.

APPENDIX B  
SECURITY OFFICER TRAINING CURRICULUM OUTLINE  
(32 Hours)

## SECTION I. SECURITY SYSTEMS:

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

## SECTION II. EMERGENCY PROCEDURES:

- A. Medical emergencies of other emergency procedures.
- B. Defensive tactics.
- C. Unusual occurrences.
  - 1. Strikes, demonstrations, etc.

## SECTION III. ROUTINE PROCEDURES:

- A. Patrol.
  - 1. Prevention.
  - 2. Response to calls for service.
  - 3. Response to crime-in-progress.

4. Crime scene protection.
- B. Reporting.
1. Information collection.
  2. Report preparation.
- C. Dealing with problems unique to the individual's assignment.

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

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

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

Background investigation.

Civil court procedures.

Civil damage suits.

Criminal court procedures.

Collection and preservation of evidence.

Crime prevention.

Custody and control of property.

Fingerprints.

Followup investigations.

Identification of persons.

Industrial investigations.

Insurance investigations.  
Interviews.  
Investigation and security as a professional vocation.  
Investigator's notebook.  
Mock crime scene.  
Modus operandi.  
Motion and still cameras.  
Obtaining information from witnesses.  
Plaintiff investigations.  
Preemployment investigations.  
Preliminary investigations.  
Preventive security.  
Principles of investigation.  
Purpose of private investigation.  
Report writing.  
Retail store investigation.  
Rules of evidence.  
Search and seizure.  
Sources of information.  
Surveillance and stakeout.  
Taking statements.

CHAPTER 93-02-03  
GENERAL RULES

Section	
93-02-03-01	Powers of Private Investigative and Security Board
93-02-03-02	License Fees - Proration - Refunds
93-02-03-03	Renewal of Licenses
93-02-03-04	Grandfather Clause
93-02-03-05	Suspension, Revocation, or Refusal to Renew

## License

93-02-03-01. Powers of private investigative and security board. The private investigative and security board shall:

1. Conduct informal inquiries concerning grievances, license revocations, license suspensions, and violations of state law relating to the providing of private investigative services and private security services in North Dakota. The chairman of the private investigative and security board, or a designee, shall preside over all inquiries. The board may call witnesses for the purpose of inquiry but has no powers of subpoena. The board may take appropriate administrative action as necessary.
2. Perform all other functions and duties as prescribed by the governor.

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

History: Effective March 1, 1990.

General Authority: NDCC 43-30-04

Law Implemented: NDCC 43-30-03

93-02-03-02. License fees - Proration - Refunds. License fees for providing private investigative services and private security services may be prorated on a quarterly basis for each period the license is in effect. However, no license renewals may be issued on a prorated basis, and no refunds may be made on license fees paid. Any agency providing both private investigative services and private security services shall meet all of the requirements for licensing as a private security agency and a detective agency.

History: Effective March 1, 1990.

General Authority: NDCC 43-30-04

Law Implemented: NDCC 43-30-11

93-02-03-03. Renewal of licenses. Every holder of a license as a private investigator, detective agency, provider of private security services, or private security agency whose license has expired may have the same restored immediately upon payment of all lapsed renewal fees; provided, however, that not more than one year has elapsed since the date of expiration, and provided that this section does not relieve any person from criminal prosecution for engaging in practice or providing services without a license as required by North Dakota Century Code chapter 43-30. Any person not paying the lapsed renewal fees within the

time required by this section must be required to reapply for a new license and meet all the requirements for licensing.

History: Effective March 1, 1990.  
General Authority: NDCC 43-30-04  
Law Implemented: NDCC 43-30-11

93-02-03-04. Grandfather clause. No person, private security agency, or detective agency previously licensed to provide private security services or private investigative services may be required to apply for a new license to provide those services, unless that person's or agency's license has been suspended, revoked, or allowed to lapse for a period of time more than one year. However, any such person, private security agency, or detective agency previously licensed shall meet all the other applicable requirements of chapters 93-02-01, 93-02-02, and 93-02-03.

History: Effective March 1, 1990.  
General Authority: NDCC 43-30-04  
Law Implemented: NDCC 43-30-06

93-02-03-05. Suspension, revocation, or refusal to renew license. In addition to the causes for suspension, revocation, or refusal to renew a license listed in North Dakota Century Code section 43-30-23, the board may either refuse to renew, suspend, or revoke a license of any person or agency for any of the following causes:

1. Failure or refusal to furnish information required by statute, rule, or request of the board.
2. Making or causing to be made any false entry or written statement of fact in application for license, reports, or other written information to be filed with the board.
3. Fraud in the taking of examination for licensing.
4. Carrying a weapon in violation of any statute or rule specifically regulating the carrying of weapons by private investigators or private security personnel, or in violation of any state and federal laws.
5. Violation of sections 93-02-01-07 and 93-02-02-14.
6. Violation of any of the rules regulating the provision of private investigative services or private security services (chapters 93-02-01, 93-02-02, and 93-03-03).

History: Effective March 1, 1990.  
General Authority: NDCC 43-30-04  
Law Implemented: NDCC 43-30-12

