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Prepared by the Legislative Council staff  
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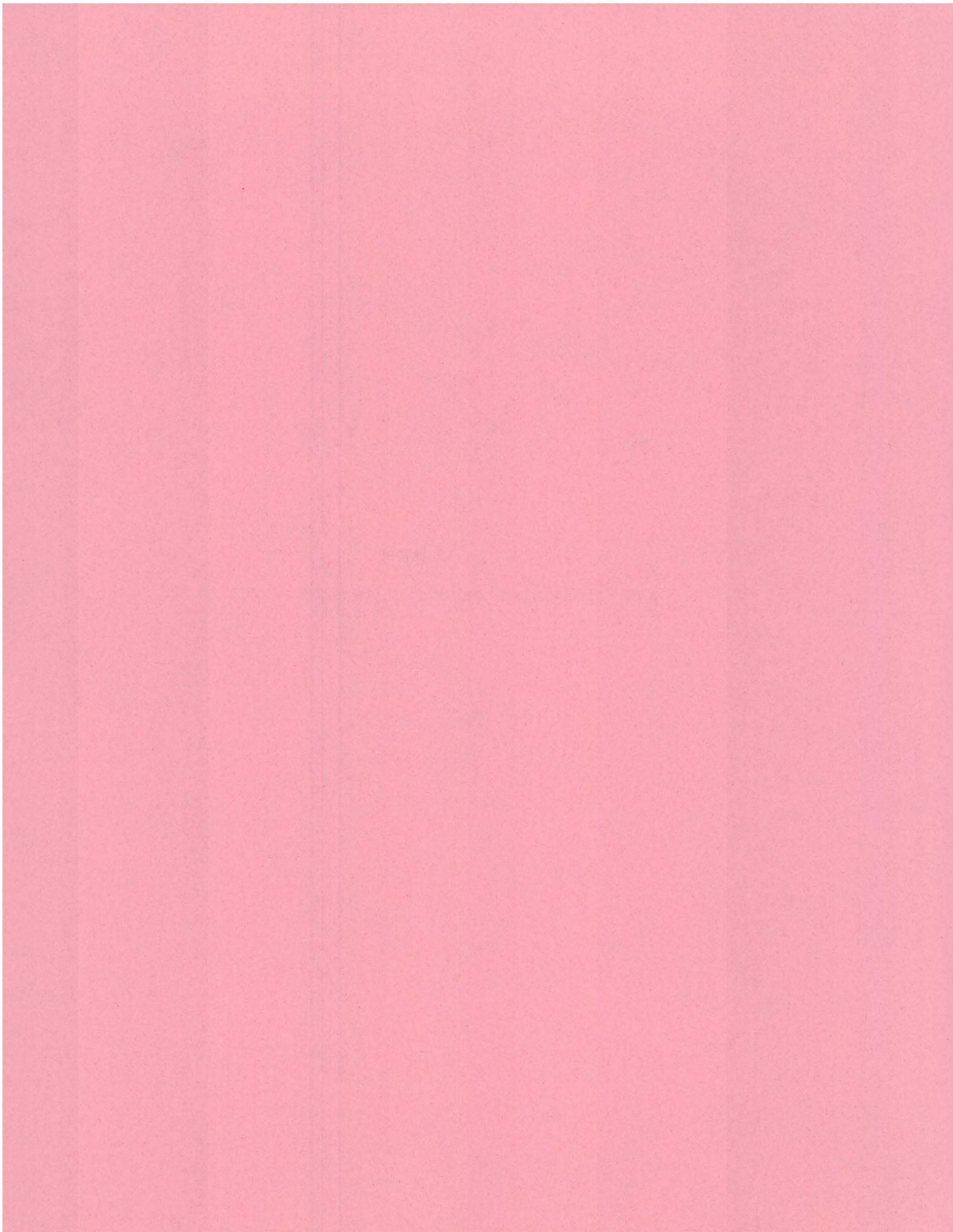


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TITLE 4  
Management and Budget, Department of



JANUARY 1993

CHAPTER 4-07-12

4-07-12-06. Annual leave taken in fifteen-minute increments. Effective on January 1, 1993, annual leave must be taken in fifteen-minute increments. An appointing authority may not accept an employee's request for annual leave for an amount of time less than fifteen minutes in duration. Repealed effective January 1, 1993.

History: Effective January 1, 1993.  
General Authority: NBCE 54-44.3-12  
Law Implemented: NBCE 54-44.3-12(1)

CHAPTER 4-07-13

4-07-13-08. Sick leave taken in increments. Effective January 1, 1993, sick leave must be taken in fifteen-minute increments. An appointing authority may not accept an employee's request for sick leave for an amount of time less than fifteen minutes in duration. Repealed effective January 1, 1993.

History: Effective January 1, 1993.  
General Authority: ~~NBCC 54-44.3-12~~  
Law Implemented: ~~NBCC 54-44.3-12(1)~~

TITLE 7  
Agriculture, Commissioner of



JANUARY 1993

CHAPTER 7-07-01

7-07-01-01. Bond required. Each applicant for a license under the provisions of North Dakota Century Code section 4-13.2-05 shall file with the application a bond, in the amount of ten thousand dollars, issued by an approved surety company. The department shall be named as the obligee in each bond but the bond shall be held for the purpose of protecting and for the benefit of any person buying or selling live poultry, as the case may be, to the licensee. Such bond shall be conditioned for all of the following:

1. The faithful performance by the licensee of the licensee's duties as such.
2. The compliance by the licensee with all of the provisions relating to the purchase or sale of poultry, as the case may be.
3. The full and complete payment to the seller for all poultry purchased by the licensee.
4. The full protection of any person who deals with the licensee.

Each bond shall cover the license period of the licensee.

Security may not be required for that portion of a licensee's business which is comprised of processing poultry raised and owned by the licensee or custom processing of poultry.

The department may waive the security requirements if it determines the volume of business is such that security would be impractical.

History: Amended effective January 1, 1993.  
General Authority: NDCC 4-13.2-03, 4-13.2-05, 28-32-02  
Law Implemented: NDCC 4-13.2-05

STAFF COMMENT: Article 7-11 contains all new material but is not underscored so as to improve readability.

ARTICLE 7-11

EGG REGULATIONS

Chapter  
7-11-01 Farm Flock Requirements

CHAPTER 7-11-01  
FARM FLOCK REQUIREMENTS

Section	
7-11-01-01	Definitions
7-11-01-02	Licenses
7-11-01-03	Labeling and Sales Requirements
7-11-01-04	Candling
7-11-01-05	Egg Handling
7-11-01-06	Egg Cleaning
7-11-01-07	General Requirements
7-11-01-08	Consumer Grades

7-11-01-01. Definitions.

1. "Check" means any crack in the exterior shell of an egg. Sometimes called cracked eggs.
2. "Department" means the department of agriculture.
3. "Destination" means the point other than the place of origin where eggs are offered for sale.
4. "Egg inspector" means an employee of the state of North Dakota authorized by the commissioner of agriculture, responsible for performing inspections pursuant to these rules.
5. "Small commercial flock" means a flock of hens between five hundred and three thousand laying hens.
6. "Washed eggs" means eggs which are washed and candled but are not graded to size. Grade B tolerances for checks will be allowed on these eggs.

History: Effective January 1, 1993.  
General Authority: NDCC 19-07-02  
Law Implemented: NDCC 19-07-02

7-11-01-02. Licenses - Application for licenses. Application for licenses must be made on forms provided by the commissioner of agriculture.

1. Egg dealer's license. Every person who wants access to commercial egg markets, engaged in the business of producing eggs shall first apply to and obtain from the department of agriculture an egg dealer's license. Licenses must be issued by the department upon receipt of proper application after inspection and approval of premises and equipment by an egg inspector pursuant to the rules of this article.
2. Candler license. Every person who candlers and grades eggs must be licensed. Candler or egg grader licenses must be issued after the candler or grader shows competence in grading and candling eggs as determined by the department of agriculture.

Egg dealer and candler grader licenses are not transferable. No egg dealer or candler grader licenses may be transferred from one person to another. New egg dealers or candler graders must possess a license. License fees are ten dollars annually and must be renewed by June first of each year.

History: Effective January 1, 1993.

General Authority: NDCC 19-07-02

Law Implemented: NDCC 19-07-02

7-11-01-03. Labeling and sales requirements.

1. Farm flock requirements. The farm flock requirements for egg production is a voluntary program.
2. Temperature. All eggs held or offered for sale must be stored in refrigerated compartments. The temperature cannot exceed forty-five degrees Fahrenheit [7.22 degrees Celsius]. This also includes temporary storage.
3. Cartons. Farm flock eggs offered for sale must be identified with the producer's name and address. Either blank cartons can be used or a carton with the individual farm name can be made up.
4. Expiration dates. All case lots of eggs must have a placard bearing the expiration date and producer's name. The expiration date cannot exceed twenty-three days from the date of candling.

History: Effective January 1, 1993.

General Authority: NDCC 19-07-02

Law Implemented: NDCC 19-07-02

7-11-01-04. Candling. All eggs being offered for sale must be candled. The equipment must be of a design allowed by the department of agriculture. Hand candling is permissible.

History: Effective January 1, 1993.

General Authority: NDCC 19-07-02

Law Implemented: NDCC 19-07-02

7-11-01-05. Egg handling. Eggs being stored before sale must be kept in an area away from objectionable odors. The storage area must be capable of maintaining a temperature of between thirty-three and forty-five degrees Fahrenheit [.55 and 7.22 degrees Celsius].

Egg packing materials must be cleaned and well constructed. Only clean, sound, dry flats and cartons must be used. Any carton or flat that is reused must be washed and sanitized before being reused.

Transportation of all eggs to the point of sale must be done in a covered container.

History: Effective January 1, 1993.

General Authority: NDCC 19-07-02

Law Implemented: NDCC 19-07-02

7-11-01-06. Egg cleaning. Eggs must be washed either manually or with the aid of automatic cleaning equipment. The entire shell of all eggs must be submerged. After washing the egg, it should be treated with a sanitizing solution and allowed to dry before packing. Clean potable water must be used in the egg-cleaning process. When manually washing eggs, a wash vat can be used with the detergent. Eggs should not be allowed to soak in water.

History: Effective January 1, 1993.

General Authority: NDCC 19-07-02

Law Implemented: NDCC 19-07-02

#### 7-11-01-07. General requirements.

1. Farms selling eggs to retailers or other business establishments will need an annual water sample.
2. Inspections of farm shell egg producers must be annually unless the commissioner of agriculture determines more inspections are necessary.
3. Failure to comply with farm shell rules may result in revocation of a permit.
4. Farm shell egg producers have the right to appeal or request a hearing to reinstate an egg producer permit. The appeal

process must be started within fifteen business days after permit suspension.

5. Farm shell egg producers and custom processors, custom hatcheries, and any other persons not directly buying or selling live poultry are exempt from North Dakota Century Code section 4-13.2-05.
6. Training for egg candling and grading will be provided by the department of agriculture.
7. Buildings housing egg grading and packing equipment must meet the following requirements:
  - a. Be of sound construction to prevent the entrance or harborage of vermin.
  - b. Be kept clean during grading and packing operations.
  - c. Be kept sanitary to prevent contamination of eggs during handling.
8. North Dakota shell egg production guidelines must be the same as the standards that govern the United States department of agriculture shell egg program.
9. The North Dakota department of agriculture may inspect out-of-state eggs at the retail level to assure compliance with North Dakota shell egg regulations.

History: Effective January 1, 1993.

General Authority: NDCC 19-07-02

Law Implemented: NDCC 19-07-02

#### 7-11-01-08. Consumer grades.

1. North Dakota consumer Grade AA at origin. Grade AA eggs at origin must consist of eggs which are at least eighty-seven percent AA quality. The thirteen percent below AA quality may be in any combination of A or B quality. Not more than five percent checks (seven percent for jumbo size) are permitted. Not more than fifty percent leakers, dirties, or loss due to blood or meat spots in any combination are permitted except the loss may not exceed thirty percent. Other types of loss are not permitted. Grade AA eggs at destination may not exceed seven percent checks (nine percent for jumbo size).
2. North Dakota consumer Grade A at origin. Grade A eggs at origin must consist of eggs which are at least eighty-seven percent A quality or better. Within the thirteen percent which may be below A quality, not more than one percent may be B quality due to blood spots or serious yolk defects. Grade A

eggs must have no more than five percent checks (seven percent check for jumbo size). Not more than fifty percent may be leakers, dirties, or loss due to blood or meat spots in any combination, except that the loss may not exceed thirty percent. Other types of loss are not permitted. Grade A eggs at destination may not exceed seven percent checks (nine percent for jumbo size).

3. North Dakota consumer Grade B at origin. Grade B eggs at origin must consist of eggs which are ninety percent B quality or better. Within the maximum tolerance of ten percent which may be below B quality, not more than ten percent may be checks. Not more than fifty percent may be leakers, dirties, or loss due to blood or meat spots in any combination, except that the loss shall not exceed thirty percent. Other types of loss are not permitted. Grade B eggs at destination cannot exceed quality factors set at the place of origin.

History: Effective January 1, 1993.

General Authority: NDCC 19-07-02

Law Implemented: NDCC 19-07-02



APRIL 1993

CHAPTER 7-03.1-01

7-03.1-01-01. New licenses. Each new sampler, ~~grader~~ milk hauler, or tester ~~applying~~ shall apply for license ~~shall first apply to~~ on forms provided by the dairy commissioner. New testers ~~and graders~~ and milk haulers will be issued a temporary permit good for a time period of three months. ~~New samplers will be issued a temporary permit good for a period of six months.~~ During this ~~timeframe~~ time, a licensed certified individual from the dairy department or the department of health and consolidated laboratories, or other qualified individual approved by the dairy commissioner must oversee the proficiency of the permitted individual ~~until such a time within the permitted period that the dairy commissioner can administer the appropriate written and practical examination.~~

History: Effective August 1, 1986; amended effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-12

7-03.1-01-02. Relicensing. To be relicensed, samplers, milk haulers, and testers, ~~and graders~~ must hold a current license and take any examinations or retraining required by the dairy commissioner ~~when the dairy commissioner reasonably determines it to be necessary.~~

History: Effective August 1, 1986; amended effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-12

7-03.1-01-03. Training. All licensed samplers and milk haulers must attend a training session at least once every two years. The

request for training is the responsibility of the sampler or milk hauler. Training must be provided by the dairy division of the department of agriculture.

History: Effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-12

## CHAPTER 7-03.1-02

7-03.1-02-01. Accepted tests. The following are the accepted tests to be performed on milk samples:

1. Butterfat - Babcock  
Milko Tester  
Milko Scan  
Berwind Multispec  
Gerber Test
2. Protein - Udy Protein Analyzer  
Pro-milk MK II  
Milko Scan  
Kjeldahl  
Berwind Multispec
3. Solids Not Fat - Udy  
Milko Scan  
Berwind
4. Bacteria - Standard plate count  
Direct microscopic clump count  
Plate loop
5. Somatic Cell -  
Screening: Wisconsin Mastitis Test - Eighteen millimeters  
Confirmatory: Direct microscopic somatic cell count  
Electronic somatic cell count  
Optical somatic cell count  
Membrane filter deoxyribonucleic acid  
somatic cell count  
Pyronin Y-methyl green stain (goats milk)
6. Coliform - Presumptive on violet red bile agar  
Confirmed with brilliant green lactose bile broth  
Petrofilm method
7. Antibiotic detection -  
Screening: ~~Charm~~ spot test, Penzyme and Delvo P Ampule Test  
Must be done with tests approved by the association  
of official analytical chemists or food and drug  
administration.  
Confirmatory: Bacillus Stearothermophilus Disc Assay with  
Penase Discs or Penzyme for Antibiotics of  
the Beta Lactum Group or other tests accepted  
by food and drug administration to be  
equally accurate and practical.
8. Phosphatase - Scharer Rapid Phosphatase Test, Rapid  
Colorimetric Phosphatase Method, Rutgers

## Phosphatase Test

9. Sediment - Mixed sample method or off-the-bottom method
10. Added Water - Thermistor Cryoscope
11. Acidity - Titratable

The dairy commissioner may approve equivalent tests other than those listed above on a case-by-case basis.

History: Effective August 1, 1986; amended effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-18

7-03.1-02-02. Standardizing requirements. All ~~tests required to standardize~~ testing procedures shall conform with the requirements in the latest ~~addition~~ edition of "The Standard Methods for the Examination of Dairy Products". The results of such tests must be maintained for one year and must be made available to the dairy commissioner upon request.

History: Effective August 1, 1986; amended effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-18

7-03.1-02-03. Plant laboratories. The laboratory utilized for the sampling and testing of dairy products must meet all of the ~~following~~ requirements: for grade A laboratories as listed in the "Pasteurized Milk Ordinance" or for manufacturing grade labs as recommended in the United States department of agriculture requirements or as required by the dairy commissioner.

1. ~~A separate room of adequate size to perform required tests and avoid overcrowding.~~
2. ~~Doors must be self-closing and tight fitting.~~
3. ~~Walls and ceilings must be smooth, impervious, and a light color.~~
4. ~~Floors must be smooth and impervious.~~
5. ~~A level bench or table covered with an impervious material, with ample working space and utilities, must be provided.~~
6. ~~Lighting must be provided at each work station at a minimum of one hundred foot-candles.~~

7. A two-compartment sink with hot and cold water must be provided. The sink must be connected to a sanitary sewer system.
8. Adequate ventilation must be provided to maintain temperature at sixty-one to eighty-one degrees Fahrenheit [16 to 27 degrees Celsius]. Laboratories utilizing Levowitz-Weber stain must have a hooded work area with forced air exhaust.
9. Laboratories utilizing sulfuric acid must have a shower, eye washes, eye protection, or other approved safety equipment available.
10. Cabinets for laboratory chemicals and supplies must be provided. All chemicals utilized in the laboratory must be stored in the laboratory or in other approved areas where proper temperature and ventilation can be maintained. All containers must be marked as to contents.
11. Refrigerators shall be available to maintain samples at thirty-two to forty degrees Fahrenheit [0 to 4.4 degrees Celsius].

History: Effective August 1, 1986; amended effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-18

7-03.1-02-04. Universal sampling plan. A universal sample must be collected every time the milk is picked up at the farm. This universal sample will be an aseptically collected sample that may be used for any and all tests described in this article as required by the dairy commissioner.

History: Effective August 1, 1986; amended effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-18

#### 7-03.1-02-05. Sample reporting - Records.

1. The results of all raw milk testing done for regulatory purposes by industry laboratories must be reported to the dairy commissioner no later than thirty days after sampling. However, all adulterants in raw producer samples must be reported immediately, and all tests above the maximum levels established by law must be reported to the dairy commissioner weekly. It is the responsibility of the licensed testers to submit all laboratory results.
2. Records on sampling, testing, or grading of milk or cream, used for the purpose of regulatory enforcement or establishing producer pay levels, must be maintained and available to the

dairy department for a period of twelve months. These records must include all of the following:

- a. Producer identification number.
  - b. Date of sampling, testing, or grading.
  - c. Type of sampling, testing, or grading procedure used.
  - d. Results of sampling, testing, or grading.
  - e. Name of licensed tester, grader, or sampler conducting the procedure.
3. During the course of investigating a complaint, the plant shall provide access to all quality records which may assist in the investigation.

History: Effective August 1, 1986; amended effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-18, 4-30-37

7-03.1-02-08. Sampling equipment. Each sample shall have available for use all of the following: All sampling equipment must comply with requirements listed in the latest edition of Standard Methods.

1. Sampling instrument, either:
  - a. Metal dipper with long handle, capacity of ten milliliters or greater, or
  - b. Single service, individually wrapped or presterilized straws.
2. Sample containers which must be:
  - a. Multiuse containers holding a minimum of two ounces. These containers must be sterilized by dry heat and steam and have leakproof closures. Containers and closures must be phenol-free. Multiuse containers may be used for butterfat sampling only.
  - b. Sterile, evacuated, sampling equipment may be used for collecting at least ten milliliter samples.
  - c. Pasterilized polyethylene or other nontoxic plastic containers of adequate size to meet test requirements.
  - d. Single service, nonsterile, leakproof vials for samples of raw milk or cream may be used provided that:

- (1) Maximum viable bacteria counts in rinse tests of containers do not exceed one per milliliter of capacity.
  - (2) Containers are not toxic and are not bacteriostatic or bactericidal.
  - (3) Closure is designed to be easily opened and closed without contamination.
  - (4) Containers must be of adequate size to meet test requirements.
3. Sanitizing solution (one hundred parts per million chlorine or equivalent). A sanitizing solution is required when a dipper is used in order to maintain the dipper in a sanitized condition.
  4. Sanitizer field test kit, used to measure strength of the sanitizing solution.
  5. Dial thermometer, accurate within one degree Fahrenheit [0.55 degrees Celsius]. Accuracy must be checked once during a six-month period at a temperature of forty-five degrees Fahrenheit [7.22 degrees Celsius]. The dial thermometer must be calibrated with the use of a certified mercury actuated thermometer. Certification must be obtained through the dairy department. A log of the results of each dial thermometer certified must be kept containing the same information recorded on the dial thermometer. This log must show the certification history of all dial thermometers for which the certification person is responsible for a period of one year. Each of the following must be listed on the dial thermometer:
    - a. 1. Initials of the person calibrating the dial thermometer.
    - b. 2. The date of calibration.
    - c. 3. The date of expiration and some method of identification (owner's name or thermometer number).
  6. Waterproof indelible marker to identify samples.
  7. Sample case which must be constructed so as to provide adequate space for samples and proper refrigerant to cool and maintain the samples at thirty-two to forty degrees Fahrenheit [0 to 4.4 degrees Celsius]. A rack must be provided to keep samples in an upright position. The neck of sample containers must be kept above the surface of the refrigerant. A proper refrigerant consists of a mixture of ice and water.

History: Effective August 1, 1986; amended effective April 1, 1993.  
 General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-18

7-03.1-02-09. Farm samplers for milk. Individuals licensed to sample milk at the farm shall follow all of the procedures listed below in the order listed. North Dakota Milk Hauler and Sampler Manual.

1. Place transfer hose through the hose port.
2. Garry sampler transfer instrument and sample container into milkroom in an aseptic manner. Single use sample transfer instruments stored in the milkroom must be stored within a closed original container and protected from moisture and contamination.
3. Wash or rinse, or both, and sanitize leaky farm bulk tank valves.
4. Place a sani-guide disk or equivalent in the transfer hose if used and connect milk transfer hose to farm bulk tank valve.
5. Wash and dry hands.
6. Smell milk through farm tank porthole.
7. Observe milk in a quiescent state with the lid open and adequate lighting available. If appearance or smell of the milk in the farm bulk tank leads the sampler to doubt its quality, take a sample and measurement of volume. Contact the receiving plant for additional instructions.
8. Dry measuring rod with an unused single-service paper towel. Seat stick and read with milk in a quiescent state. Record stick reading.
  - a. For farm tanks with external measuring tubes, the milk in the tube after reading must be discharged in a manner not to be commingled with milk being offered for sale.
  - b. External measuring rods must be cleaned and sanitized using a chlorine solution of one hundred parts per million or equivalent prior to use. Agitate farm bulk tank a minimum of five minutes for all tanks nine hundred gallons {3406.87 liters} or smaller and a minimum of ten minutes for all tanks larger than nine hundred gallons {3406.87 liters} before taking sample.
9. At least once a month, sanitize the pocket dial thermometer (immerse in sanitizer thirty seconds) and check milk temperature from it versus farm bulk tank thermometer. Record any discrepancy between the two on the farm inspection sheet. When the farm bulk tank thermometer deviates by more than plus or minus two degrees Fahrenheit {1.11 degrees Celsius} from

the pocket dial thermometer; the pocket dial thermometer must be used during every milk pickup from the bulk tank in question. All milk in the farm bulk tank must be forty-five degrees Fahrenheit {7.22 degrees Celsius} or less to be eligible for pickup and transport off the farm.

+0. Record the following on the sample container:

- a. Date.
- b. Time.
- c. Temperature of milk.
- d. Bulk hauler name or initial.
- e. Producer name or number.
- f. Any milk abnormalities (smell or sight).

The sampling container may not be preidentified before entering the farm milkroom.

+1. The same item listed in subdivisions a through f of subsection +0 should be recorded on the temperature control sample with the notation "T.C." A "T.C." must be taken at the first stop of the day and the first producer on every other farm bulk route picked up that day. This sample is to be transported with the set of samples representing each truckload of milk.

+2. Collect milk sample taking care to open sample container without contaminating interior of container or cap and sample only with agitator running. The agitator must have been running no less than five minutes for tanks with eight hundred gallons {3028.33 liters} or smaller and ten minutes for tanks over eight hundred gallons {3028.33 liters}. A sample must be taken from each tank used for raw milk storage on the farm at every pickup.

a. Metal dipper.

- (1) Rinse sampling device twice in milk before taking sample (sample through porthole).
- (2) Take sample four to six inches {10.16 to 15.24 centimeters} below level of milk.
- (3) Transfer to sample container. Do not pour into sample container over bulk tank porthole. Sample container is to be filled three-quarters full.

- (4) Close sample container. Replace porthole cover. Transport sample container to refrigerated sample case. The refrigerated sample case must contain sufficient room for a rack to maintain samples in an upright position. A water-ice mixture adequate to maintain milk samples at thirty-two to forty degrees Fahrenheit {0 to 4.4 degrees Celsius} must be utilized in the refrigerated sample case.
- (5) Rinse sample device in warm water and replace in carrying case.

b. Presterilize straws or pipettes:

- (1) With end of straw four to six inches {10.16 to 15.24 centimeters} below milk surface, close end of straw and transfer milk to sample container. Do not transfer directly over porthole. Fill sample container three-quarters full and discard extra milk in straw (sample through porthole).
- (2) Close sample container. Replace porthole cover. Transport sample container to refrigerated sample case. Dispose of sample instrument.

- +3. With agitator running, open the bulk tank valve and turn on the farm bulk truck transfer pump. All covers should be closed during milk transfer except for farm bulk tanks which operate under vacuum. Vacuum tanks must have one cover slightly open to prevent tank collapse while transferring.
- +4. When the level of the milk drops below the agitator blade, shut off the agitator.
- +5. When the farm milk tank is empty, shut off the farm bulk truck pump, disconnect the milk transfer hose and cap if used. Place the sani-guide disk in a conspicuous place for the producer to observe or in a clean sanitary holder for transport to the plant.
- +6. Observe the bottom of the tank for sediment and abnormalities. Record any unusual observances on the weigh ticket and sample container.
- +7. Rinse the bulk tank with lukewarm water, with bulk tank valve open.
- +8. Clean up milkroom so it is left in a similar condition to the way it was prior to entering.

If the agitator is running when the farm sampler enters the milkroom, the sequence must be +, 2, 3, 4, 5, 9, +0, +1, and +2. Then shut the agitator off and allow milk to become quiescent. Then finish by

~~completing 6, 7, 8, 13, 14, 15, 16, 17, and 18. No sample may be taken through the farm bulk tank valve unless approved by the dairy commissioner.~~

History: Effective August 1, 1986; amended effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-18

#### 7-03.1-02-10. Plant samplers.

1. Raw milk sampling procedures. Plant storage tanks or bulk milk tanks for storing raw milk without sampling cocks must be sampled using the same procedures described in sampling procedures for farm samplers ~~in section 7-03.1-02-09, excluding the references for transferring milk.~~
2. For plant storage tanks with sampling cocks, all of the following procedures must be used:
  - a. Rinse the area around the sample cock with warm water and clean if needed.
  - b. Wash and dry hands.
  - c. Sanitize sample cock ~~by the use of one hundred parts per million of~~ with an approved chlorine sanitize sanitizer or equivalent. Use a minimum contact time of thirty seconds.
  - d. Purge sample cock by discarding a volume of milk of sufficient quantity to remove any excess chlorine solution.
  - e. Two sample containers must be labeled with the following information:
    - (1) Plant name.
    - (2) Date.
    - (3) Time.
    - (4) Temperature.
    - (5) Sampler name or initials.
    - (6) Tank or silo identification.

The sample container to be used for the temperature control must also have the "T.C." notation put on the sample container.

- f. Aseptically remove the top of the bag or cap cover of the sample container for the one marked "T.C." **without touching the sample container to the sample cock.** Fill the sample container three-quarters full, close, and place immediately in a refrigerated sample case with a water-ice mixture capable of keeping the sample temperature at thirty-two through forty degrees Fahrenheit [0 through 4.4 degrees Celsius].
- g. Sanitize an approved certified pocket dial thermometer **by contact** with an approved **chlorine sanitizer** solution of **one hundred parts per million or equivalent for a minimum of thirty seconds.**
- h. Using the dial thermometer, or tank thermometer if certified within the last six months, obtain the temperature of the milk in the sample container. Write this temperature on both sample containers.
- i. Aseptically remove the top of the bag or cap of the remaining sample container and obtain a sample **without touching the sample container to the sample cock.** Fill the sample container three-quarters full. Close and place immediately in the refrigerated sample case.
- j. Rinse off all excess milk from the sample cock and storage tank or silo.

History: Effective August 1, 1986; amended effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-18

7-03.1-02-11. Finished product sampling procedures. All finished product collected for regulatory use must be collected by the dairy commissioner or the commissioner's designated representatives. Samples must be collected in a random manner and the older code date must be selected before a more recent code date.

Finished product chosen for sampling must be stored in a refrigerated sample container capable of maintaining the samples at thirty-two to forty degrees Fahrenheit [0 to 4.4 degrees Celsius]. A temperature control sample must be selected for each area or cooler where finished milk product is being stored. The temperature control must be opened and a temperature obtained using a properly certified dial thermometer. The temperature control must be closed and sealed to prevent leakage during transport. All finished samples for regulatory purposes must be taken at the plant of origin.

History: Effective August 1, 1986; amended effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-18

7-03.1-02-12. Adulterants.

1. Antibiotic screening Drug screening.

- a. Raw milk. An approved screening test of each commingled farm truckload of milk must be conducted daily in lieu of individual producer testing. All positive screening tests must be immediately confirmed. A positive confirmatory test on the commingled sample will require confirmation testing for antibiotics of all individual producer samples making up the farm truck commingled load. Prior to processing, all bulk milk pickup tankers must be tested for the presence of beta lactam drug residues and in addition must be tested for other residues as determined necessary by the dairy commissioner. Test methods will be those approved by the association of analytical chemists or the food and drug administration. A positive confirmatory test on the commingled sample will require confirmation testing for drug residues of all individual producer samples making up the bulk pickup tanker. Bulk milk tankers testing positive must be reported to the department immediately. This report must include the tests used, volume of milk contaminated, how the milk was disposed of and which producer caused the positive residue. All milk sample residue results must be recorded and retained for examination by the department for a period of six months.
- b. Bulk load rejected. If a bulk load of milk tests positive for a drug residue, the processor shall reject the entire bulk load. The rejected bulk load may not be used for human food.
- c. Dairy processor may recover loss. If a dairy processor sustains a monetary loss because a bulk load of milk is rejected, the dairy processor may recover that loss from the producer or producers whose individual milk samples represent shipments in that bulk load testing positive. Recovery may not exceed the processor's loss.
- d. Followup testing. If a bulk load of milk tests positive for drug residue, the processor shall immediately notify the department and suspend further pickup of milk from the producer whose milk contaminated the bulk load until followup tests of that producers milk test negative for drug residues. It is the responsibility of the dairy processor to perform followup tests.
- e. Testing bulk loads. In addition to performing routine beta lactam tests, a dairy processor shall randomly test bulk milk deliveries for other drug residues as required by the department. The drug testing program shall include

milk from each producer in at least four separate months during any consecutive six-month period.

f. Bacillus stearothermophilus. A reading of greater than twelve and eight-tenths millimeters but less than fifteen and eight-tenths millimeters on the bacillus stearothermophilus test of any individual producer's raw milk sample must be immediately reported to the dairy commissioner as below actionable level. A reading of sixteen ~~milliliters~~ millimeters or greater must be reported immediately to the dairy commissioner who shall stop milk shipments until the milk offered for sale tests twelve and eight-tenths or below millimeters using the bacillus stearothermophilus ~~tests or other.~~ Other tests approved by the dairy commissioner or the food and drug administration may be used.

~~b-~~ g. Finished product. All finished grade A milk products must be tested for antibiotics monthly. Raw milk contaminated with antibiotics may not be used in processing finished grade A products. All manufacturing grade finished milk products must be tested as determined by the dairy commissioner. These products include fluid and cultured products, butter, cheese, and other products so designated by the dairy commissioner.

~~A reading of twelve and eight-tenths millimeters or greater on the Bacillus Stearothermophilus must be immediately reported to the dairy commissioner who shall take appropriate action according to rule and statute. Plants using milk contaminated with antibiotics in manufacturing grade finished products shall notify the dairy commissioner. Antibiotic testing of finished dairy products by other governmental agencies must be accepted for meeting the requirements of this section upon approval of the dairy commissioner.~~

2. Producer penalties. A person may not sell or offer for sale milk or cream which contains drug residues or other chemical substances in amounts above the tolerances or safe levels established by the food and drug administration action levels are based on tolerances or "safe levels" specified by the United States food and drug administration, and identified in the memorandum from the food and drug administration's milk safety branch, HFF-346, dated July 21, 1991. "Safe levels" are merely enforcement guidelines and do not constitute legal tolerances. They do not legalize residues found in milk that are below the "safe levels".

a. When a producer is found to have shipped milk which tests positive for residue, that permit must be suspended for two days or equivalent penalty.

- b. When a producer is found to have shipped milk which tests positive for residue two times in a twelve-month period, that producer's permit must be suspended for a period of four days or equivalent penalty.
  - c. When a producer is found to have shipped milk which tests positive for residue three times in a twelve-month period, that producer's permit must be suspended for a period of four days or equivalent penalty, and the department shall start administrative procedures to revoke the producer's grade A permit for a period of not less than sixty days.
  - d. A milk producer who violates the drug residue rules shall have the permit to sell milk suspended until the milk has been sampled and found to contain no residues above safe levels. The producer will then be issued a temporary permit to sell milk for thirty days or until the producer and a licensed veterinarian have completed the milk and dairy beef quality assurance program and verification is received by the department.
  - e. The drug residue prevention program under this section should conform to the milk and dairy beef quality assurance program which is endorsed by the food and drug administration.
  - f. A producer may request a hearing within ten days of a suspension notice if the producer feels the department is in error.
3. Pesticides. Milk containing any pesticides or chemical contamination ~~over~~ exceeding United States food and drug administration or environmental protection agency established standards for safe food may not be offered for sale.
- ~~3.~~ 4. Added water. Milk may not contain added water. Any milk testing over ~~.540~~ .530 degrees Horvet using the cryoscope thermistor test may not be offered for sale. Regulatory action must be taken on all samples testing higher than two percent added water.

History: Effective August 1, 1986; amended effective April 1, 1993.  
General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1  
Law Implemented: NDCC 4-30-18, 4-30-40

## CHAPTER 7-03.1-03

7-03.1-03-01. General requirements. Cream separated on the farm used for manufacturing milk products must be derived from milk meeting the requirements of the certification program established by the dairy department. Wet hand milking is prohibited. All farm separated cream must be stored on the farm where produced for a period not exceeding seven days before being transported to a cream receiving station. Farm separated cream must meet the temperature and production requirements of manufacturing grade milk. Farm cream must be screened for drug residue.

History: Effective August 1, 1986; amended effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-21

7-03.1-03-02. Milk facility requirements. The milking facility must meet all of the following requirements:

1. Raw cream storage and milkroom:
  - a. Walls and ceilings dusttight.
  - b. Impervious floors.
  - c. Only water or refrigerated air can be used to cool the cream and the storage containers may not be submerged.
  - d. Adequate lighting, a minimum of ten foot-candles.
  - e. Self-closing, tight-fitting outer door.
  - f. Must be free from insects, rodents, and other vermin.
2. Milking area:
  - a. Adequate lighting, a minimum of ten foot-candles.
  - b. Dusttight ceilings, walls, and doors.
3. Water supply. The water supply must have been inspected and found to be in compliance with state water codes, or tested and found to be a safe water supply pursuant to the state department of health guidelines.
4. Premises and surroundings:
  - a. Manure must be removed or stored so as to not create a fly problem and must be inaccessible to the milking herd.
  - b. Cowyard must drain.

c. Surroundings must be maintained so as to prevent rodent harborage.

5. Milking herd:

a. Cattle must be kept clean and free of excess mud and manure.

b. All cattle must be free of any disease which can be transmitted via the milk to humans. Fowl and swine may not be housed in proximity to the milking herd.

6. Equipment:

a. Utensils, equipment, and all items used in handling milk must be free from rust.

b. All new and replacement equipment must meet 3A standards as defined in North Dakota Century Code section 4-30-01 where standards are established.

c. Finned metal must be rust-free.

d. Equipment must be cleaned and sanitized prior to each use.

e. Equipment must be stored to prevent contamination after cleaning and sanitizing until used.

7. Temperature standards:

a. 1. Cream on the farm and during transport must be maintained at thirty-two to forty-five degrees Fahrenheit [0 to 7.22 degrees Celsius].

b. 2. Once in possession of the cream station or plant, cream must be stored within temperatures ranging of thirty-two to forty-five degrees Fahrenheit [0 to 7.22 degrees Celsius] and maintained at that temperature.

History: Effective August 1, 1986; amended effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-21

7-03.1-03-03. Farm separated cream quality requirements.

1. Each container of farm separated cream must be tested for sediment content by using the "off-the-bottom" or the "mixed can" method.

2. If a producer's cream is classified number 1 or number 2, the cream must be accepted. If the cream is classified number 3, the producer must be put on probational status, and if the

next delivery tested contains cream classified as number 3 or number 4, the cream must be rejected. Any farm separated cream classified as number 4 must be rejected from the market. When cream is classified as "reject", the cream must be returned to the seller and colored with a harmless vegetable dye.

3. When cream from a producer falls below number 2, the cream buyer shall notify the state dairy commissioner. A special sanitary inspection must be conducted of the producer's facility. If the producer's facility does not meet the standards for the production of cream, the dairy commissioner may order their cream suspended from the market until unsatisfactory conditions have been corrected.

History: Effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-21

7-03.1-03-04. Classifications. For the purpose of quality control and establishing a rejection level of farm separated cream to the producer, seller, or shipper, the following classification of cream for sediment is applicable:

1. Accurate plant records listing the results of quality tests made on farm separated raw cream must be maintained on cream from each producer, seller, or shipper. Each producer, seller, or shipper shipping probational or rejected cream must be informed immediately of results of such quality tests. Producers, sellers, or shippers shipping cream should receive such information at the time of regular remittances. Such records must be available for examination by the dairy commissioner and kept on file for at least one year. Alternately, when a buyer of farm separated cream has in operation an acceptable quality program, at the producer level, which is approved by the dairy commissioner being effective in obtaining results comparable to or higher than the quality program as outlined in chapter 7-03.1-04 for cream, then such a program may be accepted in lieu of the program outlined in this section.
2. All containers used for sale of raw cream must be identified by state-assigned producer numbers or producer's name. A log identifying the producer container, acidity or bacteria test, sediment test and butterfat test results, and temperature must be maintained by the cream station for the period of one year.
3. Testing to determine classification of cream must be conducted by individuals licensed by the dairy commissioner.

History: Effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-21

CHAPTER 7-03.1-04

SEDIMENT TESTING

[Repealed effective April 1, 1993]

CHAPTER 7-03.1-05

7-03.1-05-01. Facilities Cream receiving and processing facilities.

1. Cream ~~stations~~ receiving and processing facilities shall provide all of the following facilities:
  - ~~1.~~ a. Laboratory area - adequate size and facilities to conduct butterfat, acidity, and sediment testing.
  - ~~2.~~ b. Cooling facilities - used for the storage of cream samples and for resale or processing shall maintain a storage temperature between thirty-two to forty-five degrees Fahrenheit [0 to 7.22 degrees Celsius].
  - ~~3.~~ c. External loading facilities, if present, must have insect-tight and dusttight, self-closing outer doors.
  - ~~4.~~ d. Floors:
    - ~~a.~~ (1) Cream ~~stations~~ with receiving and processing facilities must have concrete or tile floors in the cream receiving area.
    - ~~b.~~ (2) Cream ~~stations~~ receiving without processing facilities must have well maintained wood, linoleum, or other flooring material acceptable to the dairy commissioner.
  - ~~5.~~ e. Hand wash sinks and double vat sinks or can steamers.
  - ~~6.~~ f. Adequate supply of hot and cold running water.
  - ~~7.~~ g. Storage facilities for raw cream must be 3A approved standards, as defined in North Dakota Century Code section 4-30-01, and must be constructed of stainless steel or other material as accepted by the dairy ~~department~~ commissioner.
- ~~8.~~ 2. The cream receiving area must have trapped drains leading to an approved sewage disposal system.
- ~~9.~~ 3. A separate room for receiving and washing raw cream containers (i.e., cans) ~~are~~ is required if processing of milk cream products is conducted in the same facility.
4. Licensed cream stations must have a certified thermometer to check temperature of farm cream.
5. Plants receiving farm separated cream may process only cream.

History: Effective August 1, 1986; amended effective April 1, 1993.  
General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1  
Law Implemented: NDCC 4-30-25

CHAPTER 7-03.1-06

7-03.1-06-02. Milk offered for sale must be wholesome and unadulterated.

1. Milk must be tested monthly by either the direct microscopic count or the standard plate count to determine bacteria compliance. Milk must be classified for bacterial estimates based on either of these tests:

No. 1 Not over five hundred thousand per milliliter.

No. 2 Not over one million per milliliter.

Milk offered for sale must meet minimum United States department of agriculture standards.

2. Milk must be tested monthly to determine compliance with the somatic cell count. Determination of compliance may be by either of the following methods: the direct microscopic somatic cell count - single strip; electronic somatic cell counting; optical somatic cell counting; membrane filter deoxyribonucleic acid somatic cell counting; or screening tests of the Wisconsin Mastitis Test. The milk must test below one million somatic cells per milliliter of milk by the direct microscopic somatic cell count or below nineteen on the Wisconsin Mastitis Test. If the Wisconsin Mastitis Test is used and the test exceeds eighteen, then a confirmatory direct microscopic somatic cell count must be run to determine compliance. Effective July 1, 1993, the legal somatic cell count shall be seven hundred fifty thousand per milliliter.
3. A producer's raw milk must shall be classified as undergrade under warning when:
  - a. Monthly bacteria counts by the direct microscopic clump cell count or standard plate count exceed one million. Milk under warning because of exceeding a one million bacteria count on two successive monthly tests, must be rejected from the market for a minimum of one milking.
  - b. Two out of the last four monthly somatic cell counts exceed one million; seven hundred fifty thousand after July 1, 1993. Milk under warning because of somatic cell counts will result in a warning letter sent to the producer. No sooner than three days nor later than twenty-one days after the first warning letter, another sample must be taken and, if this test exceeds one million, the dairy commissioner shall reject the milk from the market. A producer will need three consecutive counts below the legal limit to regain full status.

- c. The sediment content exceeds one and five-tenths or equivalent by the mixed sample method; milk under warning because of sediment content must be resampled and tested between three and twenty-one days following notice of violation and if found to exceed one and fifty-hundredths milligrams by the mixed sampling method or equivalent must be rejected from the market.
- d. The last two dairy facility inspections scored below eighty five; or
- e. The same inspection item has been debited consecutively on the last three dairy facility inspections, unless the farm score is ninety or above. Violations of the same inspection item on four consecutive facility inspections will result in action to suspend certification if score is below ninety, and maximum points are taken for each violation.

Milk classified as undergrade because of bacterial quality on two successive monthly tests, must be rejected from the market.

Milk classified as undergrade because of somatic cell counts will result in a warning letter sent to the producer. No sooner than three days nor later than twenty-one days after the first warning letter, another sample must be taken and, if this test exceeds one million, the dairy commissioner shall reject the milk from the market.

Milk classified as undergrade because of sediment content must be resampled and tested between three and twenty-one days following notice of violation and if found to exceed one and fifty hundredths milligrams by the mixed sampling method or equivalent must be rejected from the market.

Milk classified as undergrade because of inspection score or three consecutive violations of an inspection item, if not corrected within thirty days from being classified undergrade, will result in certification being suspended.

Reinstatement of certification status cannot be accomplished until conditions leading to the undergrade status have been corrected by evidence of either test results or a satisfactory inspection of the facility, as determined by the dairy commissioner.

- e. Reinstatement of certification status cannot be accomplished until conditions leading to the suspension have been corrected by evidence of either test results or a satisfactory inspection of the facility, as determined by the dairy commissioner.

4. Wholesomeness. Milk offered for sale must be tested monthly to determine sediment content. The sediment standard is:

No. 1 Not to exceed fifty-hundredths milligrams or equivalent

No. 2 Not to exceed one and fifty-hundredths milligrams or equivalent

Note: All sediment tests must be by the mixed sample method, unless otherwise approved by the dairy commissioner.

5. Volume requirement. The volume of milk in the bulk tank after the first milking must reach the agitator to such a level that adequate agitation of the milk is possible. Failure to produce adequate volumes on the first milking will result in suspension of a producer's certification to sell raw milk.

History: Effective August 1, 1986; amended effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

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

#### 7-03.1-06-03. Water supply.

1. The dairy facility water supply must be properly located, protected, and operated and must be of ample supply and safe for the cleaning of utensils and equipment. Rural farm water supplies approved by the state department of health and consolidated laboratories are acceptable. Wells constructed in compliance with state board of water well contractors and tested every three years by an approved laboratory and found to be satisfactory are acceptable. Other water supplies approved by the dairy commissioner and tested annually and found to be satisfactory are acceptable. All water sources must be tested following repairs or other disruptions to the water system and must be found satisfactory. All new water supplies to the dairy facilities must be in compliance with either 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. ~~A separate handwashing facility~~ Handwashing facilities, including soap, individual sanitary towels, and hot and cold water under pressure ~~with a mixing faucet, hand sink, or washbasin~~ must be provided.

History: Effective August 1, 1986; amended effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-27

7-03.1-06-04. Milk truck approach. The milk truck approach to the dairy facility must be such as to prevent excess mud and to allow

easy access to the milkroom. Farm animals may not have free access to the truck approach area milk loading area. The hoseport slab and milk loading area must be kept clean.

History: Effective August 1, 1986; amended effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-27

7-03.1-06-06. Milkhouse or milkroom Milking facility requirements. All milking facilities selling manufacturing grade milk must comply with the current United States department of agriculture recommended guidelines for farms.

1. A milkhouse or milkroom conveniently located and properly constructed, lighted, and ventilated must be provided for handling and cooling milk and for washing, handling, and storing the utensils and equipment. Light fixtures over a bulk tank must be constructed of shatterproof materials.
2. The floor of the building must be of concrete or other impervious material and graded to provide proper drainage. The walls and ceilings must be constructed of smooth, easily cleaned material, and must be dusttight.
3. All outside doors must be self-closing, unless they are provided with tight-fitting screen doors that open outward or unless other effective means are provided to prevent the entrance of flies. If a part of the barn or other building, the milkhouse or milkroom must be partitioned, screened, and sealed to prevent the entrance of dust, flies, or rodents. Solid doors between the milkroom and milking area are required to be tight-fitting and self-closing.
4. The milkhouse or milkroom must be equipped with a wash and a rinse vat constructed of material approved by the dairy commissioner, a utensil rack, and milk cooling facilities, and must have an adequate supply of hot and cold water under pressure for cleaning of the milking equipment.
5. Other products may not be handled in the milkroom which would be likely to contaminate milk, or otherwise create a public health hazard.
6. The milkhouse or milkroom and appurtenances must be kept clean and free of trash, animals, and fowl.
7. Single-service articles must be properly stored and may not be reused.
8. Only pesticides approved for uses in the milkroom with an environmental protection agency number may be stored in the milkroom and when used must be used in accordance with label

instructions so as to prevent contamination of the milk. Antibiotics and other medicinals may be stored in the milkroom if stored in a safe manner, to not contaminate the milk supply or milk contact equipment.

History: Effective August 1, 1986; amended effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-27

7-03.1-06-07. Utensils and equipment. Utensils and equipment used in the milking and milk handling operations must be in good repair, clean, and properly stored. Cleaning equipment must be in satisfactory condition and properly stored. All milk contact surfaces must be free of milk and other residue buildup and must be maintained in a sanitary condition. Milk contact surfaces must be washed, rinsed, drained, and stored in a sanitary manner after each use and must be sanitized immediately prior to each use. All utensils and equipment must comply with applicable 3A sanitary standards as defined in North Dakota Century Code section 4-30-01. Approved dairy cleaners, sanitizers, and brushes must be available in the milkroom or adjacent approved storage area. Repealed effective April 1, 1993.

History: Effective August 1, 1986.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-27

7-03.1-06-07.1. Pesticides. Only pesticides approved for use in the milkroom with an environmental protection agency number may be stored in the milkroom and when used must be used in accordance with label instructions so as to prevent contamination of the milk. Antibiotics and other medicinals may be stored in the milkroom if stored in a safe manner to not contaminate the milk supply or milk contact equipment. No automatic pesticide dispensers are allowed.

History: Effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-27

7-03.1-06-08. Bulk milk.

1. A bulk milk tank that meets 3A sanitary standards as defined in North Dakota Century Code section 4-30-01 for construction must be provided. Milk may not be stored in the milkroom in unapproved containers or offered for sale in any unapproved container. The tank will be equipped with an approved milk measuring device, and a conversion table to determine pounds [kilograms] will be in the milkroom. Milk above forty-five degrees Fahrenheit [7.22 degrees Celsius] may not be offered for sale or transported off of farms.

- 2- The bulk tank must be cleaned after each milk pickup and sanitized prior to refilling the tank. New tanks must be equipped with a tight-fitting, 3A sanitary standards, as defined in North Dakota Century Code section 4-30-01, approved valve designed for use on a bulk tank. Existing tanks must be equipped with 3A sanitary standards, as defined in North Dakota Century Code section 4-30-01, approved valves or other valves acceptable to the dairy commissioner. Valves not designed for cleaning-in-place cleaning must be taken apart and hand-cleaned and sanitized between milk pickup and refilling.
- 3- Milk in farm bulk tanks must be cooled to forty degrees Fahrenheit [4.4 degrees Celsius] or lower within two hours after milking and maintained at forty-five degrees Fahrenheit [7.22 degrees Celsius] or lower until transferred to the transport tank, and blended milk may not exceed fifty degrees Fahrenheit [10 degrees Celsius]. All bulk tanks will be equipped with a thermometer accurate to within plus or minus two degrees Fahrenheit [1.11 degrees Celsius]. Milk may not be held longer than ninety-six hours on the farm from the first milking to pickup, except during storm-related conditions. Any time milk is removed from the bulk tank, the tank must be completely emptied, washed, and sanitized prior to the next milking. Milk offered for sale must be removed from the tank only through the tank milk valve.
- 4- The farm bulk tank must be properly located in the milkhouse or milkroom for access to all areas for cleaning and servicing. It may not be located over a floor drain or under a ventilator.
- 5- 2. A platform or slab constructed of concrete or other impervious material must be provided outside the milkhouse, properly centered under a suitable port opening in the wall for transferring milk from the bulk tank to the milk truck. On new construction, a minimum of six-foot by six-foot [1.83-meter by 1.83-meter] slab is required. The port opening must be closed when not in use.

History: Effective August 1, 1986; amended effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-27

#### 7-03.1-06-09. Milking area.

- 1- A milking barn or milking parlor of adequate size and arrangements must be provided 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, and the floors and gutters in the milking area must be constructed of concrete or other impervious material, and must be in good repair. The milking areas must be protected from particles from areas outside the milking facility. The walls and ceilings must be in good repair. The facility must be kept clean. The manure must be removed daily and stored to prevent access to the cows. Repealed effective April 1, 1993.

History: Effective August 1, 1986.

General Authority: ~~NBCC 4-29-03, 4-29-04, 4-30-55.1~~

Law Implemented: ~~NBCC 4-30-27~~

7-03.1-06-10. Yard, loafing area, or premises. The facility must be kept clean. The manure must be removed daily and stored to prevent access to cows. The yard or loafing area must be of ample size to prevent overcrowding, must be drained to prevent forming of standing water pools, and must be kept clean. Manure must be spread daily or stored in an approved manner. Stacked or piled manure and manure packs in housing facilities must be spread prior to fly season each year (approximately June 15).

History: Effective August 1, 1986; amended effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-27

7-03.1-06-11. Milking procedures. All milking procedures must comply with current United States department of agriculture recommended guidelines.

- 1- All milking cows must be kept clean. The udders and teats must be washed and wiped immediately before milking with a clean, damp cloth or paper towel moistened with a sanitizing solution and wiped dry. Other sanitary udder wash 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 cows or handle milk or milk containers, utensils, or equipment.
- 3- Milk from cows known to be infected with mastitis, residues of antibiotics or other drugs, milk containing pesticides or other chemical residues in excess of the established state or federal limits, or milk from cows during the first ninety-six hours after freshening (colostrum) must be milked last or with separate equipment and must be excluded from the market.
- 4- Milk stools, surcingles, and antikickers must be kept clean and properly stored.

5. ~~Dusty operations may not be conducted immediately before or during milking. Strong flavored feeds are to be fed after milking.~~
6. ~~Concentrates and feed, if stored in the building, must be kept in a tightly covered box or bin.~~

History: Effective August 1, 1986; amended effective April 1, 1993.  
General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1  
Law Implemented: NDCC 4-30-27

7-03.1-06-12. Inspection procedures and enforcement - Farm inspection.

1. Farms scoring ~~ninety-two~~ ninety or higher on farm inspections, ~~with all violations on the preceding inspection corrected,~~ must be inspected at a frequency of every four to six months.
2. Farms scoring between ~~ninety-one~~ eighty-nine and ~~eighty-five,~~ eighty must be inspected at a frequency of every sixty to one hundred twenty days.
3. ~~Farms scoring below eighty-five, or farms with two successive violations, must be reinspected at a frequency of every fourteen to forty-five days.~~ Farms under warning or with equipment cleaning or cooling problems will be inspected within thirty days.
4. Items for which the dairy commissioner has established a compliance deadline are exempted from further action until the deadline has expired.

History: Effective August 1, 1986; amended effective April 1, 1993.  
General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1  
Law Implemented: NDCC 4-30-27, 4-30-28

## CHAPTER 7-03.1-07

### 7-03.1-07-01. General requirements for the certification of new milking facilities.

1. All dairy farms wishing to sell milk shall make application for farm certification pursuant to North Dakota Century Code section 4-30-28. No dairy farm may sell milk or cream without state certification.
2. Application must be made by letter to the office of the state dairy commissioner, state capitol, Bismarck, North Dakota, at least twelve days before inspection of facilities and premises by the state dairy department.
3. A set of plans containing information on the dairy farm, milking facility, and milking equipment must be submitted to the dairy commissioner for new dairy facilities or prior to major changes in existing facilities. This information must be provided by the dairy producer and accepted by the dairy commissioner prior to the start of any improvements.
4. A facility inspection must be conducted and a water sample taken as a requirement for certification. Satisfactory results from both these items will result in the posting of an inspection sheet which represents certification of that facility to sell milk in the state of North Dakota.
5. The inspection sheet must be prominently posted on the premises and is prima facie evidence in all proceedings by and before the dairy commissioner for compliance of premises and facilities with all the provisions of North Dakota Century Code chapter 4-30.
6. Dairy farm facilities will be certified according to approved uses as:
  - a. Grade A - A production unit that is certified by the dairy department to meet state production practices as required by North Dakota Century Code section 4-30-36.
  - b. Manufacturing grade - A production unit that is certified by the dairy department to meet state production requirements as required by North Dakota Century Code section 4-30-27.
  - c. Cream grade - A production unit that is certified by the dairy department to meet state production requirements as required by North Dakota Century Code section 4-30-21.

7. Certification is continuous unless suspended or revoked and is not transferable.
8. Any dairy facility temporarily not in use during a normally scheduled inspection is required to be recertified prior to the start of raw milk ~~or cream sale~~ production.
9. All certified producers will be assigned a producer number by the dairy commissioner. This number must be used by the producer, bulk hauler, and plant when communicating with the dairy department.

History: Effective August 1, 1986; amended effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-28

7-03.1-07-02. Special requirements for the certification of new milking facilities.

1. Grade A milk farm.

- a. The water supply must be tested by an approved state water testing laboratory and found to contain less than one coliform per milliliter of water by the membrane filter method; or less than two and two-tenths coliforms per milliliter of water if tested by the most probable number method; a source from which the supply has been approved for municipal or rural water supply by the state department of health; a well constructed in compliance with North Dakota board of water well contractors requirements for water wells for domestic use; or for existing wells that are of approved construction; a pit that meets the following minimum requirements is acceptable: Water supply and facilities must meet all pasteurized milk ordinance requirements at time of certification.

(1) Walls must be watertight and extend above ground surface a minimum of six inches [15.24 centimeters]. Water supply must meet the requirements of the North Dakota board of water well contractors and state department of health and consolidated laboratories, division of water supply and pollution control at time of certification.

(2) A concrete floor sloping to an externally discharging drain or sump equipped with sump discharging to the surface is required. Or a supply which has been approved for municipal or rural water supply by the state department of health and consolidated laboratories.

- (3) All pumps located in the pit must be mounted a minimum of twelve inches [30.48 centimeters] above the floor of the pit. Properly constructed wells must be located at least fifty feet [15.24 meters] from privy pits, cesspools, septic tanks, absorption fields, sewers, barnyards, feedlots, high water marks of lakes, streams, sloughs, ponds, etc.
- (4) A watertight overlapping cover is required on the pit. Fifty feet is the distance requirement with favorable soil conditions, with a properly constructed well. The dairy commissioner may require more than fifty feet [15.24 meters] when soil conditions are unknown or the nature of contaminant or toxic chemical wastes in the area.
- (5) Wells must be at least ten feet [3.01 meters] from any basement.
- (6) One hundred fifty feet [45.72 meters] from underground manure storage, chemical or fertilizer storage, or chemical preparation area.
- (7) Hydrants must be ten feet [3.01 meters] or more away from well.
- (8) Well site may not be subject to flooding and should be graded to facilitate the rapid drainage of surface water.
- (9) The grade must be sloped away from the well to divert surface water. The area must be filled, if necessary, graded, and maintained to prevent the accumulation or retention of surface water within fifty feet [15.24 meters] of the well in all directions.
- (10) For a well on a hillside, adequate intercepting ditches shall be constructed on the uphill side of the well to keep runoff at least fifty feet [15.24 meters] away from it in all directions.
- (11) The casing or pitless unit for all ground water sources must project not less than twelve inches [30.48 centimeters] above the final ground elevation, the well cover slab, or pumphouse floor.
- (12) Pit wells, buried well seals, and sand point wells are not acceptable for grade A certification.

b. A farm score of ninety or better by a dairy department inspector at the time the certification inspection is conducted is required and all the following must be met:

(1) All construction requirements have been found in compliance or an acceptable date agreed to for compliance.

(2) All milk contact equipment and utensils must meet 3A sanitary standards, as defined in North Dakota Century Code section 4-30-01, construction or cooling requirements, provided 3A sanitary standards, as defined in North Dakota Century Code section 4-30-01, have been adopted.

(3) The farm bulk tank must be empty at the time of certification.

b. Temporary certifications will not be issued for grade A farms. Only farms that have met all minimum requirements for grade A will be certified.

c. The farm bulk tank must be empty at the time of certification.

d. Hoseport must be installed in an exterior outside milkhous well.

e. Hoseport slab must be at least a six-foot by six-foot [1.83-meter by 1.83-meter] cement slab centered under the hoseport.

f. Milkhous must have a direct door to the exterior. Haulers must not have to go into milking area or animal housing area to get to the milkhous.

g. No light fixtures or vents over bulk tanks.

h. Handwashing facilities must be in the milkhous. Hand sinks must be of lavatory fixture style and at least twenty-four inches [60.96 centimeters] away from wash vats or have splash board of sufficient size to prevent contamination of double vat. Two compartment wash vats must be stainless steel.

i. Light must be provided to properly inspect interior of bulk tanks.

j. Livestock or fowl may not have access to truck approach (driveway) or loading area.

k. Hot water heater capacity must be adequate to do a good job of cleaning the equipment.

2. Manufacturing grade milk farm. Manufacturing grade milk farms shall meet all requirements of the United States department of agriculture minimum standards minimum standards.

- a. Water supply has been tested and found safe by a state-approved water testing laboratory.
- b. The farm has obtained a minimum score of ninety on its certification inspection and all the following are met:
  - (1) All construction requirements are in compliance or a satisfactory compliance date has been agreed to.
  - (2) All milk contact and cooling equipment meets the requirements for manufacturing milk production.

3. Cream grade farms.

- a. The water supply has been inspected and found in compliance with state water codes, or tested and found to be a safe water supply pursuant to the state department of health guidelines.
- b. The farm has been inspected and found to be in adequate compliance to assure the production, handling, and storage of a safe and wholesome cream supply.

History: Effective August 1, 1986; amended effective April 1, 1993.  
 General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1  
 Law Implemented: NDCC 4-30-28

7-03.1-07-03. Rejection of certification and appeal.

1. Should the inspection determine that deficiencies exist which prevent certification of the farm, the farm may not be certified.
2. The producer shall correct all deficiencies prior to requesting a reinspection.
3. A dairy producer denied certification may appeal that decision to the dairy commissioner within thirty days of the denial, by requesting, in writing, a hearing. Upon receipt of the request for a hearing, the dairy commissioner shall convene a hearing as soon as possible, but not later than fifteen days after receiving the request. All interested parties must be given notice to attend the hearing. Notice may be oral notice if time does not allow for written notice. The hearing must otherwise be in accordance with North Dakota Century Code chapter 28-32. The dairy commissioner hearing officer shall issue a written decision including findings and conclusions in regard to certification, if certification is denied.

History: Effective August 1, 1986; amended effective April 1, 1993.  
 General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1  
 Law Implemented: NDCC 4-30-28

## CHAPTER 7-03.1-08

### 7-03.1-08-01. Transfer procedures.

1. Dairy producers must meet minimum quality and inspection standards to be eligible to sell their milk. To ensure that this regulation is effective, all current dairy producers who want to transfer between plants shall make application to the dairy commissioner for authority to transfer. The application must be made on forms provided by the dairy commissioner.
2. Upon receipt of an application, the dairy commissioner shall examine the inspection and milk quality records of that producer. If the producer's records indicate that the producer meets minimum milk quality standards for the respective grade of milk being sold and the producer is under no suspension or suspension warning, the dairy commissioner shall immediately approve the transfer application and mail a copy to the dairy producer and plants involved. Should the producer's records leave doubt about whether minimum standards are met, the dairy commissioner shall immediately order a sample of milk be taken or an inspection of the dairy facility, or both, to determine compliance. If said inspection ~~(minimum score of eighty five for manufacturing grade and ninety for grade A required)~~ and milk quality tests conclude that the producer meets minimum standards, the dairy commissioner shall immediately approve the transfer and notify the interested parties.
3. In all cases, the dairy commissioner shall approve or disapprove the application to transfer in writing, within seven days. The transfer is effective, if approved, no sooner than fourteen days after receipt of the application by the dairy commissioner.
4. No transfer may be approved while a producer is under a warning of intent to suspend for failure to meet any minimum quality standard for raw milk offered for sale.
5. Upon written request of the dairy producer, within thirty days of the denial of a transfer request, the dairy commissioner shall convene a hearing, within fifteen days of receiving the written request, to determine the circumstances of the disputed transfer and whether the denial is proper. The hearing must otherwise be in accordance with North Dakota Century Code chapter 28-32. The dairy commissioner shall issue written findings and conclusions from the hearing if transfer is denied.
6. If a producer wishes to stay with the producer's current milk buyer before the approved transfer date, the producer may

notify the dairy commissioner to rescind the transfer. The producer must notify the companies involved that the transfer was rescinded.

History: Effective August 1, 1986; amended effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-23

CHAPTER 7-03.1-09

7-03.1-09-01. Chemical, physical, bacteriological, and temperature standards. The following chemical, physical, bacteriological, and temperature standards apply to milk and milk products standards of identity and quality, and at a minimum must meet the standards established by the United States department of agriculture and the pasturized milk ordinance.

- 1. Commingled grade A raw milk for pasteurization
  - Temperature . . . . . Milk must be received and maintained not to exceed ~~fifty~~ forty-five degrees Fahrenheit [~~10~~ 7 degrees Celsius] while in storage.
  - Bacterial limit . . . . . Not to exceed three hundred thousand per milliliter prior to pasteurization.
  - ~~Antibiotics~~ Drugs . . . . . Not to equal or exceed sixteen millimeter zone with the Bacillus Sterothermophilus disc assay method or a positive confirmation on a food and drug administration approved test.
  
- 2. Grade A pasteurized milk and milk products
  - Temperature . . . . . Cooled to forty-five degrees Fahrenheit [7 degrees Celsius] or less and maintained thereat.
  - Bacterial limit . . . . . Twenty thousand per milliliter.
  - Coliform . . . . . Not to exceed ten per milliliter, provided that, in the case of bulk milk transport tank shipments, it shall not exceed one hundred per milliliter.
  - Phosphatase . . . . . Less than one microgram per milliliter by the

		Scharer Rapid Method or equivalent.
	<del>Antibiotics</del> <u>Drugs</u> . . .	No zone greater than or equal to sixteen millimeters with the Bacillus Sterothermophilus disc assay method <u>or a positive confirmatory on a food and drug administration approved test.</u>
3. Grade A pasteurized condensed milk	Temperature . . . . .	Cooled to forty-five degrees Fahrenheit [7 degrees Celsius] or less and maintained at that level unless drying is commenced immediately after condensing.
	Bacterial limit . . . . .	Not to exceed thirty thousand per gram.
	Coliform limit . . . . .	Not to exceed ten per gram.
	<del>Antibiotics</del> <u>Drugs</u> . . .	No zone greater than or equal to sixteen millimeters with the Bacillus Sterothermophilus disc assay method <u>or a positive confirmatory on a food and drug administration approved test.</u>
	Phosphatase . . . . .	Less than one microgram per milliliter by the Scharer Rapid Method or equivalent.
4. Grade A nonfat dry milk	Not more than:	
	Butterfat . . . . .	One and twenty-five-hundredths percent.
	Moisture . . . . .	Four percent.
	Titratable acidity . . . . .	Fifteen-hundredths percent.
	Solubility index . . . . .	One and twenty-five-hundredths milliliters.
	Bacterial estimate . . . . .	Thirty thousand per gram.
	Coliform . . . . .	Ten per gram.
	Scorched particles disc B . . . . .	Fifteen per gram.

- Antibiotics Drugs . . . No zone greater than or equal to sixteen millimeters with the Bacillus Sterothermophilus disc assay method or a positive confirmatory on a food and drug administration approved test.
5. Grade A whey for condensing      Temperature . . . . . Maintained at a temperature of forty-five degrees Fahrenheit [7 degrees Celsius] or less, or one hundred forty-five degrees Fahrenheit [63 degrees Celsius] or greater except for acid-type whey with a titratable acidity of forty-hundredths percent or above or a pH of four and sixty-hundredths or below.
- Antibiotics Drugs . . . No zone greater than or equal to sixteen millimeters with the Bacillus Sterothermophilus disc assay method or a positive confirmatory on a food and drug administration approved test.
6. Grade A pasteurized condensed whey      Temperature . . . . . Cooled to forty-five degrees Fahrenheit [7 degrees Celsius] or less during crystallization, within eighteen hours of condensing.
- Bacterial limit . . . . . Not to exceed thirty thousand per gram.
- Coliform limit . . . . . Not to exceed ten per gram.
- Antibiotics Drugs . . . No zone greater than or equal to sixteen millimeters with the Bacillus Sterothermophilus disc assay method or a

positive confirmatory  
on a food and drug  
administration approved  
test.

- Phosphatase . . . . . Less than one microgram per milliliter by the Scharer Rapid Method or equivalent.
7. Grade A dry whey
- Bacterial limit . . . . . Not to exceed thirty thousand per gram.
- Coliform limit . . . . . Not to exceed ten per gram.
- ~~Antibiotics~~ Drugs . . . . . No zone greater than or equal to sixteen millimeters with the Bacillus Sterothermophilus disc assay method or a positive confirmatory on a food and drug administration approved test.
8. US Extra grade dry buttermilk
- Bacterial estimate . . . . . Not more than fifty thousand per gram.
- Butterfat . . . . . Not less than four and fifty-hundredths percent.
- Moisture . . . . . Not more than four percent.
- Scorched particle content . . . . . Not more than fifteen milligrams for the spray process and twenty-two and fifty-hundredths milligrams for the roller process.
- Solubility index . . . . . Not more than one and twenty-five hundredths milliliters for the spray process and fifteen milliliters for the roller process.
- Titratable acidity . . . . . Not less than ten-hundredths percent; not more than

		eighteen-hundredths percent.
9. US Standard grade dry buttermilk	Bacterial estimate . . . . .	Not more than two hundred thousand per gram.
	Butterfat . . . . .	Not less than four and fifty-hundredths percent.
	Moisture . . . . .	Not more than five percent.
	Scorched particle content . . . . .	Not more than twenty-two and fifty-hundredths milligrams for the spray process and thirty-two and fifty-hundredths milligrams for the roller process.
	Solubility index . . . . .	Not more than two milliliters for the spray process and fifteen milliliters for the roller process.
	Titratable acidity . . . . .	Not less than ten-hundredths percent; not more than twenty-hundredths percent.
10. US Extra grade whole milk	Bacterial estimate . . . . .	Not more than fifty thousand per gram standard plate count.
	Coliform estimate . . . . .	Not more than ten per gram.
	Milkfat . . . . .	Not less than twenty-six percent, but not greater than forty percent.
	Moisture . . . . .	Not more than four and fifty-hundredths percent (as determined by weight of moisture on a milk solids not fat basis).
	Scorched particle content . . . . .	Not more than fifteen milligrams for spray process and twenty-two and fifty-hundredths milligrams

		for roller process.
	Solubility index . . .	Not more than one milliliter for spray process, and fifteen milliliters for roller process.
11. US Standard grade dry whole milk	Bacterial estimate . . .	Not more than one hundred thousand per gram standard plate.
	Coliform estimate . . .	Not more than ten per gram.
	Milkfat . . . . .	Not less than twenty-six percent, but not greater than forty percent.
	Moisture . . . . .	Not more than five percent (as determined by weight of moisture on a milk solids not fat basis).
	Scorched particle content . . . . .	Not more than twenty-two and fifty-hundredths milligrams for spray process and thirty-two and fifty-hundredths milligrams for roller process.
	Solubility index . . .	Not more than one and fifty-hundredths millimeters for spray process, and fifteen milliliters for roller process.
12. US Extra grade fat dry milk (Roller Process)	Bacterial estimate . . .	Not more than fifty thousand per gram standard plate count.
	Butterfat . . . . .	Not more than one and twenty-five-hundredths percent.
	Moisture . . . . .	Not more than four percent.
	Scorched particle content . . . . .	Not more than twenty-two and fifty-hundredths

		milligrams.
	Solubility index . . .	Not more than fifteen milliliters.
	Titrateable acidity . .	Not more than fifteen-hundredths percent.
13. US Standard grade nonfat dry milk (Roller Process)	Bacterial estimate . .	Not more than one hundred thousand per gram standard plate count.
	Butterfat . . . . .	Not more than one and fifty-hundredths percent.
	Moisture . . . . .	Not more than five percent.
	Scorched particle content . . . . .	Not more than thirty-two and fifty-hundredths milligrams.
	Solubility index . . .	Not more than fifteen milliliters.
	Titrateable acidity . .	Not more than seventeen-hundredths percent.
14. US Extra grade instant nonfat dry milk	Bacterial estimate . .	Not more than thirty thousand per gram standard plate count.
	Coliform count . . . .	Not more than ten per gram.
	Milkfat . . . . .	Not more than one and twenty-five-hundredths percent.
	Moisture . . . . .	Not more than four and fifty-hundredths percent.
	Scorched particle content . . . . .	Not more than fifteen milligrams.
	Solubility index . . .	Not more than one milliliters.
	Titrateable acidity . .	Not more than fifteen-hundredths percent.
	Dispersibility . . . .	Not less than eighty-five

		percent.
15. US Extra grade fat dry milk (Spray Process)	Bacterial estimate . . .	Not more than fifty thousand per gram standard plate count.
	Butterfat . . . . .	Not more than one and twenty-five-hundredths percent.
	Moisture . . . . .	Not more than four percent.
	Scorched particle content . . . . .	Not more than fifteen milligrams.
	Solubility index . . .	Not more than one and twenty-hundredths milliliters except that product classified as US High Heat may have more than two milliliters.
	Titratable acidity . .	Not more than fifteen-hundredths percent.
16. US Standard grade nonfat dry milk (Spray Process)	Bacterial estimate . . .	Not more than one hundred thousand per gram standard plate count.
	Butterfat . . . . .	Not more than one and fifty-hundredths percent.
	Moisture . . . . .	Not more than five percent.
	Scorched particle content . . . . .	Not more than twenty-two and fifty-hundredths milligrams.
	Solubility index . . .	Not more than two milliliters except that product classified as US High Heat may have not more than two and fifty-hundredths milliliters.
	Titratable acidity . .	Not more than seventeen-hundredths percent.
17. US Extra grade dry whey	Bacterial estimate . . .	Not more than fifty thousand per gram standard plate count.

Coliform . . . . . Not more than ten per gram.  
 Milkfat . . . . . Not more than one and  
 fifty-hundredths percent.  
 Moisture . . . . . Not more than five percent.

18. Butter                    Proteolytic count not more than one hundred per gram.  
                                   Yeast and mold not more than twenty per gram.  
                                   Coliform count not more than ten per gram.

19. Whipped butter        Proteolytic count not more than one hundred per gram.  
                                   Yeast and mold not more than twenty per gram. Coliform  
                                   count not more than ten per gram. Eterococci not more  
                                   than ten per gram.

Requests for standards of identity of products not previously defined, must be made in writing to the dairy commissioner who is responsible for developing the standards of identity for the product in question.

History: Effective August 1, 1986; amended effective April 1, 1993.  
 General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1  
 Law Implemented: NDCC 4-30-35, 4-30-36

7-03.1-09-02. Enforcement procedures.

1. Whenever three of the last five consecutive bacteria, somatic cell temperature, or coliform counts exceed the standards of section 7-03.1-09-01, the pasteurized milk ordinance or United States department of agriculture, immediate suspension of the permit for the plant processing the product in violation will occur.
2. Whenever any phosphatase test is positive, an investigation to determine the cause must be made by the dairy commissioner and the product in question may not be offered for sale until the investigation determines the cause of the problem.
3. Whenever any antibiotic drug or pesticide test results in a level exceeding the limits established in section 7-03.1-09-01 by the food and drug administration or environmental protection agency, the product in question must be removed from the market and an investigation to determine the cause of the problem must be made by the dairy commissioner. The milk product in question may not be offered for sale until the cause of the problem has been determined.
4. Raw milk cheese is not permitted to be processed or sold in North Dakota. All milk to be used for cheese processing must be heat treated or pasteurized: Heat treating at one hundred forty-seven degrees Fahrenheit [63.89 degrees Celsius] for

twenty-one seconds; one hundred fifty-three degrees Fahrenheit  
[67.22 degrees Celsius] for fifteen seconds.

History: Effective August 1, 1986; amended effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-35, 4-30-36, 4-30-56

## CHAPTER 7-03.1-10

7-03.1-10-01. Standards for the composition of milk products and certain nonmilkfat products. The standards for the composition of milk products and certain nonmilkfat products are attached in tabular form as appendix to this chapter. The minimum standards shall comply with those standards set by the food and drug administration or the United States department of agriculture.

History: Effective August 1, 1986; amended effective July 1, 1991; April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-35, 4-30-36

**STANDARDS FOR THE COMPOSITION OF MILK  
PRODUCTS AND CERTAIN NONMILKFAT PRODUCTS  
(Appendix)**

PRODUCT	MILKFAT CONTENT		MOISTURE CONTENT	MILK SOLIDS	MISCELLANEOUS REQUIREMENTS	
	Min.	Max.	NOT MORE THAN	NOT LESS THAN		
ADDITIONAL				<u>Total Solids</u>	<u>S.N.F.</u>	
1. Whole milk	3.25%				8.5*	<p><u>*Must be in compliance with National Food Labeling Laws and FDA Requirements</u></p> <p>Vitamin A — 2000 IU/qt.            Vitamin D — 400 IU/qt.            Vitamin B<sub>1</sub> — 1.0 mg/qt.            Vitamin B<sub>2</sub> — 2.0 mg/qt.            Niacin — 10.0 mg/qt.            Iron — 10.0 mg/qt.            Iodine — .1 mg/qt.</p> <p><del>———— All Optional ————</del>  <del>Other additives may be used if approved by the dairy commissioner.</del></p>
2. 2% milk	1.9%	2.1%			8.5*	<p><u>*Must be in compliance with National Food Labeling Laws and FDA Requirements</u></p>
1% milk	.9%	1.1%			8.5*	
2. Low Fat Milk	.05%	2.0%			8.5	<p>Vitamin A — 2000 IU/qt.</p> <p><del>———— Required ————</del></p> <p>Vitamin D — 400 IU/qt.            Vitamin B<sub>1</sub> — 1.0 mg/qt.            Vitamin B<sub>2</sub> — 2.0 mg/qt.            Niacin — 10.0 mg/qt.            Iron — 10.0 mg/qt.            Iodine — .1 mg/qt.</p> <p><del>———— Optional ————</del>  <del>Other additives may be used if approved by the dairy commissioner.</del></p>

PRODUCT	MILKFAT CONTENT		MOISTURE CONTENT	MILK SOLIDS		MISCELLANEOUS REQUIREMENTS
	Min.	Max.	NOT MORE THAN	Total Solids	NOT LESS THAN	
3. Skim milk		0.5%			8.5*	<u>*Must be in compliance with National Food Labeling Laws and FDA Requirements</u> Same requirements as low fat
4. Acidified or Cultured Milk	3.25%				8.5*	Not less than .5% acidity expressed as Lactic Acid
5. Lowfat Acidified or Cultured Milk	0.5%	2.0%			8.5*	Not less than .5% acidity expressed as Lactic Acid
6. Skim Acidified or Cultured Milk		0.5%			8.5*	Not less than .5% acidity expressed as Lactic Acid
7. Half and half	10.5%	18.0%				
8. Sour half and half	10.5%	18.0%				Not less than .5% acidity expressed as Lactic Acid
9. Dry cream	40.0%	75.0%	5.0%			
10. Heavy cream	36.0%					
11. Light cream	18.0%	30.0%				
12. Light Whipping Cream	30.0%	36.0%				

PRODUCT	MILKFAT CONTENT		MOISTURE CONTENT	MILK SOLIDS	MISCELLANEOUS REQUIREMENTS
	Min.	Max.	NOT MORE THAN	NOT LESS THAN	
13. Sour cream	18.0%			<u>Total Solids</u>	S.N.F.  When the food is characterized by the addition of bulky flavoring ingredients, the weight of the milkfat is not less than 18% of the remainder obtained by subtracting the weight of such optional ingredients from the weight of the food. In no case does the food contain less than 14.4% milkfat.
14. Acidified Sour Cream	18.0%				Same as above, but also add not less than .5% acidity expressed as Lactic Acid.
15. Yogurt	3.25%				8.5*  <u>*Must be in compliance with National Food Labeling Laws and FDA Requirements.</u> Not less than 1.9% acidity expressed as Lactic Acid.
16. Low Fat Yogurt	0.5%	2.0%			8.5* Not less than 0.9% acidity expressed as Lactic Acid.
17. Non Fat Yogurt					Not less than 0.9% acidity expressed as Lactic Acid.
18. Frozen Yogurt					Not less than 0.9% acidity expressed as Lactic Acid.

PRODUCT	MILKFAT CONTENT		MOISTURE CONTENT	MILK SOLIDS		MISCELLANEOUS REQUIREMENTS
	Min.	Max.	NOT MORE THAN	NOT LESS THAN		
				Total Solids	S.N.F.	
19. Frozen Yogurt Mixes						Not less than 0.9% acidity expressed as Lactic Acid.
20. Egg Nog	6.0%				8.5*	<u>*Must be in compliance with National Food Labeling Laws and FDA Requirements.</u> Not less than 1% egg yolk solids.
21. Dry Curd Cottage Cheese	0.5%		80.0%			Calcium Chloride may be added in a quantity of not more than 0.2% calculated as Anhydrous Calcium Chloride of the weight of the mix.
22. Creamed Cottage Cheese	4.0%		80.0%			
23. Low Fat Partially Creamed Cottage Cheese	0.5%	2.0%	82.5%			Legal if properly labeled, "Low Fat" Cottage Cheese. 2% butterfat required on the label.

PRODUCT	MILKFAT CONTENT		MOISTURE CONTENT	MILK SOLIDS		MISCELLANEOUS REQUIREMENTS
	Min.	Max.	NOT MORE THAN	NOT LESS THAN		
<u>CONCENTRATED MILK PRODUCTS</u>				<u>Total Solids</u>	<u>S.N.F.</u>	
24. Evaporated Milk and Concentrated Milk	7.5%			25.5%		<u>If Vitamin D is added, at least 25 USP units per fluid ounce must be added.</u>
25. Plain Condensed Skim Milk Evaporated & Concentrated		0.5%		20.0%		
26. Sweetened Condensed Whole Milk	8.0%			28.0%		
27. Sweetened Condensed Skim Milk		0.5%		24.0%		
28. Whole Milk Powder or Dry Whole Milk	26.0%	40.0%	5.0%			Max. Moisture -- premium grade 2.25% extra grade 2.50% standard grade 3.00%
29. Skim Milk Powder, Dry Skim Milk or Non Fat Dry Milk		Extra grade 1.25% Stand. grade 1.5%	Extra grade 4.0% Standard grade 5.0%			

PRODUCT	MILKFAT CONTENT		MOISTURE CONTENT	MILK SOLIDS		MISCELLANEOUS REQUIREMENTS
	Min.	Max.	NOT MORE THAN	NOT LESS THAN		
32. Ice Milk - Plain  Ice Milk - Fruit, Nut, or Chocolate and Bulky Flavors	2.0%	7.0%		<u>Total Solids</u>	<u>S.N.F.</u>	Not more than 0.5% stabilizer (Max. 0.2% emulsifier) Not less than 4.5 lbs. per gallon Not less than 1.3 lbs. food solids per gallon  6.0% min.  Same as above
33. Sherbet	1.0%	2.0%		5.0% Max.		Minimum Acid .35% - weight/gallon 6.0#
34. Frozen Custard	<u>10.0%</u>			20.0%		0.5% stabilizer - weight/gallon 4.5# food solids per gallon 1.6# Flavors - same as for ice cream with fruit, nuts
35. Egg Yolks				1.4%		Per 90 pounds

## CHAPTER 7-03.1-11

### 7-03.1-11-01. Frozen desserts - Manufacturers and processors regulations.

1. For the purposes of this chapter, frozen desserts include ice cream, ice milk, sherbet, soft serve, and any frozen dessert or ice cream mix containing dairy products.
2. Licenses are required for any frozen dessert or soft serve processor that packages, freezes, or adds flavors to ice cream mix. Establishments taking the product directly from the mix freezer and delivering it directly to the ultimate consumer are exempt from licensing.
3. All frozen dessert processors must be inspected once each six months at the direction of the dairy commissioner.
4. All new equipment utilized by frozen dessert processors must comply with 3A sanitary standards as defined in North Dakota Century Code section 4-30-01 or acceptable to commissioner. Modifications of plant processes for the manufacture of frozen desserts must be submitted to the dairy commissioner for review prior to installation or construction.
5. All raw milk and dairy ingredients, including ice cream mix, used in processing frozen desserts must be pasteurized and must originate from plants approved by the United States department of agriculture, the food and drug administration, or state ~~inspection~~ dairy department.
6. Sanitary requirements, at a minimum, shall comply with United States department of agriculture general specifications for approved dairy plants and standards for grades of dairy products recommended standards for the manufacture of frozen desserts.
7. Samples must be collected by the dairy commissioner or the commissioner's appointed representative from each frozen dessert ~~establishment or distributor, in the case of frozen desserts that originate outside the jurisdiction of the regulatory authority~~ processor, at a frequency of four samples within a six-month period.
8. Samples must be handled in accordance with requirements of the latest edition of "Standard Methods for the Examination of Dairy Products" and those conditions stated in North Dakota Century Code section 4-30-18. Samples must be tested at laboratories approved by the dairy commissioner.

History: Effective August 1, 1986; amended effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1  
Law Implemented: NDCC 4-30-33, 4-30-35, 4-30-36

7-03.1-11-02. Microbiological requirements for ice cream, ice milk, and ice cream mix. The microbiological requirements for ice cream, ice milk, and ice cream mix are for

- ~~+~~ Frozen frozen desserts, including artificially sweetened:
  - ~~a.~~ 1. Ingredients - Raw milk and dairy products.
    - ~~+~~ a. Milk - Maximum plant delivery temperature forty-five degrees Fahrenheit [7.22 degrees Celsius] - Raw for pasteurization five hundred thousand per milliliter standard plate count.
    - ~~+~~ b. Cream - Maximum plant delivery temperature forty-five degrees Fahrenheit [7.22 degrees Celsius] - Raw for pasteurization eight hundred thousand per milliliter standard plate count.
  - ~~b.~~ 2. Pasteurized dairy products.
    - ~~+~~ a. Phosphatase - The phenol value may be no greater than the minimum specified for the particular product as determined by the phosphatase test of the latest edition of Standard Methods, or other tests approved by the dairy commissioner.
    - ~~+~~ b. Coliform requirements.
      - ~~+~~ (1) Frozen dessert (plain) - Coliform determination not more than ten ~~milliliters~~ per milliliter. Storage temperature not more than forty-five degrees Fahrenheit [7.22 degrees Celsius]. Bacteria count not more than fifty thousand per milliliter.
      - ~~+~~ (2) Frozen dessert (flavored) - Meets all the requirements of subdivisions a and b subsections 1 and 2. Coliform determination, however, may not be more than twenty per milliliter.
- ~~c.~~ 3. Dry dairy ingredients. United States extra grade or better, unless otherwise approved by the dairy commissioner.
  - ~~2.~~ Butter. Proteolytic count not more than one hundred per gram. Yeast and mold not more than twenty per gram. Coliform count not more than ten per gram.
  - ~~3.~~ Whipped butter. Proteolytic count not more than one hundred per gram. Yeast and mold not more than twenty per gram.

Coliform count not more than ten per gram. Eterococci not more than ten per gram.

History: Effective August 1, 1986; amended effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-33, 4-30-35, 4-30-36

CHAPTER 7-03.1-12

7-03.1-12-01. Abnormal milk.

1. Cows producing abnormal milk including lacteal secretions obtained within ninety-six hours of freshening (colostrum) should be milked last or with separate equipment and the milk discarded. Milk adulterated by chemical, medicinal, or radioactive materials, or milk obtained from cows less than ninety-six hours after calving, may not be stored in the milkroom or offered for sale.
2. Disease infected cows, or cows treated with chemicals or medicinals, and cows producing milk that is abnormal to sight or odor must be segregated from the milking herd or identified to prevent commingling with normal milk.
3. Milk from diseased, contaminated, or treated cows that is abnormal, adulterated, or unwholesome in nature, must be properly disposed of and may not be offered for sale or stored in the milkroom.
4. Equipment used to milk sick cows or from cows producing abnormal, adulterated, or unwholesome milk may not be stored in the milkroom, unless it meets all the construction, cleaning, sanitation, and storage requirements in section ~~7-03.1-12-06~~. Repealed effective April 1, 1993.

History: Effective August 1, 1986.

General Authority: ~~NDEC 4-29-03, 4-29-04, 4-30-55.1~~

Law Implemented: ~~NDEC 4-30-36~~

7-03.1-12-01.1. Requirements for farms producing grade A raw milk. All farms producing grade A milk shall meet the requirements of the "grade A pasteurized milk ordinance 1989 revision" United States department of health, food and drug administration, and all updates.

1. All grade A farms in violation of equipment cleaning, drug violations, cooling, or other serious public health concerns will be reinspected not before three days but before twenty-one days.
2. Denial of access to a grade A farm for the purpose of an IMS survey, or federal check rating will result in immediate downgrade of the facility. The facility must be reinspected as a manufacturing grade farm within thirty days.
3. Denial of access for a farm inspection will result in loss of market.

4. Construction to repair or upgrade a pit well will require elimination of pit and bringing the well into compliance with the board of water well contractors guidelines.
5. Whenever a farm has been downgraded two times within two years for either inspection violations, milk quality or both, a farm must be off the grade A market for at least sixty days and must meet all grade A requirements for reinstatement.
6. Farms that score less than eighty-five after an IMS survey or federal check rating, must be reinspected within thirty days after survey.
7. All bulk tanks must have an accurate working thermometer.
8. Farms with three repeat violations of the same inspection line item, or that score seventy-five or below, must be downgraded to manufacturing grade certification. The inspector shall notify the dairy commissioner, the milk plant, the milk hauler, and the producer of the status change.
9. Wash and rinse vats must be stainless steel.
10. Light fixtures may not be directly above bulk tank.

History: Effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-36

7-03.1-12-02. Milking and cow area. A milking barn or parlor must be provided for the milking operations. At a minimum the milking area must meet all of the following requirements:

1. Have floors constructed of concrete or equally impervious material.
2. Have smooth, painted, or otherwise properly finished walls and ceilings that are in good repair, and the ceiling must be dusttight.
3. Separate stalls or pens for horses, calves, and bulls, if housed in the milking area.
4. Have the equivalent of ten foot-candles of natural or artificial light, well distributed for either day or night milking.
5. If feed is stored in or adjacent to, or fed in the milking area, it must have a dusttight covered storage facility.
6. Have sufficient space for milking operations and air circulation to prevent condensation and excessive odors.

7. Be kept clean and free of litter.
  - a. The floors, walls, ceiling, windows, pipelines, and equipment must be clean and free of filth.
  - b. Be free of swine and fowl, including excreta or waste materials.
8. At a minimum the cowyard must:
  - a. Be graded to drain and have no standing pools of water.
  - b. Be cleaned and well maintained with no accumulations of organic wastes (a loafing or housing area with a manure pack will be in compliance from October first to June first, if properly maintained and clean bedding is added at sufficient frequency to prevent soiling of the cow. Manure packs may not be allowed between June first and September thirtieth).
  - c. Not be accessible to swine or swine waste.
  - d. Be free from the accumulation of waste feed. Manure is to be removed or properly stored at sufficient intervals so as to not be accessible to the cow. Repealed effective April 1, 1993.

History: Effective August 1, 1986.

General Authority: NDEC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDEC 4-30-36

7-03.1-12-03. Milkhouse or milkroom. Except as provided in subsection 5 of section 7-03.1-12-06, a milkroom must be provided for the cooling, handling, and storing of milk and to conduct the washing, sanitizing, and storage requirements of the milk containers and utensils. The milkroom at a minimum must meet all the following requirements:

1. The floor must:
  - a. Be smooth and of concrete or equally impervious material.
  - b. Graded to drain.
  - c. Have drain trapped or screened.
2. Have walls and ceilings that are smooth and in good repair, and well painted or finished in an equally acceptable manner. All windows, doors, and hose ports must be in good repair to operate properly.
3. Have adequate lighting and ventilation.

- a. An equivalent of twenty foot-candles must be provided in all working areas.
  - b. Ventilation must be provided to minimize odors and condensation.
  - c. All openings must be closed during dusty or windy weather.
  - d. Vents or light fixtures may not be placed over milk or utensil storage areas.
4. Other general requirements:
- a. Be of sufficient size and used only for approved milkhouse operations.
  - b. Have no direct openings into any barn, stable, or rooms used for domestic purposes except a tight-fitting door may be permitted if solid and self-closing.
  - c. Dispose of liquid waste in a sanitary manner.
  - d. Be equipped with a hose port.
  - e. Existing dairy farms must have an impervious slab at a minimum of three feet by three feet [0.914 meters by 0.914 meters] in size to protect the milk hose on the outside of the milkroom under the hose port. After July 31, 1986, all new dairy farms must have a minimum hose port slab of six feet by six feet [1.83 meters by 1.83 meters].
  - f. A suitable shelter for the transportation truck if used for cooling and storing milk.
  - g. A double wash and rinse vat accessible for use and of adequate size.
  - h. Hot water heating capacities and temperature to match milkroom needs.
  - i. Adequate hot and cold water under pressure to provide the normal cleaning needs of the milkroom, utensils, and equipment.
5. Keep the floors, walls, ceiling, windows, tables, shelves, cabinets, wash vats, nonproduct contact surface of equipment, containers, and utensils clean.
6. Must be used only for storage of articles and to conduct activities normal to the milkroom. Animals and fowl are not to be allowed in or housed in the milkroom. Repealed effective April 1, 1993.

History: Effective August 1, 1986.  
General Authority: NDEC 4-29-03, 4-29-04, 4-30-55.†  
Law Implemented: NDEC 4-30-36

7-03.1-12-04. Toilet. Every dairy farm must have adequate toilet facilities and the facility must meet all the following requirements:

1. Be conveniently located for the convenience of workers involved in the dairy operation.
2. Be constructed to prevent human waste from polluting soil surfaces or contaminating any water supply, and operated to prevent access to insects.
3. Be kept clean and free of evidence of human waste.
4. Be operated in compliance with state requirements. Repealed effective April 1, 1993.

History: Effective August 1, 1986.  
General Authority: NDEC 4-29-03, 4-29-04, 4-30-55.†  
Law Implemented: NDEC 4-30-36

7-03.1-12-05. Water supply. A safe water supply in compliance with state water requirements must be provided. At a minimum, the water supply must meet the following requirements:

1. Be constructed and operated in accordance with the state water requirements.
2. Be in compliance with state bacteriological requirements.
3. Be free of any cross connection or submerged inlets that could allow contamination of a water supply. Repealed effective April 1, 1993.

History: Effective August 1, 1986.  
General Authority: NDEC 4-29-03, 4-29-04, 4-30-55.†  
Law Implemented: NDEC 4-30-36

7-03.1-12-06. Utensils and equipment. All utensils and equipment must be of a design approved by the dairy commissioner, constructed of materials known to be safe, and must be easily cleaned and sanitized.

1. Construction must be in compliance with 3A sanitary standards, as defined in North Dakota Century Code section 4-30-01, where 3A sanitary standards have been adopted for dairy equipment. Where no standards exist, dairy commissioner approval is required.

2. The commissioner's approval must be based on meeting all the following requirements:
  - a. At a minimum, the equipment and utensils must be smooth, impervious, safe, and cleanable.
  - b. The equipment and utensils must be maintained in good repair and must be accessible for inspection. Where tools are required to gain access to equipment, the tools must be stored in the milkroom.
  - c. Single-service items must have been manufactured, packaged, transported, and handled in a sanitary manner. They must be stored in a manner to prevent contamination and may not be reused.
  - d. Equipment design must be submitted to the dairy commissioner, prior to installation, for approval. Equipment not installed according to an approved plan must be corrected and brought into compliance within a time acceptable to the dairy commissioner.
  - e. Clean-in-place equipment must be installed to be self-draining. Gaskets or fittings must be self-positioned, smooth, and with flush interior surfaces. Requirements for clean-in-place systems are the same as stated in subdivisions a, b, and d.
3. The product contact surfaces of all multiuse containers, equipment, and utensils used in the handling, storage, or transportation of milk must be cleaned after each use.
4. The product contact surface of all multiuse containers, equipment, and utensils used in the handling, storage, or transportation of milk must be cleaned after each use and sanitized before each use.
5. All equipment, utensils, and articles, used in the milking operations must be stored in the milkroom. Additionally, all the following are required:
  - a. All multiuse equipment and utensils must be in a sanitizing solution or on racks in the milkroom until used, except milk lines and equipment designed and approved for use in the milking area, and clean-in-place cleanable, may be stored in the milking area if properly capped or protected.
  - b. Equipment when stored, unless in sanitizing solutions, must be stored to assure complete drainage.

c. ~~Single-service items must be stored in their original container or other approved containers or cabinets to assure protection against contamination.~~

6. ~~After sanitation, all containers, utensils, and equipment must be handled in a manner to prevent contamination. Repealed effective April 1, 1993.~~

History: ~~Effective August 1, 1986.~~

General Authority: ~~NDEC 4-29-03, 4-29-04, 4-30-55.†~~

Law Implemented: ~~NDEC 4-30-36~~

7-03.1-12-07. Milking. Milking must be performed in a facility approved by the dairy commissioner and cows must be clean when milked. The requirements for milking are as follows:

1. ~~The milking operation must be conducted in a parlor, stable, or barn.~~
2. ~~If brushing is required, it must be completed prior to milking.~~
3. ~~Cows must be clean at the time of milking and flanks, bellies, tails, and udders must be clipped as necessary to facilitate cleaning of these areas.~~
4. ~~Teats and udders of milking cows must be cleaned and treated with a sanitizing solution and be relatively dry just prior to milking. Teats must be treated in an approved manner following milking to prevent the spread of mastitis.~~
5. ~~Hand milking is prohibited, except in an emergency, and then, wet hand milking is prohibited. Repealed effective April 1, 1993.~~

History: ~~Effective August 1, 1986.~~

General Authority: ~~NDEC 4-29-03, 4-29-04, 4-30-55.†~~

Law Implemented: ~~NDEC 4-30-36~~

7-03.1-12-08. Miscellaneous equipment. All equipment necessary for the milking operation but not considered a part of the facility or milking equipment must be clean and properly stored when not in use. Milk stools, surcingles, and anti-kickers are to be kept clean and stored above the floor in either the milking area or milkroom, when not in use. Milk stools may not be padded and must be constructed to be easily cleanable. Repealed effective April 1, 1993.

History: ~~Effective August 1, 1986.~~

General Authority: ~~NDEC 4-29-03, 4-29-04, 4-30-55.†~~

Law Implemented: ~~NDEC 4-30-36~~

7-03.1-12-09. Protection from contamination. All milking equipment, milk handling equipment, containers holding milk, or items to be in contact with milk must be properly protected from contamination as follows:

1. Equipment and operations must be located so as to prevent overcrowding and contamination of cleaned and sanitized containers, equipment, and utensils by splash, condensation, or manual contact. Openings must be covered or otherwise protected from sources of contamination.
2. All milk which has leaked, overflowed, been spilled, or improperly handled must be discarded.
3. Milk being offered for sale will immediately be stored in an approved bulk tank.
4. Milk must be transferred through approved equipment, pipelines, pails, or other containers adequately protected from contamination.
5. Air under pressure, used to agitate or move milk, or air directed at milk contact surfaces, must be free of oil, dust, rust, excessive moisture, extraneous material and odors, and must be properly filtered.
6. Antibiotics and medicinals must be stored in such a manner that they cannot contaminate milk or milk contact surfaces. Only medicines and chemicals recommended for use on lactating dairy cows may be stored in the milkroom.
7. During milking operations, pipeline and equipment used to contain or conduct milk must be effectively separated from tanks or circuits containing cleaning or sanitizing solutions, or other potential sources of adulterants. Repealed effective April 1, 1993.

History: Effective August 1, 1986.

General Authority: NDCE ~~4-29-03~~, ~~4-29-04~~, ~~4-30-55~~.

Law Implemented: NDCE ~~4-30-36~~

7-03.1-12-10. Handwashing facility. Every dairy farm must be equipped with an adequate handwashing facility. The handwashing facility must be conveniently located and accessible to the milkroom, milking area, and flush toilets. The handwashing facility must include an approved cleaning compound, hot and cold running water, individual sanitary towels, and a lavatory fixture. Utensil wash and rinse vats may not be used for handwashing. Repealed effective April 1, 1993.

History: Effective August 1, 1986.

General Authority: NDCE ~~4-29-03~~, ~~4-29-04~~, ~~4-30-55~~.

Law Implemented: NDCE ~~4-30-36~~

7-03.1-12-11. Personal cleanliness. Personnel involved in the milking operations or conducting operations in the milkroom, shall practice acceptable personal hygiene and shall be attired in clean garments. Hands must be washed, cleaned, and dried with an individual sanitary towel immediately before milking, and before performing any milking function. Milkers and persons utilizing the milkroom shall wear clean outer garments while milking or handling milk, milk containers, utensils, and equipment. Repealed effective April 1, 1993.

History: Effective August 1, 1986.

General Authority: NDEC ~~4-29-03~~, ~~4-29-04~~, ~~4-30-55~~.

Law Implemented: NDEC ~~4-30-36~~

7-03.1-12-12. Cooling. Every dairy farm must be equipped with a bulk tank of adequate capacity to hold all milk being offered for sale and the tank must meet 3A sanitary standards as follows:

1. Milk must be cooled to forty degrees Fahrenheit [~~4.4~~ degrees Celsius] or less within two hours after milking and blended milk temperatures from subsequent milkings may not exceed fifty degrees Fahrenheit [~~10~~ degrees Celsius]. Raw milk must be forty-five degrees Fahrenheit [~~4.4~~ degrees Celsius] or cooler to be eligible for sale and transport off the farm.
2. Recirculated cold water used in precoolers or heat exchangers must be from a source determined safe by the dairy commissioner and adequately protected from possible contamination.
3. The volume of milk in the bulk tank after the first milking must reach the agitator to such a level that adequate agitation of the milk is possible. Failure to produce adequate volumes of milk on the first milking will result in loss of the producer's certification to sell raw milk. Repealed effective April 1, 1993.

History: Effective August 1, 1986.

General Authority: NDEC ~~4-29-03~~, ~~4-29-04~~, ~~4-30-55~~.

Law Implemented: NDEC ~~4-30-36~~

7-03.1-12-13. Milk transporting vehicles. Vehicles used to transport milk must be clean and constructed to protect the milk. Milk transporting vehicles must be clean both externally as well as in the milk contact surfaces of the tank, pump, and hose. The tank must be constructed to protect the milk from the sun, to maintain temperatures from the farm to the point of delivery between thirty-two and fifty degrees Fahrenheit [~~0~~ and ~~10~~ degrees Celsius], and to protect the milk from contaminations. Substances capable of contaminating or adulterating the milk may not be transported with the milk. Repealed effective April 1, 1993.

History: Effective August 1, 1986.  
General Authority: NDCE ~~4-29-03~~, ~~4-29-04~~, ~~4-30-55~~.†  
Law Implemented: NDCE ~~4-30-36~~, ~~4-30-38~~

7-03.1-12-14. Insect and rodent control. Effective measures must be taken to prevent the contamination of milk, containers, equipment, and utensils by insects or rodents as follows:

1. Fly breeding must be kept to a minimum:
  - a. Manure during fly breeding season (approximately June fifteenth) must be spread directly to fields or piled for not more than four days on the ground, or seven days in an impervious floored bin. Other satisfactory methods that will effectively control fly breeding may be approved by the dairy commissioner.
  - b. All manure packs must be well bedded and managed in a manner to prevent fly breeding.
2. Milkrooms must be effectively protected:
  - a. Openings must be screened against the entrance of vermin.
  - b. The milkroom must be free of evidence of insects or rodents either present or having been present in the milkroom.
3. All surroundings to the dairy operations must be kept neat and clean and free of conditions known to harbor, or that are conducive to the breeding of, insects or rodents. Repealed effective April 1, 1993.

History: Effective August 1, 1986.  
General Authority: NDCE ~~4-29-03~~, ~~4-29-04~~, ~~4-30-55~~.†  
Law Implemented: NDCE ~~4-30-36~~

7-03.1-12-15. Pesticides and adulterants. Chemicals used to control insects and rodents must be safe and used so as to not adulterate the milk supply. Only insecticides and rodenticides approved by the dairy department or registered and labeled for use in the dairy operation are allowed. Chemicals must be used in a safe manner according to manufactured label recommendation. Chemicals must be used in a manner that will not contaminate milk contact surfaces, the milk supply, or feed and water. Repealed effective April 1, 1993.

History: Effective August 1, 1986.  
General Authority: NDCE ~~4-29-03~~, ~~4-29-04~~, ~~4-30-55~~.†  
Law Implemented: NDCE ~~4-30-36~~

7-03.1-12-16. Milk quality. The following chemical, physical, and bacteriological standards apply to Grade A raw milk for pasteurization:

Bacteria Limit: Milk may not exceed one hundred thousand per milliliters.

Somatic Cell: Milk may not exceed one million per milliliters.

Antibiotics: Milk may not equal or exceed a sixteen millimeters zone with the bacillus sterothermophilus disc assay method.

Pesticides: Milk may not exceed the established limits set by the environmental protection agency for any pesticides.

Repealed effective April 1, 1993.

History: Effective August 1, 1986.

General Authority: NDEC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDEC 4-30-36

7-03.1-12-17. Inspection and enforcement procedures - Farm inspections.

1. Farms scoring ninety-two or higher on farm inspections, with all violations on the preceding inspection corrected, must be inspected at a frequency of every four to six months.
2. Farms scoring between ninety-one and eighty-five, with all violations on the preceding inspections corrected, must be inspected at a frequency of every sixty to one hundred twenty days.
3. Farms scoring below eighty-five, or farms with two successive violations must be reinspected at a frequency of every fourteen to forty-five days.
4. Items for which the dairy commissioner has established a compliance deadline will be exempted until the deadline has expired.
5. Farms with three repeat violations of the same inspection line item, or that score seventy-nine or below, must be downgraded to manufacturing grade certification. The inspector shall notify the dairy commissioner, the milk plant, the milk hauler, and the producer of the status change.
6. A warning letter must be sent notifying the producer of intent to suspend the producer's permit any time two of the last four milk tests exceed the temperature, bacteria, or somatic cell limits, or when the same inspection item has been in violation on two consecutive inspections.

7. No sooner than three days nor later than twenty-one days following the warning for exceeding the bacteria or somatic cell requirements, the producer's milk must be resampled and tested to determine compliance. Should that sample test exceed the requirements, the producer's grade A certification must be suspended.

8. When any official test shows a producer's milk exceeds one million bacteria per milliliter of milk, the grade A certification must be immediately suspended, the producer's status changed to manufacturing grade, and the milk supply classified as undergrade.

When milk is in violation of antibiotic or pesticide limits, it must be excluded from all markets until test shows the supply to be in compliance. Repealed effective April 1, 1993.

History: Effective August 1, 1986.

General Authority: NDCC ~~4-29-03~~, ~~4-29-04~~, ~~4-30-55~~.†

Law Implemented: NDCC ~~4-30-31~~, ~~4-30-36~~, ~~4-30-53~~

## CHAPTER 7-03.1-13

### 7-03.1-13-01. Premises.

1. General requirements. The premises must be clean, orderly, and free from strong odors, smoke, or air pollution. By July 1, 1991, traffic areas must be constructed of cement, asphalt, or hard surfaced material to keep dust and mud to a minimum.
2. Surroundings. Surroundings must be free from refuse, overgrown vegetation, and waste materials, and must be designed to prevent rodents, insects, and other vermin from harboring.
3. Drainage. The premises must provide a system which will allow rapid drainage of all water from plant buildings and driveways. Such water must be disposed of in a manner to prevent an environmental health hazard. Dairy processing plants must comply with United States department of agriculture general specifications for approved dairy plants and standards for grades of dairy products.

History: Effective August 1, 1986; amended effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-34

### 7-03.1-13-02. Buildings.

1. General requirements. Buildings must be of sound construction, kept in good repair, and built to prevent rodent, bird, insect, and other harmful animal harborage. Service pipe openings in buildings must be sealed or provided with tight metal collars.
2. Outside doors, windows, and other openings.
  - a. All outer openings must be effectively screened to prevent insect, rodent, dust, and dirt from entering.
  - b. All outside door openings must be self-closing into processing areas. If screened, they must be of sound construction.
  - c. All hinged, outside screen doors must open outward and be self-closing and insect tight. All doors and windows must be kept clean and repaired.
  - d. Outside conveyor openings must be constructed to prevent entrance of flies and rodents.

- e. Outside openings for sanitary pipelines must be covered when not in use.
  - f. On new construction, window sills must slant downward at a forty-five degree angle.
3. Walls, ceilings, partitions, and posts.
- a. All must be smoothly finished with suitable light color, moisture impervious material, and kept clean.
  - b. New construction must have rounded corners at the juncture of the wall and floor in all areas.
4. Floors: Floors must be laid with impervious joint material, concrete, or other impervious material and must be smooth, kept in good repair, and graded to drain (all drains must be equipped with traps). The plumbing must be so installed as to prevent sewage backup into drain lines and to the floor of the plant. Old storage rooms of product and starter rooms need not be provided with floor drains if the floor is sloped to drain to an exit. Sound, smooth, wood floors which can be kept clean may be used in rooms where containers and supplies are stored.
5. Lighting:
- a. It must be ample and natural or artificial.
  - b. Thirty foot-candles are required in:
    - (1) Rooms where products are manufactured or packaged.
    - (2) Rooms where utensils are washed.
    - (3) Restrooms and locker rooms.
  - c. Fifty foot-candles are required in:
    - (1) Rooms where dairy products are graded.
    - (2) Rooms where products are examined for condition and quality.
  - d. Other rooms need ten foot-candles when measured at a distance of thirty inches [76.2 centimeters].
  - e. Where contamination of product by broken glass is possible, light bulbs and fluorescent tubes must be protected against breakage.
6. Ventilation:

- a. Adequate heating, ventilation, or air-conditioning is required for all rooms and compartments to permit maintenance of sanitary conditions.
  - b. Inlet fans must be provided with an adequate air filtering device to eliminate dirt and dust from incoming air.
  - c. Ventilation systems must be periodically cleaned and repaired.
  - d. Exhaust outlets must be screened or provided with self-closing louvers to prevent the entrance of insects when not in use.
7. Rooms and compartments.

a. General.

- (1) Rooms and compartments must be so designed, constructed, and maintained to assure desirable room temperatures, must be clean and in orderly operating condition, and must be free from objectionable odors and vapors.
- (2) Bulk milk receiving rooms must be separated from processing rooms by a wall.
- (3) Processing rooms must be kept free of extraneous equipment and materials not involved in the processing.

b. Coolers and freezers must be:

- (1) Clean.
- (2) Dry.
- (3) Maintained at proper uniform temperatures and humidity.
- (4) Equipped with adequate air circulation.
- (5) Free from rodents, insects, and other vermin.
- (6) Equipped with clean dry shelves where applicable.
- (7) Equipped with refrigeration units that have provisions for collecting and disposing of condensate.

A thermometer is required at the entrance to all coolers where finished dairy products are stored.

- c. Supply rooms and storage rooms must be:
- (1) Clean, dry, and orderly.
  - (2) Free of insects, rodents, and other vermin.
  - (3) Maintained and repaired.
- d. Food ingredients and packaging materials stored in supply rooms and storage rooms must be protected from dust, dirt, or other extraneous material, and must be so arranged on racks, shelves, or pallets to permit access to supplies and cleaning and inspection of the room. A twelve-inch [30.48 centimeters] distance must be maintained between the supply storage room wall and the products to be stored. Nonfood items (i.e., cleaning compounds) must be stored in a separate room or in a closed cabinet away from the food items or packaging supplies.
- e. Boiler and shop rooms must be separated from processing areas, packaging areas, or storage areas and must be orderly and reasonably free from dust and dirt.
- f. Toilet and dressing rooms:
- (1) They shall be conveniently located.
  - (2) The toilet room may not directly open into processing packaging or storage areas.
  - (3) The doors must be self-closing.
  - (4) They must be vented to the outside air and vents kept clean and repaired.
  - (5) Locker rooms must be kept clean, free, and orderly.
  - (6) There must be adequate handwashing facilities.
  - (7) Signs must be posted conspicuously directing employees to wash their hands before returning to work.
- g. Laboratories in all rooms and compartments must meet requirements of North Dakota Century Code section 4-30-18. Any deviation from these requirements will only be allowed with approval of the dairy commissioner.
- h. Starter facilities must be adequate and not located near areas where contamination is likely to occur. Positive ventilation, light colored walls, and concrete floors are required.

i. Grading and inspection room:

- (1) When grading and inspection of product is performed, there must be a room or appropriate area specifically designated for this.
- (2) The product to be graded or inspected shall be tempered in accordance with United States Department of Agriculture requirements in a room or area kept at not less than sixty degrees Fahrenheit (15.55 degrees Celsius).
- (3) The room must have a table or desk and convenient handwashing facilities. It must be clean, dry, free from foreign odors, and free from distracting elements.

j. Resident inspectors facilities must include:

- (1) A conveniently located, adequate sized, well-lighted, vented or air-conditioned and heated office.
- (2) A desk.
- (3) A lockable storage supply cabinet.
- (4) A clothes locker.

k. Lunchrooms and eating areas:

- (1) Must be kept clean and orderly.
- (2) May not open directly into processing or packaging areas.
- (3) Must have signs posted directing employees to wash hands before returning to work. Repealed effective April 1, 1993.

History: Effective August 1, 1986.

General Authority: NDGE ~~4-29-03~~, ~~4-29-04~~, ~~4-30-55~~.

Law Implemented: NDGE ~~4-30-34~~

7-03.1-13-03. Facilities.

1. Water supply in facilities must comply with all of the following requirements:

- a. Ample supply of hot and cold running water.
- b. Safe and sanitary in quality.

- c. Protected against contamination.
  - d. No cross connections.
  - e. Bacteriological examination of plant's water supply must be taken at least twice a year, or more frequently when necessary, and records kept on file.
  - f. Well construction, location, and operation must be approved by the dairy commissioner.
2. Drinking water facilities must be sanitary and conveniently located.
3. Handwashing facilities must have:
- a. Hot and cold running water.
  - b. Soap.
  - c. Sanitary single-service towels or air dryers.
  - d. Convenient access, located in processing rooms, toilets, locker rooms, and other essential areas in plant.
  - e. Containers provided for towels and other waste material. They must be metal, plastic, disposable or reusable, and have self-closing covers.
4. Steam must be supplied in sufficient volume and pressure for operation. Culinary steam in contact with milk or dairy products must be free of harmful substances. Only boiler water additives meeting requirements of 21 CFR 121.1068 or a secondary steam generator using only soft water without use of boiler compounds is allowed.
5. Air under pressure must comply with 3A sanitary standards and practices as defined in North Dakota Century Code section 4-30-01.
6. Disposal of wastes requirements:
- a. Wastes must be properly disposed of in accordance with the environmental protection agency requirements. Minimum waste line size must be four inches (10.16 centimeters) on new construction or another size approved by the dairy commissioner.
  - b. Sewer systems must be of sufficient slope and capacity.
  - c. Where public sewer is not available, wastes must be disposed of in a manner not to contaminate equipment or create a nuisance or public health hazard. These systems

must be approved by the dairy department prior to installation.

- d. Containers for collection must be metal, plastic, or other impervious material and covered with a tight fitting lid.
- e. Wastes must be stored in an area or room to protect the room from flies and vermin.
- f. Solid waste must be disposed of regularly and containers cleaned before reuse.
- g. Cardboard and other paper waste must be kept to a minimum and disposed of acceptably.
- h. Sanitary sewers may not be located directly above milk or milk product storage facilities or processing facilities.  
Repealed effective April 1, 1993.

History: Effective August 1, 1986.

General Authority: NDEC ~~4-29-03~~, ~~4-29-04~~, ~~4-30-55~~.

Law Implemented: NDEC ~~4-30-34~~

#### 7-03.1-13-04. Equipment and utensils.

##### ~~1. General requirements.~~

- a. All equipment and utensils must be readily dismountable for cleaning, sanitizing, and for inspection.
- b. All product contact surfaces shall be stainless steel, meet 3A sanitary standards as defined in North Dakota Century Code section ~~4-30-01~~, or be approved by the dairy commissioner.
- c. Nonmetallic parts other than glass must meet 3A sanitary standards as defined in North Dakota Century Code section ~~4-30-01~~ for plastic, rubber, and rubberlike material.
- d. Equipment and utensils for cleaning must be in acceptable condition, i.e. not rusty, pitted, or corroded.
- e. All equipment and piping must be kept in good repair and free from cracks and corroded surfaces.
- f. New or rearranged equipment must be set away from the wall or spaced to facilitate good housekeeping and cleaning. Major changes in plant operations due to new or rearranged equipment should be approved by the dairy commissioner.

- g. All product contact parts and piping must be reasonably accessible for inspection except those carrying only clean-in-place solution.
  - h. Dairy product pumps must be sanitary and easily dismantled or of specially approved construction to allow effective cleaning in place.
  - i. Clean-in-place systems must comply with 3A sanitary standards as defined in North Dakota Century Code section 4-30-01 and be equipped with recording thermometers.
2. Receiving tanks must comply with 3A sanitary standards; must be easily accessible for cleaning inside and out; must be elevated above the floor; and must be protected sufficiently with covers or baffles to prevent contamination. When necessary to provide easy access to cleaning of floors and walls; receiving tanks must be equipped with wheels or casters.
3. Product storage tanks or vats.
- a. Product storage tanks or vats must be fully enclosed or tightly covered; must be well insulated; and the entire inside surface as well as agitators and all other appurtenances must be accessible for cleaning and inspection.
  - b. Any opening at the top of the vat or tank including shaft entrance must be protected against entry of dust, dirt, and grease.
  - c. Sight glasses must be sound, clear, and in good repair.
  - d. Vats with hinged covers must be easily cleanable and designed for protection of dust or moisture entering the product when the lid is opened.
  - e. In cases of air agitation; systems must be 3A sanitary standards; as defined in North Dakota Century Code section 4-30-01; approved.
  - f. Vats holding products at least eight hours must be equipped with adequate insulation and adequate refrigeration. Ice cream and other frozen desserts must be refrigerated a maximum of zero degrees Fahrenheit [minus 17.77 degrees Celsius]. Cheese, liquid milk and other processed dairy products must be refrigerated a maximum of thirty-two to forty-five degrees Fahrenheit [0 to 7.22 degrees Celsius].
  - g. All tanks or vats must comply with 3A sanitary standards as defined in North Dakota Century Code section 4-30-01 or

state approved standards and must be equipped with thermometers in working order, which are tested for accuracy semiannually.

4. All product contact surfaces of separators must be stainless steel and free of rust or pits. All separators must be 3A sanitary standards, as defined in North Dakota Century Code section 4-30-01, approved or acceptable to the dairy commissioner.
5. Dome type batch pasteurizers must be stainless steel and nonmetallic parts must comply with 3A standards as defined in North Dakota Century Code section 4-30-01. Each pasteurizer used for heating products at a temperature of five degrees Fahrenheit {minus 15 degrees Celsius} or more above the minimum pasteurization temperature need not have an airspace heater. Each pasteurizer must, however, be equipped with an airspace thermometer to ensure a temperature at least five degrees Fahrenheit {minus 15 degrees Celsius} above that required for pasteurization of the product and must have an adequate means of controlling the heating medium. Dome type batch pasteurizers must have temperature indicating and recording devices which will be checked by the dairy department a minimum of every six months.
6. High temperature short time pasteurizing systems:
  - a. When pasteurization is intended or required, all the following must be present:
    - (1) An approved timing pump or device.
    - (2) A recorder controller.
    - (3) Flow diversion valve or valves.
    - (4) A holding tube.
    - (5) A plate type or internal tubular heat exchanger.
  - b. The entire system must comply with 3A sanitary standards as defined in North Dakota Century Code section 4-30-01 and must be checked by the dairy department a minimum of every six months.
  - c. After the pasteurization unit has been checked, the timing pump or timing system, flow diversion valves, and recorder controller must be sealed in accordance with 3A sanitary standards as defined in North Dakota Century Code section 4-30-01 and state standards. It shall be the responsibility of the plant to notify the dairy commissioner immediately of any broken seals on high temperature short time equipment.

d. When direct steam pasteurizers are used, the steam strainer and steam purifier with a steam trap are required, and the steam must be of culinary quality.

7. Thermometers and recorders.

a. Indicating thermometers must be long stem, accurate within five-tenths degrees Fahrenheit {0.27 degrees Celsius} and for the applicable temperature range, and provide for checking of temperature of pasteurization, cooling of products, and the accuracy of recording thermometers.

b. Short stem indicating thermometers must be accurate within five-tenths degrees Fahrenheit {0.27 degrees Celsius} for the applicable temperature range, and installed in the proper stationary position.

c. Storage tank thermometers, when required, must have a plus two degree accuracy.

d. Airspace indicating thermometers, when required must be accurate within one degree Fahrenheit {0.55 degrees Celsius}, and must be installed above the surface of the products pasteurized in the vat (a minimum of one inch {2.54 centimeters}) to make sure the temperature of foam or air, or both, above the products pasteurized also receives the required treatment.

e. Recording thermometers.

(1) Recording thermometers must be accurate within plus one degree Fahrenheit {1.11 degree Celsius} for the applicable temperature range, and must be used on each heat treating, pasteurizing, or thermal processing unit to record the heating process.

(2) Additional use of recording thermometers must be accurate within plus one degree Fahrenheit {1.11 degree Celsius} when a record of temperature or time of cooling and holding is of significant importance.

(3) Charts must be marked to show:

(a) Date.

(b) Plant identification.

(c) Reading of indicating thermometer at a particular referenced point.

(d) Name of product pasteurized, amount or product pasteurized or flow rate, and length of time product pasteurized.

- (e) Cut-in and cut-out on high temperature short time system.
- (f) Record of forward and divert flow on high temperature short time systems.
- (g) Airspace temperature (when applicable).
- (h) A record of any unusual occurrences on chart.

8. Surface coolers.

- a. Surface coolers must be equipped with hinged cover and removable cover.
- b. Edges of the fins must be so designed to divert condensate on nonproduct surfaces away from product contact surfaces.
- c. All gaskets or swivel connections must be leakproof.

9. Plate heat exchangers.

- a. Plate heat exchangers must comply with 3A sanitary standards, as defined in North Dakota Century Code section 4-30-01, when applicable.
- b. Gaskets must be tight and in good operating order.
- c. Plates must be opened for inspections by the operator at frequent intervals to determine if equipment is clean.
- d. A cleaning regime must be posted.

+10. Internal tubular heat exchangers must comply with 3A sanitary standards, as defined in North Dakota Century Code section 4-30-01, when applicable.

+11. Pumps when applicable, must comply with 3A sanitary standards, as defined in North Dakota Century Code section 4-30-01, and must be disassembled and cleaned manually after each use unless specifically designed for effective cleaning in place.

+12. Scales must be inspected by the North Dakota department of weights and measures, yearly, and must be sealed.

+13. Homogenizers must comply with 3A sanitary standards, as defined in North Dakota Century Code section 4-30-01, or United States department of agriculture standards, when applicable and must be disassembled and cleaned daily after use unless designed for effective cleaning in place.

+14. New equipment and replacements must comply with 3A standards and, where there are no 3A standards, as defined in North

Dakota Century Code section 4-30-01, available, must meet the approval of the dairy commissioner. Also, only materials that are sanitary, readily cleanable, and nontoxic may be used for product contact surfaces, parts, and gaskets.

15. Vacuumizing equipment.

- a. Vacuumizing equipment must be used for flavor control and water removal. It must be made of stainless steel or other equally corrosion-resistant material, constructed to facilitate cleaning, and accessible for inspection. It must be isolated by a vacuum breaker and positive activated check valves on the inlet and discharge sides when located on the pasteurized side of the unit.
- b. If direct steam is used, it must be equipped with a ratio controller to regulate the composition when required to finish product; it must be of culinary quality, and it must have incoming steam supply regulated by an automatic solenoid valve which will cut off the steam supply in the event the flow diversion device is not in the forward flow position.
- c. Condensers, when used, must be equipped with a water level control and an automatic safety shutoff valve. Repealed effective April 1, 1993.

History: Effective August 1, 1986.

General Authority: NDEC ~~4-29-03~~, ~~4-29-04~~, ~~4-30-55.1~~

Law Implemented: NDEC ~~4-30-34~~

7-03.1-13-05. Personnel - Cleanliness and health.

1. Cleanliness requirements.

- a. All employees shall wash hands upon returning to work from:
  - (1) Using toilet facilities.
  - (2) Eating.
  - (3) Smoking.
  - (4) Otherwise soiling their hands.
- b. All employees must keep hands clean and follow good hygiene practices while on duty.
- c. Expectorating (spitting) or use of tobacco is prohibited in areas where milk or milk products are handled in any way.

d. The following items must be worn by all persons engaged in receiving, testing, processing, manufacturing, packaging, or handling dairy products:

(1) Clean, white or light colored, washable or disposable outer garments.

(2) Caps (paper caps, hard hats, or hair nets).

(3) Beard nets (males).

## 2. Health.

a. No person with a communicable disease may be permitted in any rooms where milk and milk products are handled in any way.

b. No person with an open discharging or infected wound on arms, hands, or on the exposed body parts may work in any dairy processing rooms or in any capacity resulting in contact with milk.

c. At time of employment, each employee involved in processing, manufacturing, packaging, or handling dairy products, must certify that the employee is free of any communicable disease. This information must be kept on file at the dairy plant. It must be made available to the dairy commissioner upon request.

d. An employee returning to work following illness from a communicable disease must have a certificate from the attending physician to establish proof of complete recovery. The record of a medical physical examination following illness from a communicable disease must be kept on file at the dairy plant and must be made available to the dairy commissioner upon request. Repealed effective April 1, 1993.

History: Effective August 1, 1986.

General Authority: NDCC ~~4-29-03~~, ~~4-29-04~~, ~~4-30-55~~.

Law Implemented: NDCC ~~4-30-34~~

7-03.1-13-06. Using farm separated cream in the manufacturing of butter. Farm separated cream may be used to manufacture butter, provided the cream is:

1. Received and stored in containers separated from cream produced in compliance with the state's manufacturing milk requirements.

2. Following the manufacturing of butter containing farm separated cream, the equipment is completely washed and

sanitized before butter made from cream meeting the manufacturing milk requirements is manufactured into butter.

3. Butter made from farm separated cream is identified and stored in a manner acceptable to the dairy commissioner to ensure identity and separation from butter products manufactured in compliance with United States department of agriculture requirements.

4. In the final form when sold to the consumers, the products must be labeled in a manner not to confuse the product with United States department of agriculture approved or graded product, and the label must be approved by the dairy commissioner. Repealed effective April 1, 1993.

History: Effective August 1, 1986.

General Authority: NDEC 4-29-03, 4-29-04, 4-30-55.†

Law Implemented: NDEC 4-30-33, 4-30-35, 4-30-45

## CHAPTER 7-03.1-14

### 7-03.1-14-01. Floors.

- 1- The floors of all rooms in which milk is handled, processed, or stored or in which milk containers or utensils are washed must be concrete, impervious tile, or brick laid with impervious joint material, metal surfacing with impervious joint material, or other material which is the equivalent of good quality concrete. The floors must be provided with drains, smooth, have no pooled water, and must be sloped.
- 2- The floors of storage rooms for dry ingredients or packaging material may be constructed of tightly joined wood and without drains.
- 3- Cold storage rooms used for storing milk and milk products need not be provided with floor drains when the floors are sloped to one or more exits. Repealed effective April 1, 1993.

History: Effective August 1, 1986.

General Authority: ~~NDCC 4-29-03, 4-29-04, 4-30-55.~~†

Law Implemented: ~~NDCC 4-30-36~~

#### 7-03.1-14-01.1. Inspection criteria.

1. All grade A milk must be processed according to the minimum requirements of the grade A pasteurized milk ordinance, 1989 revision, United States department of health and human services, food and drug administration and subsequent supplements.
2. All grade A condensed and dry milk products and condensed and dry whey must be processed according to supplement I to the grade A pasteurized milk ordinance.

History: Effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-36

7-03.1-14-02. Walls and ceilings. Walls and ceilings must be finished with smooth, washable, light colored painted wood, tile, smooth surface concrete, cement plaster, brick, or other equivalent materials with washable light colored surface. Walls, partitions, windows, and ceilings must be kept in good repair and refinished as often as the finish wears off or becomes discolored. Repealed effective April 1, 1993.

History: Effective August 1, 1986.  
General Authority: NBCE ~~4-29-03~~, ~~4-29-04~~, ~~4-30-55~~.†  
Law Implemented: NBCE ~~4-30-30~~

7-03.1-14-03. Doors and windows.

1. All openings to the outer air must be effectively protected by any of the following:
  - a. Screening.
  - b. Effective electric screen panels.
  - c. Fans or air curtains to provide sufficient air velocity.
  - d. Properly constructed flaps where it is impractical to use self-closing doors or air curtains.
  - e. A combination of subdivisions a, b, c, and d.
2. All openings to the outer air must be ratproof to the extent that is necessary to prevent rodent entry.
3. Outer doors must be self-closing. Screen doors must open outward. Repealed effective April 1, 1993.

History: Effective August 1, 1986.  
General Authority: NBCE ~~4-29-03~~, ~~4-29-04~~, ~~4-30-55~~.†  
Law Implemented: NBCE ~~4-30-36~~

7-03.1-14-04. Lighting and ventilation.

1. Lighting requirements:
  - a. Adequate light sources are required (natural, artificial, or combination) which must furnish at least twenty foot-candles to all areas where milk and milk products are handled, processed, or stored or where utensils, containers, or equipment are washed.
  - b. Dry storage areas must be provided with at least five foot-candles of light.
2. Ventilation requirements:
  - a. Small rooms must be kept reasonably free of odors and excessive condensation on equipment, walls, and ceilings.
  - b. Pressurized ventilating systems, if used, must have a filtered air intake. Repealed effective April 1, 1993.

History: Effective August 1, 1986.

General Authority: NDEC ~~4-29-03~~, ~~4-29-04~~, ~~4-30-55~~.

Law Implemented: NDEC ~~4-30-36~~

#### 7-03.1-14-05. Rooms.

1. Processing, pasteurizing, cooling, and packaging must be conducted in single rooms but not in the same room as cleaning of cans, bottles, and cases or the cleaning and unloading of milk truck tanks.
2. Cooling may be done in the room where milk tank trucks are unloaded or cleaned and sanitized.
3. Facilities for cleaning and sanitizing of milk tank trucks must be equipped for manual or mechanical operations. If facilities are not on plant premises they must be performed at receiving stations, transfer stations, or separate washing installations.
4. Rooms must be of sufficient size for their intended purpose.
5. Rooms in which milk or milk products are handled, processed, or stored or where equipment utensils and milk containers are washed or stored, may not directly open into stables or rooms used for domestic purposes.
6. All bulk milk storage tanks must be vented into a room used for pasteurization, processing, cooling, packaging operations, or into a storage tank gallery room. Vents may be located elsewhere, if they are adequately equipped with air filters so as to preclude the contamination of the milk.
7. Solid doors in required partitions must be self-closing.
8. Cottage cheese rooms.
  - a. New cottage cheese vat installations must be located in a separate room maintained free of vermin and flies, and must be kept clean.
  - b. Existing installations will be allowed in the processing room provided there is no evidence of overcrowding, excessive traffic, condensation, or splash, and provided they are equipped with multiservice, or single-service covers which must be kept in place at all times during the setting operation. Repealed effective April 1, 1993.

History: Effective August 1, 1986.

General Authority: NDEC ~~4-29-03~~, ~~4-29-04~~, ~~4-30-55~~.

Law Implemented: NDEC ~~4-30-36~~

7-03.1-14-06. Toilet facilities.

1. The milk plant must be provided with facilities conforming with the applicable provisions of the state or local plumbing code.
2. Toilet rooms may not open directly into any room in which milk or milk products are processed. They must be completely enclosed and have tight fitting self-closing doors.
3. Dressing rooms and fixtures must be kept in clean condition and good repair and must be well lighted and ventilated, have toilet tissue, and have an easily cleanable covered waste receptacle.
4. Sewage and other liquid wastes must be disposed of in a sanitary manner. Nonwater carried sewage disposal facilities may not be used. Repealed effective April 1, 1993.

History: Effective August 1, 1986.

General Authority: NDCG 4-29-03, 4-29-04, 4-30-55.†

Law Implemented: NDCG 4-30-36

7-03.1-14-07. Water supply.

1. Municipal water systems must be from an adequate supply, protected and operated. They must be easily accessible and safe as approved by the state water control authority.
2. Individual water systems must be constructed and operated in compliance with the state water requirements. They must also be free of any cross connection or submerged inlets that could allow contamination of a water supply.
3. There must be no cross connections between safe and unsafe water sources.
4. An airgap or effective back-flow preventer must be on all connections between the water supply piping and a makeup tank (such as for cooling and condensing).
5. Condensing water and vacuum water must meet the requirements of subsections 1 through 4. In specific cases where the water does not meet these requirements, the water may be used so long as the evaporator or vacuum heat equipment is constructed and operated to preclude contamination of the equipment or its contents. This is accomplished by use of a surface-type condenser or use of reliable safeguards to prevent the overflow of condensing water from the condenser.

6. Condensing water and reclaimed water from milk or milk products may be reused when in compliance with the requirements of this section and when proper protection from contamination is used.
7. Water systems which have been repaired or otherwise contaminated must be disinfected before use and then pumped free of disinfectant before bacteriological testing.
8. Regulatory bacteriological testing must occur:
  - a. Upon initial approval.
  - b. Once every six months after approval.
  - c. Upon notification of repair or alteration of water system.

Regulatory bacteriological testing must be conducted at an official laboratory, and must be on record and retained at the dairy department. Repealed effective April 1, 1993.

History: Effective August 1, 1986.

General Authority: NDEC 4-29-03, 4-29-04, 4-30-55.†

Law Implemented: NDEC 4-30-36

7-03.1-14-08. Handwashing facilities. Handwashing facilities must be conveniently located to toilets and rooms in which milk plant operations are conducted and must be clean and in good repair, and must have hot and cold or warm running water, soap, and individual sanitary towels or approved handdrying devices. Steam water mixing valves and vats for washing bottles, cans, and similar equipment may not be used as handwashing facilities. Repealed effective April 1, 1993.

History: Effective August 1, 1986.

General Authority: NDEC 4-29-03, 4-29-04, 4-30-55.†

Law Implemented: NDEC 4-30-36

#### 7-03.1-14-09. Milk plant cleanliness.

1. All piping, floors, walls, ceilings, fans, shelves, tables, and the nonproduct contact surfaces of facilities and equipment must be clean.
2. All rooms in which milk and milk products are handled, processed, or stored or in which containers, utensils, or equipment are washed or stored, must be kept clean, neat, and free of evidence of insects and rodents.
3. Only equipment directly related to processing operations or the handling of containers, utensils, and equipment is

permitted in the pasteurizing, processing, cooling, packaging, and bulk milk storage rooms.

4. No trash or solid waste may be stored within the plant except in covered containers. Waste containers at the packaging machine or bottle washer may be uncovered during operation of such equipment. Repealed effective April 1, 1993.

History: Effective August 1, 1986.

General Authority: NBCE 4-29-03, 4-29-04, 4-30-55.†

Law Implemented: NBCE 4-30-36

#### 7-03.1-14-10. Sanitary piping.

1. All sanitary piping, fittings, and connections which are exposed to milk or milk products, or from which liquids may drip, drain, or be drawn into milk products must consist of smooth impervious, corrosion-resistant, nontoxic, easily cleanable material consisting of one or more of the following:
  - a. Stainless steel of the American iron and steel institute 300 series.
  - b. Equally corrosion-resistant metal (to subsection a) which is nontoxic and nonabsorbent.
  - c. Heat resistant glass.
2. Plastic, rubber, or rubberlike materials used for gaskets, sealing applications, short plastic take down jumpers, or connections where flexibility is required for essential or functional reasons must be:
  - a. Relatively inert.
  - b. Resistant to scratching, scoring, decomposition, crazing, chipping, and distortion.
  - c. Nontoxic.
  - d. Fat resistant.
  - e. Relatively nonabsorbent.
  - f. Constructed of a material which does not impart flavor or odor to the product.
3. The piping, fittings, and connections must be designed, constructed, and installed to be easily cleaned, kept in good repair, free of breaks or corrosion, to contain no dead ends of piping, and to allow drainage, and inspection.

4. ~~Cleaned in place milk pipelines and return solution lines must be rigid, self draining, and so supported to maintain uniform slope and alignment.~~
5. ~~Gaskets, if used, must be self-positioning, designed, finished, and applied to form a smooth, flush interior surface. If gaskets are not used, fittings must have self-positioning faces designed to form smooth, flush interior.~~
6. ~~Pipelines.~~
  - a. ~~Interior of welded joints must be free of pits, cracks, or inclusions.~~
  - b. ~~Pipelines must be inspected by a borescope or other appropriate inspection device.~~
  - c. ~~Pipelines must have access points for inspection and be approved by the dairy commissioner.~~
  - d. ~~Plans for welded pipelines and any changes in these plans must be approved in writing by the dairy commissioner prior to construction.~~
7. ~~Milk and milk products must be conducted from one piece of equipment to another only through sanitary piping. In the case of cottage cheese dressing or cheese, ingredients may be transported by other methods which protect the product from contamination. Repealed effective April 1, 1993.~~

History: Effective August 1, 1986.

General Authority: NDCC ~~4-29-03, 4-29-04, 4-30-55.~~†

Law Implemented: NDCC ~~4-30-36~~

7-03.1-14-11. Construction and repair of containers and equipment.

- †. ~~Multiuse containers and equipment with which milk and milk products come into contact must be.~~
  - a. ~~Smooth.~~
  - b. ~~Impervious.~~
  - c. ~~Corrosion resistant.~~
  - d. ~~Nontoxic.~~
  - e. ~~Stainless steel, of equally corrosion-resistant metal which is nontoxic and nonabsorbent, or heat-resistant glass, or plastic or rubber and rubberlike material that~~

is inert; resistant to scratching; scoring; decomposition; crazing; chipping; and distortion; nonabsorbent; nontoxic and resistant; does not impart flavor or odor to the product; and maintains original properties under repeated use.

2. Joints in containers, equipment, and utensils must be flush and finished as smooth as adjoining surfaces.
3. Rotating shaft inserted through a surface which milk or milk products come into contact. The joint between the moving and stationary surfaces must be close fitting.
4. A pressure tight seal must be provided ahead of all threads and crevices when thermometers or temperature sensing elements are inserted through a surface with which milk and milk products come into contact.
5. Openings in covers of tanks, vats, separators, and other containers and equipment must be protected by raised edges or otherwise to prevent the entrance of surface drainage.
6. Condensation diverting aprons must be provided as close as possible on all pipes, thermometers, and other equipment unless a watertight joint is provided.
7. All surfaces with which milk or milk products come into contact must be easily accessible or demountable for manual cleaning.
8. All product contact surfaces must be accessible for inspection and self drainage.
9. There must be no threads used in contact with milk or milk products except where needed for functional or safety reasons and these must be of a sanitary type.
10. All multiuse containers and other equipment must have rounded corners, be in good repair, and free from breaks, crevices, and corrosion. Milk cans must have umbrella type covers.
11. Strainers must be self draining and of approved design. The design must be perforated metal design. Strainers must use single service strainer media. When required for functional reasons inherent to production of certain milk products, multiuse woven material may be used where it is impractical to use perforated metal. This must be mechanically cleaned by such methods that thoroughly clean the woven material and do not contaminate the product.
12. Single service articles must be approved and not reused. They must be nontoxic and handled in a sanitary manner. Repealed effective April 1, 1993.

History: Effective August 1, 1986.  
General Authority: NDEC 4-29-03, 4-29-04, 4-30-55.1  
Law Implemented: NDEC 4-30-36

7-03.1-14-12. Cleaning and sanitizing of containers and equipment.

1. Containers and equipment must be thoroughly cleaned after each use and all equipment must be thoroughly cleaned at least once each day.
2. Storage tanks must be cleaned when emptied and must be emptied once every seventy-two hours. Tanks holding milk longer than twenty-four hours must be equipped with a seven-day temperature recording device.
3. Milk tank trucks must be cleaned and sanitized as required by the regulatory agency. Trucks must bear a tag or have a record showing the date, time, place, and signature or initial of the operator, unless the truck delivers to only one receiving unit where responsibility for cleaning and sanitizing can be definitely established without tagging. The tag must be removed where the truck is next washed and sanitized and kept on file for fifteen days.
4. Pipelines and equipment designed for mechanical cleaning must have an effective cleaning and sanitizing regimen, a temperature recording device in the return solution line, and temperature recording charts identified, dated, and retained for three months. Charts are to be checked by the dairy commissioner on each official inspection.
5. Plants which manually clean containers must be equipped with a two compartment wash and rinse vat. A third treatment vat, steam cabinet, or individual steam jet plate with hood must be provided for sanitizing.
6. All multiuse containers, equipment, or containers must be sanitized prior to use. Tests to determine the efficiency of sanitation should be made by the dairy department.
7. The residual bacteria count of multiuse containers may not exceed one per milliliter of capacity (rinse test) and fifty colonies per eight square inches {51.61 square centimeters} of product-contact surface (swab test). Multiuse containers must be free of all coliforms. If fabricated in another plant and the regulatory agency has information that they do comply, the agency may accept the containers as being in conformance without additional tests unless they have reason to believe there is a conformance problem or bacterial problem.
8. The closure must be single service.

9. The container may not impart into the product pesticide residual levels or other contaminants in excess of acceptable limits. Repealed effective April 1, 1993.

History: ~~Effective August 1, 1986.~~

General Authority: ~~NBCE 4-29-03, 4-29-04, 4-30-55.1~~

Law Implemented: ~~NBCE 4-30-36~~

7-03.1-14-13. Storage of cleaned containers and equipment.

1. All multiuse containers, equipment, and utensils, after cleaning, must be transported and stored inverted on metal racks or in clean nonabsorbent, corrosion resistant, nontoxic cases elevated above the floor or otherwise protected from contamination.
2. Floors may not be flushed or washed when crates of clean bottles are stacked on them. Repealed effective April 1, 1993.

History: ~~Effective August 1, 1986.~~

General Authority: ~~NBCE 4-29-03, 4-29-04, 4-30-55.1~~

Law Implemented: ~~NBCE 4-30-36~~

7-03.1-14-14. Storage of single-service containers, utensils, and materials.

1. Single-service caps, cap stock, parchment paper, containers, gaskets, or other single-service articles for use on contact with milk and milk products must be purchased and stored in sanitary tubes, wrappings, or cartons, kept clean and dry until used, and handled in a sanitary manner.
2. Paperboard shipping containers used to enclose plastic bags or unfilled containers must be used only once.
3. Spilled caps, gaskets, or parchment paper may not be refilled into their original container.
4. Cartons or boxes from which contents have been partially removed must be kept closed.
5. Caps, closures, or containers must be protected from contamination. Repealed effective April 1, 1993.

History: ~~Effective August 1, 1986.~~

General Authority: ~~NBCE 4-29-03, 4-29-04, 4-30-55.1~~

Law Implemented: ~~NBCE 4-30-36d~~

7-03.1-14-15. Protection from contamination.

1. Equipment and operations must be located so to prevent overcrowding and contamination of cleaned and sanitized containers, equipment, and utensils by splash, condensation, or manual contact.
2. Pipelines and equipment used to contain or conduct milk must be separated from tanks or circuits containing cleaning or sanitizing solution.
3. Milk and milk products which have overflowed, leaked, spilled, or been improperly handled must be discarded.
4. Milk and milk products drained from processing equipment at the end of a run, or collected from defoamers which do not return product to the filler bowl, or milk solids rinsed from equipment, containers, or pipelines, must only be repasteurized if they are handled sanitarilly and kept at forty-five degrees Fahrenheit {7.22 degrees Celsius} or less, otherwise they are to be discarded.
5. Returned package milk may not be repasteurized unless the product has been pasteurized at another grade A plant, handled in a sanitary manner, and maintained at forty-five degrees Fahrenheit {7.22 degrees Celsius} or less.
6. All product surfaces must be covered or otherwise protected from dust, insects, condensation, or contamination.
7. All openings attached to milk storage and milk tank trucks, pumps, vats, etc. must be capped or otherwise protected.
8. Unloading at transfer receiving stations or pasteurization plants, the following conditions must be met:
  - a. If the area is completely enclosed and the dust cover or dome and manhole cover opened slightly and held by metal clamps, a filter is not required.
  - b. If a dust cover or manhole is open in excess of what is allowed by the metal clamps, or the covers are removed, a filter is required for the manhole.
  - c. If areas are not enclosed or doors are open during unloading, a suitable filter is required.
  - d. Direct connections from truck to truck must be valve to valve or through the manhole lid, provided that all connections are made from ferrule to ferrule with protection for the air vent.
  - e. Receiving and dump vats must be completely covered, except during washing and sanitizing and when milk is being

dumped. Openings in vats for strainers shall have covers designed to cover the opening with the strainer in place.

9. Whenever air under pressure is used in a manner to be in contact with milk and contact surfaces of milk equipment, it must be free of oil, free of dust, excessive moisture, extraneous material, and odor.
10. Steam containing toxic substances is prohibited and when used must be of culinary quality.
11. Standardization must be done before pasteurization is started unless pasteurized milk or milk products are used for standardization. In no case may raw milk be used to standardize pasteurized products unless the product is subsequently repasteurized. Standardization of grade A products with any milk or milk products other than grade A is prohibited.
12. Processing of food and drinks other than grade A milk and milk products must be performed to preclude the contamination of milk and milk products.
13. Means must be provided to prevent contamination of milk containers, utensils, and equipment.
14. All ingredients and nonproduct contact materials used in the preparation or packing of milk and milk products must be stored in a clean place, free from contamination.
15. Pasteurized milk may not be strained or filtered except through a perforated metal strainer.
16. Only those poisonous or toxic materials necessary for the maintenance of the dairy plant may be present in the dairy plant. These may not be stored in any room or area where they could contaminate product equipment, containers, utensils, etc., but must be in a separate room and distinctly labeled.
17. Only insecticides and rodenticides approved by the dairy commissioner may be used. They must be used in accordance with the manufacturers' label directions. They may not be used to contaminate milk, containers, equipment, and utensils.  
Repealed effective April 1, 1993.

History: Effective August 1, 1986.

General Authority: ~~NDEC 4-29-03, 4-29-04, 4-30-55.~~

Law Implemented: ~~NDEC 4-30-36~~

7-03.1-14-16. Pasteurization.

1. Batch.

- a. The pasteurizer must be designed so that the difference in temperature between the milk product in the center and the coldest milk in the vat will not exceed one degree Fahrenheit {0.55 degrees Celsius} at any time. The vat must be provided with adequate agitation with the agitator sufficiently submerged.
- b. Location and required readings of indicating and recording thermometers.
  - (1) Each batch pasteurizer must be equipped with both an indicating and recording thermometer.
  - (2) The thermometer may not read less than required pasteurization temperatures throughout the holding period. Temperatures of both thermometers must be checked by the plant operator and comparison must be on the recording chart.
  - (3) The recorder may not read higher than the indicating thermometer.
  - (4) No batch of milk or milk products may be pasteurized unless it is sufficient to cover both thermometer bulbs.
- c. Batch pasteurizers must be so operated that in all circumstances milk and milk products will be held at not less than the minimum pasteurization temperature continuously for at least thirty minutes.
- d. When filling or emptying temperatures are included in the time interval on the recording chart, such intervals must be indicated on the chart by the operator.
- e. In batch pasteurizers the temperatures of the atmosphere above the milk and milk products may not be less than five degrees Fahrenheit {2.75 degrees Celsius} higher than legal pasteurization temperature. The pasteurizer must be equipped with an airspace thermometer, the surface of the milk must be at least one inch {25.4 millimeters} below the thermometer bulb, and this temperature must be inscribed on the recording chart each time the pasteurizer is in use.
- f. Design and installation of valves and connections.
  - (1) Design and installation of valves and connections must meet requirements of section 7-03.1-14-10.
  - (2) All pipelines and fittings must be so constructed and so located that leakage will not occur.

- (3) All single leak grooves and all mating leak grooves when matted must extend throughout the entire depth of the seat. Leakage must be diverted, drainage promoted, and air binding prevented.
- (4) A stop must be provided on all plug-type outlet and inlet valves in order to guide the operator in closing the valve so unpasteurized milk is not permitted to enter the outlet line or holder respectively.
- (5) Outlet valves must be designed to prevent the accumulation of unpasteurized milk in the valve passages when the valve is in closed position.
- (6) Inlet pipelines and outlets from vat pasteurizers must be equipped with leak protector valves unless piping is so arranged that only one vat can be connected to the inlet line at a time, and this one vat must be disconnected during holding and emptying periods.
- (7) Inlet and outlet connections other than through close-coupled valves may not enter or leave the pasteurizer below the level of milk therein.
- (8) When the inlet line enters the holder above the milk level, the inlet line must be provided with an automatic air relief or vent located at the valve or elsewhere and designed to function in every closed position.
- (9) All leak detector valves must be installed in the proper position to ensure the function of the leak diverting device.
- (10) All outlet valves must be kept fully closed during filling, heating, and holding periods. All inlet valves must be closed during holding and emptying periods.

2. High temperature short time continuous flow pasteurization.

- a. Indicating thermometers and recorder/controller instruments must comply with state standards.
- b. Automatic milk flow controls. Each high temperature short time must be equipped with a flow-diversion device which automatically causes the diversion of milk in response to a sublegal pasteurization temperature. This device must comply with all of the following specifications:

- (1) Forward flow of subtemperature milk under any circumstance is prohibited.
- (2) When a packing gland is used it must be impossible to tighten the stem packing nut to such an extent so as to prevent the valve from assuming a fully diverted position.
- (3) A leak escape must be installed on the forward flow side of the valve seat or when back pressure is exerted on the valve seat. The leak escape should lie between the two valve seats or between two portions of the same seat. All leakage must be discharged through a line separate from the diversion device. If discharged to a constant level on the tank, a sight glass must be installed on the line.
- (4) The closure of the forward flow seat must be tight so that leakage past it will not exceed the capacity of the leak escape device.
- (5) The length of the connecting rod may not be adjustable.
- (6) Failure of the devices primary motivating power must automatically divert the flow of milk.
- (7) The flow-diversion device must be located downstream from the holder and the flow control sensor must be located in the milk line not more than eighteen inches {457.20 millimeters} upstream from the flow control device.
- (8) The pipeline from the flow-diversion device must be self-draining and free of restriction unless so designed that stoppage of the diversion line cannot occur.
- (9) When used, the pipeline from the leak detector port must meet the criteria provided in paragraph 8.

c. Holding tubes must be so designed:

- (1) To hold every particle of milk and milk products for at least the legal time.
- (2) To assure simultaneous temperature difference can be assumed one degree Fahrenheit {0.55 degrees Celsius} in holders of seven inches {177.8 millimeters} or smaller.
- (3) To assure that short circuiting a portion of the holder is not possible.

- (4) To have an upward slope in the direction of flow not less than twenty-five inches per foot [6.35 millimeters per 304.8 millimeters].
- (5) And be provided with supports to maintain all parts of holding tubes in a fixed position.
- (6) To assure that no portion between the inlet and the flow control temperature sensor is heated.

d. Indicating and recording thermometers.

- (1) Indicating and recording thermometers must be located as close as possible to the temperature sensor of the recorder controller.
- (2) The temperature of the recorded controller must be checked daily against the indicator by the plant operator and readings recorded on the chart. The recorder controller must read no higher than the indicating thermometer.

e. Flow-promoting devices.

- (1) Equipment which may produce flow through the holder must be upstream from the holder unless the flow-promoting devices have a means provided to eliminate negative pressure.
- (2) Vacuum equipment located downstream from the holder must have an effective vacuum breaker plus automatic means of preventing negative pressure.
- (3) The speed of pumps or other flow-promoting devices governing the rate of flow through the holder must be controlled to hold every particle of milk to comply with the legal definition of pasteurization. They must be sealed after being checked by the dairy commissioner and if the seal is broken, the dairy department must be notified immediately. The metering or timing pump must be of the positive displacement type.
- (4) The holding time tests must be taken when all equipment and devices are operated and adjusted to provide for maximum flow. It must be tested in both forward and divert flow initially and semiannually thereafter by the dairy department, and also when the seal of the steep setting has been broken.

3. Milk to milk regenerative heating.

a. Pasteurizers employing milk to milk regenerative heating with both sides closed to the atmosphere must comply with the following specifications:

- (1) Regenerators must be constructed, installed, and operated so that the pasteurized product in the regenerator will automatically be under greater pressure than the raw product.
- (2) Pasteurized product between regenerator and the nearest point downstream open to the atmosphere must rise to a vertical elevation twelve inches {304.80 millimeters} above the highest raw milk downstream from the constant level tank and must be open to the atmosphere at this or a higher elevation.
- (3) The overflow of the top rim of the balance tank must be lower than the lowest level of milk in the regenerator.
- (4) No pump flow-promoting devices which can effect proper pressure relationships within the regenerator may be located between the product outlet from the regenerator and the nearest point downstream open to the atmosphere.
- (5) No pump may be located between the raw milk inlet to the regenerator and the raw milk supply tank unless designed and installed to operate only when milk is flowing through the pasteurized side and the pressure on the pasteurized side is greater than the pump's maximum pressure. To accomplish this, the booster pump must be wired so operation is impossible unless:
  - (a) The metering pump is operating.
  - (b) The flow-diversion device is in the forward flow position.
  - (c) The pasteurized product pressure exceeds maximum pressure developed by the booster pump by one pound per square inch {6.87 kilopascals}. Pressure gauges must be installed at the inlet and outlet of the regenerator or in lieu of regeneration outlet-cooler outlet. These will be checked by the regulatory agency.
- (6) The motor casing and impeller of the booster pump must be identified and such records maintained.
- (7) All raw milk in the regenerator must drain back to the balance tank when raw pumps are shut down and raw milk outlet from the regenerator is disconnected.

(8) Vacuum equipment located downstream from the flow-diversion device must be provided to prevent the lowering of pasteurized product level in the regenerator during periods of diverted flow or shut down. An effective vacuum breaker plus automatic means of preventing a negative pressure must be installed in the line between the vacuum chamber and the pasteurized product inlet to the regenerator.

b. Milk to water to milk regenerative heating.

(1) Milk to water to milk regenerative heating must be designed, installed, and operated so that the heat transfer medium side of the regenerator in the raw milk section is under greater pressure than the raw milk side at all times.

(2) The heat transfer water must be safe and in a covered tank open to the atmosphere at an elevation twelve inches {304.80 millimeters} higher than any raw milk level downstream from the balance tank. The heat transfer water between its regenerator outlet and the nearest downstream point must be open to the atmosphere and must rise to a vertical elevation of at least twelve inches {304.80 millimeters} above any raw milk.

(3) The heat transfer water circuit must be full of water at the beginning of the run and all loss of water from the circuit must be automatically and immediately replenished whenever raw milk is present in the regenerator.

(4) The overflow of the top rim of the balance tank must be lower than the lowest level of milk in the regenerator.

(5) All raw milk must drain freely back to the upstream supply tank when the raw milk pumps are shut down and the raw milk outlet from the regenerator is disconnected.

(6) No pump may be located between the raw milk inlet to the raw milk supply tank unless designed and installed to operate when water is flowing through the heat transfer section of the regenerator, and when the pressure of the heat-transfer water is higher than the pressure of the raw milk. This may be accomplished by wiring the booster pump so that it cannot operate unless the heat transfer water pump is operating, and the heat transfer water pressure exceeds raw milk pressure in the regenerator by at least one pound per square inch {6.87 kilopascals}.

Pressure gauges must be installed at the raw milk outlet and the heat transfer water outlet of the regenerator. The accuracy of these pressure gauges must be checked by the dairy commissioner upon installation, quarterly, and after repair.

4. Temperature recording charts, equipment tests, and examination.

- a. All temperature recording charts must be preserved at the plant for a period of three months.
- b. The use of temperature recording charts may not exceed the time limit for which they are designed.
- c. The following information must be entered on the charts as applicable.

(1) Batch pasteurizers.

(a) Date.

a(b) Number or location of recorder when more than one is used.

(c) Extent of holding period including filling and emptying times.

(d) Reading of airspace thermometer.

(e) Reading of indicating thermometer.

(f) Quarterly, the initials of the dairy commissioner opposite the required readings of the indicating thermometer and airspace thermometer.

(g) Quarterly, the time accuracy of the recorder as determined by the dairy commissioner.

(h) Amount and name of pasteurized milk and milk products represented by each batch or run on the chart.

(i) Record of unusual occurrences.

(j) Signatures or initials of operator.

(k) Name of milk plant.

- (2) High temperature short time charts must have all the information as specified in subdivision c of subsection 4, except subparagraphs c, d, and f; a

record of the time during which the flow-diversion device is in the forward flow position; and the cut-in and cut-out milk temperature recorded daily by the operator at the beginning of the run and initialed by the dairy department quarterly.

- d. The dairy commissioner shall conduct equipment tests on instruments, upon installation and once every three months thereafter, and when repairs or alterations are made. The salt test must be conducted once every six months.  
Repealed effective April 1, 1993.

History: Effective August 1, 1986.

General Authority: NDEC ~~4-29-03~~, ~~4-29-04~~, ~~4-30-55~~.

Law Implemented: NDEC ~~4-30-36~~

#### 7-03.1-14-17. Cooling of milk.

1. Raw milk product must be maintained at forty-five degrees Fahrenheit [~~7.22~~ degrees Celsius].
2. Pasteurized milk and milk products, except those to be cultured, must be cooled immediately in approved equipment to forty-five degrees Fahrenheit [~~7.22~~ degrees Celsius] or less, prior to packaging.
3. Storage of pasteurized milk and milk products must be forty-five degrees Fahrenheit [~~7.22~~ degrees Celsius] or less.
4. In delivery vehicles, the temperature of the milk and milk products may not exceed fifty degrees Fahrenheit [~~10~~ degrees Celsius].
- a5. Each refrigerator room in which milk or milk products are stored must be equipped with an indicating thermometer located in the warmest zone of the room.
6. Each storage tank must be equipped with an indicating thermometer the sensor of which must be located to permit the registering of the temperature of the contents when the tank contains no more than twenty percent of its calibrated capacity.
7. Surface coolers must meet all of the following specifications:
  - a. The sections of open surface coolers must leave a gap of at least twenty-five hundredths inch [~~6.35~~ millimeters] between the header sections for ease of cleaning.
  - b. Where header ends are not completely enclosed, condensation or leakage from headers must be prevented from entering the milk and milk products.

- c. The cooler must be located to prevent drips from entering the milk or milk products.
- 8. Recirculated cold water used in coolers and exchangers must be a safe source protected from contamination, tested semiannually, and must comply with bacteriological standards. If systems become contaminated, they must be properly treated and retested.
- 9. Freezing point depressants, when used, must be nontoxic. Repealed effective April 1, 1993.

History: Effective August 7, 1986.

General Authority: NDCE ~~4-29-03~~, ~~4-29-04~~, ~~4-30-55.1~~

Law Implemented: NDCE ~~4-30-36~~

#### 7-03.1-14-18. Bottling and packaging.

- 1. All milk and milk products must be bottled and packaged at the plant where final pasteurization is performed without undue delay after pasteurization.
- 2. All bottling or packaging must be done on approved mechanical equipment. This does not exclude manually operated machinery but does exclude methods in which the bottling and capping devices are not integral in one system.
- 3. Bottling or packaging machines are designed to minimize needs for adjustment during operation.
- 4. Bottling or packaging machine supply tanks and bowls must have covers which are constructed to prevent any contamination. All covers must be in place during operation.
- 5. A drip deflector designed and adjusted to divert condensation must be installed on each filler valve.
- 6. Container in-feed conveyors to automatic bottling or packaging machines must have overhead shields to protect the bottles or packages from contamination.
- 7. Container fabricating materials must be handled in a sanitary manner and protected against undue exposure during the package assembly operation.
- 8. Floats on machines must be designed to be adjustable without removing the cover.
- 9. The filler pipe of all bottling and packaging machines must have an apron or other approved device as close to the filler bowl as possible.

- 10. Filling cylinders on packaging machine must be protected from contamination by use of overhead shields.
- 11. Lubricants applied to milk contact surfaces must be nontoxic, sterile, and applied sparingly and in a sanitary manner.
- 12. Cottage cheese, dry curd cottage cheese, and lowfat cottage cheese may be transported in sealed containers in a protected sanitary manner from one plant to another for creaming or packaging. Repealed effective April 1, 1993.

History: Effective August 1, 1986.

General Authority: NDEC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDEC 4-30-36

#### 7-03.1-14-19. Capping.

- 1. Capping or closing must be performed in a sanitary manner by approved mechanical equipment. This may not exclude manually operated equipment. If suitable equipment is not available for capping cottage cheese, dry curd cottage cheese, and lowfat cottage cheese, other methods which eliminate possible contamination may be approved by the dairy commissioner.
- 2. Hand capping will not be allowed unless containers are three gallons [11.36 liters] or more and the method used eliminates all possibility of contamination.
- 3. Need for adjustment of equipment during operation must be kept at a minimum.
- 4. Imperfectly capped and closed products must be emptied into approved sanitary containers immediately, protected from contamination, maintained at forty-five degrees Fahrenheit [7.22 degrees Celsius] or less, and repasteurized, or in lieu of repasteurization, discarded.
- 5. All caps and closures must be designed and applied so as to protect the pouring lip to at least its largest diameter. Removal of caps cannot be made without detection. Closures for cottage cheese, dry curd cottage cheese, and lowfat cottage cheese containers must extend over the top edges of the container.
- 6. Caps and closures must be handled in a sanitary manner. The first cap, the first lap from each roll of cap or cover stock, and the first sheet of parchment or cover paper must be discarded. This does not apply to cottage cheese, dry curd cottage cheese, and lowfat cottage cheese container closures, when such closures are supplied in a totally enclosed package or wrapped so as to protect the closures. Repealed effective April 1, 1993.

History: Effective August 1, 1986.  
General Authority: NDCE ~~4-29-03~~, ~~4-29-04~~, ~~4-30-55~~.†  
Law Implemented: NDCE ~~4-30-36~~

7-03.1-14-20. Personnel cleanliness.

1. Hands must be washed before commencing plant functions and whenever soiled or contaminated.
2. All persons engaged in processing, pasteurization, handling, storage, or transportation of milk, milk products, containers, equipment, and utensils must wear clean outer garments, caps (paper caps, hard hats, or hair nets), and beard nets (males).
3. Tobacco may not be used by any person while engaged in the processing of milk or milk products. Repealed effective April 1, 1993.

History: Effective August 1, 1986.  
General Authority: NDCE ~~4-29-03~~, ~~4-29-04~~, ~~4-30-55~~.†  
Law Implemented: NDCE ~~4-30-36~~

7-03.1-14-21. Vehicles. All vehicles used for transportation of pasteurized milk and milk products must be constructed and operated so that the milk and milk products are maintained at forty-five degrees Fahrenheit [7.22 degrees Celsius] or less and are protected from sun, from freezing, and from contamination. Vehicles must be kept clean. No contaminating substances may be transported in a vehicle that hauls milk and milk products. Vehicles must have fully enclosed bodies with well-fitted solid doors. Repealed effective April 1, 1993.

History: Effective August 1, 1986.  
General Authority: NDCE ~~4-29-03~~, ~~4-29-04~~, ~~4-30-55~~.†  
Law Implemented: NDCE ~~4-30-36~~

7-03.1-14-22. Surroundings. Surroundings must be neat and clean, free of pooled water, harborage, and fly and rodent breeding areas. Only approved insecticides and rodenticides may be used. Driveways, lanes, and areas serving milk plant vehicular traffic must be graded, drained, and free from pools of standing water. Repealed effective April 1, 1993.

History: Effective August 1, 1986.  
General Authority: NDCE ~~4-29-03~~, ~~4-29-04~~, ~~4-30-55~~.†  
Law Implemented: NDCE ~~4-30-36~~

## CHAPTER 7-03.1-15

7-03.1-15-02. Equipment and vehicles. The maximum amount of time between pickup of milk on the farm is four days. All equipment used ~~in the~~ to transport of raw milk or cream must conform to 3A sanitary standards, as defined in North Dakota Century Code section 4-30-01, or be approved by the dairy commissioner. Equipment not meeting 3A sanitary standards and not having the dairy commissioner's approval must be sealed or tagged by the dairy commissioner. ~~Use of sealed or tagged equipment will result in the suspension of the hauler's license or designee and may not be used for storing and transporting milk and milk products.~~ Vehicles used for transporting raw milk or milk products may not be used for transporting other products, unless approved by the dairy commissioner.

History: Effective August 1, 1986; amended effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-38

### 7-03.1-15-03. Raw milk pickup.

1. Raw milk picked up on the farm must be stored in containers meeting all the following requirements:
  - a. Compliance with 3A sanitary standards, as defined in North Dakota Century Code section 4-30-01, or approved by the dairy commissioner.
  - b. Ability to agitate to obtain a universal sample.
  - c. Ability to hold milk at a temperature between thirty-two to forty-five degrees Fahrenheit [0 to 7.22 degrees Celsius].
2. Only raw milk stored on the farm in bulk tanks approved by the dairy commissioner may be picked up. It is a violation of this section to add milk stored in containers not complying with this section to milk stored in a container meeting the requirements of this section.
3. Filter bowls or open bowl strainers with fiber filters must comply with 3A sanitary standards as defined in North Dakota Century Code section 4-30-01. Only approved in-line filtering devices may be used when transferring milk from a farm bulk tank to a farm bulk truck. These devices must be stored in a sanitary manner.
4. During transfer of all milk or milk products from farm bulk trucks or tankers, a filter is required for any air inlet vent

when transfer occurs outside or in an area not completely enclosed.

5. Transfer of ~~all~~ milk and milk products between trucks or ~~between truck and~~ tankers must be made from valve to valve with adequate filter protection for air inlet vent.
6. Only milk stored at forty-five degrees Fahrenheit [7.22 degrees Celsius] or below may be picked up at the farm.
7. Milk can only be picked up from farms with a valid posted certification.

History: Effective August 1, 1986; amended effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-38

7-03.1-15-04. Pup trailers. When pup trailers are used in hauling milk and milk products, the connecting pipeline between the main tanker and pup trailer must be kept free of milk or milk products during transport. Any milk retained in the connecting pipeline must be disposed of and not transferred to plant storage silos or tanks. These connecting pipelines or hoses must be cleaned and sanitized between each use. Two compartment tankers shall carry the same grade product in each compartment.

History: Effective August 1, 1986; amended effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-38

7-03.1-15-05. Wash records.

1. All farm bulk trucks used for transporting raw milk from the farm to the plant shall maintain a record of washing and sanitizing at the end of each day's use. This record may consist of a mechanical recording chart, a wash log, or any other approved method which contains the following information:
  - a. Truck identification - state identification number if applicable.
  - b. ~~Washer identification~~ Name and location of wash station.
  - c. Date and time of washing.
  - d. ~~Time~~ Date and time of sanitizing.
  - e. ~~Name and location of washing facility~~ Type of sanitizer.

f. Complete name of individual responsible for washing and sanitizing.

All items such as valves and milk pumps which cannot be cleaned in place must be manually cleaned and sanitized at the end of each day's use.

2. All tankers and farm bulk trucks washed and sanitized outside the state of North Dakota will require a seal on the outlet valve and wash tag containing the following information:

a. Truck identification - state identification number if applicable.

b. Location Name and location of wash station.

c. Date and time of washing.

d. Name of individual responsible for washing and Date and time of sanitizing.

e. Type of sanitizer.

f. Complete name of individual responsible for washing and sanitizing.

All milk transported in tankers or farm bulk trucks which are washed out of state and do not have the required seal and wash tag must be diverted to nongrade A uses.

3. If milk is held in tankers or farm trucks overnight, the milk may not exceed forty-five degrees Fahrenheit [7.22 degrees Celsius].

History: Effective August 1, 1986; amended effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-38

## CHAPTER 7-03.1-16

7-03.1-16-01. License requirements. ~~All persons other than milk producers or dairy plant employees engaging in over-the-road transport of milk or milk products, but not required to sample, must be licensed as milk haulers.~~ All private owners of over-the-road tankers and farm bulk trucks must be licensed as milk haulers. All the following items must be complied with in order to obtain a license:

1. The vehicles hauling milk must be properly identified with lettering of such height as easily readable. It must include the owner's name, address, and identification number.
2. The truck and tank must comply with 3A sanitary standards, as defined in North Dakota Century Code section 4-30-01, for unrefrigerated tanks storing milk and milk products.
3. Application must be made to the dairy commissioner for a license. The license must be renewed annually.
4. All milk haulers should be trained to screen milk for drug residue.

History: Effective August 1, 1986; amended effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-38.1

## CHAPTER 7-03.1-17

7-03.1-17-02. Vehicle requirements. All vehicles used in the transport of dairy products covered under this section must comply with all the requirements listed below:

1. A temperature of forty-five degrees Fahrenheit [7.22 degrees Celsius] or lower must be maintained in the storage area of the delivery vehicle.
2. All milk and milk products must be maintained at forty-five degrees Fahrenheit [7.22 degrees Celsius] or lower. Failure to maintain milk and milk products in ~~the~~ this temperature range ~~of thirty two to forty five degrees Fahrenheit to 7.22 degrees Celsius~~ will require use of a refrigerated storage compartment. Ultrapasteurized and aseptically processed dairy products are exempt from this requirement.
3. The interior of the storage area must be cleaned daily and free from insects and rodents.
4. An approved thermometer must be mounted in the storage area of all vehicles used to transport processed and manufactured dairy products.
5. All newly licensed distributors must have an inspection of their facilities and equipment prior to licensing. Application for a distributor license must be made with the dairy commissioner.

History: Effective August 1, 1986; amended effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-39

CHAPTER 7-03.1-18

BRANDING CANS, KEGS, BARRELS, AND RECEPTACLES

[Repealed effective April 1, 1993]

## CHAPTER 7-03.1-20

7-03.1-20-01. Federal requirements. All milk and milk products must comply with the labeling and nomenclature requirements of title 21, Code of Federal Regulations, parts 131, 133, ~~and~~ 135, and the "Nutrition Labeling and Education Act of 1990", inclusive, except where state law takes precedence.

History: Effective August 1, 1986; amended effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-45

### 7-03.1-20-02. Cheese labeling.

1. Bulk cheese must be legibly marked with:
  - a. The name of the product.
  - b. Code or date, or both, of manufacture.
  - c. Vat number.
  - d. Officially designated code number or name and address of manufacturer.
  - e. Statement as to whether the product is pasteurized or heat treated or for further processing.
  - f. Other required information as listed in title 21, Code of Federal Regulations, part 133, or the "Nutrition Labeling and Education Act of 1990".
2. Each consumer sized container must be marked with:
  - a. Name and address of the manufacturer or United States department of agriculture code.
  - b. Packer or distributor.
  - c. Net weight of the contents.
  - d. Name of the product.
  - e. ~~Vat number.~~
  - f. Date of manufacture.
  - ~~g.~~ f. Date of packing.

h. g. Other required information as listed in title 21, Code of Federal Regulations, part 133.

3. In lieu of the requirements of subsections 1 and 2 where labeling of consumer sized packages is not practical, a record of processing dates, names, vat numbers, etcetera and plant code of the original bulk cheese must be kept on file at the particular establishment for a period of one year and made available to the dairy commissioner upon request.

History: Effective August 1, 1986; amended effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-45

7-03.1-20-03. Sodium labeling. Sodium labeling must be the same as the 1990 Nutrition Labeling and Education Act and its updates.

†. As used in this section:

- a. Salt refers to the sodium chloride, but is not synonymous with sodium.
- b. Sodium free may be used on the label and in labeling of foods that contain less than five milligrams of sodium per serving.
- c. Very low sodium may be used to designate foods containing thirty-five milligrams or less of sodium per serving.
- d. Low sodium may be used to designate foods containing one hundred forty milligrams or less of sodium per serving.
- e. Reduced sodium may be applied to foods that have been formulated to serve as and are represented as direct replacements for foods containing at least four times the sodium content (i.e., reflect at least seventy-five percent reduction).
- f. The terms "unsalted," "no salt added," and "without salt added" may only be used in the following cases:
  - (1) No salt is added during processing.
  - (2) The food it resembles or for which it substitutes normally is processed without salt.
  - (3) Sodium labeling is provided.

The label shall give information comparing the food's sodium content per serving with that of the food it replaces if the term "reduced" sodium is used.

2. The declaration of nutrition information must specify "sodium content" or "sodium" as milligrams per specified serving of food, expressed to the nearest multiple of five milligrams for foods containing from five to one hundred forty milligrams or ten milligrams for foods containing greater than one hundred forty milligrams per serving, and located on the label immediately following the statement of fat content (and fatty acid or cholesterol, or both, if stated).
3. If nutrition labeling is not used, a statement of the number of milligrams of sodium per serving, as "contains \_\_\_\_\_ milligrams sodium per (size) serving" may be provided on the principle or information panel. Sodium content must be expressed as zero (0) when a serving contains less than five milligrams.
4. A food will be considered misbranded if the sodium content is greater than twenty percent in excess of the label - declared sodium label. Reasonable deficiencies of calories, fat, or sodium are acceptable within current good manufacturing practice.
5. Potassium content information may be voluntarily included on the nutritional labeling format.

History: Effective August 1, 1986; amended effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-45

7-03.1-20-04. Frozen desserts. All frozen dessert labels must include:

1. Name of product.
2. Name of plant which processed product.
3. Address of processor.
4. Size or volume of container.
5. Whether product is naturally or artificially flavored.
6. List of ingredients in descending order.
7. Other pertinent information as required by title 21, Code of Federal Regulations, part 135, or the "Nutrition Labeling and Education Act of 1990".

History: Effective August 1, 1986; amended effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-45

7-03.1-20-05. Butter labeling. All butter coming into the state of North Dakota must be from United States department of agriculture listed plants.

History: Effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-45

STAFF COMMENT: Chapter 7-03.1-22 contains all new material but is not underscored so as to improve readability.

CHAPTER 7-03.1-22  
GOAT MILK PRODUCTION AND PROCESSING

Section  
7-03.1-22-01            Requirements

7-03.1-22-01. Requirements.

1. All manufacturing grade goat milk must be produced and processed according to United States department of agriculture minimum standards.
2. All grade A goat milk must be produced and processed according to grade A pasteurized milk ordinance, 1989 revision, United States department of health, food and drug administration, and its updates.

History: Effective April 1, 1993.

General Authority: NDCC 4-29-03, 4-29-04, 4-30-55.1

Law Implemented: NDCC 4-30-27



TITLE 13  
Banking and Financial Institutions,  
Department of



DECEMBER 1992

CHAPTER 13-03-11  
AGRICULTURAL LOANS

[Repealed effective December 1, 1992]

CHAPTER 13-03-12

BUSINESS LOANS

[Repealed effective December 1, 1992]

## CHAPTER 13-03-13

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

History: Effective March 1, 1988; amended effective December 1, 1992.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-13-02. Investments restricted. Total investments authorized under ~~chapter 13-03-13~~ is section 13-03-13-01 are limited to an amount not more than ten percent of assets. Adjustments must be made on the last day of each quarter to the lower of cost or market. Notwithstanding federal regulations, those mutual funds offering "puts" and "calls" are eligible for purchase by state credit unions.

History: Effective March 1, 1988; amended effective December 1, 1992.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

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

History: Effective March 1, 1988; amended effective December 1, 1992.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-13-04. Authority to invest in credit union service organizations. State credit unions may invest in credit union service organizations subject to the limitation provided for in this chapter and subject to approval by order of the board.

History: Effective December 1, 1992.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-13-05. Definitions. Unless the context otherwise requires, terms in this chapter have the following meanings:

1. "Affiliated" means those credit unions that have either invested in or made loans to a credit union service organization.
2. "Credit union service organization" means financial service organization created by a credit union or group of credit unions or a league service organization to provide services not available from credit unions themselves.
3. "Equity" means the total of regular reserves, investment valuation reserve, other reserves, and undivided earnings as reported on the most recent yearend call report.
4. "Immediate family member" means a spouse or other family member living in the same household.
5. "Officials or senior management employees" means members of the board of directors, supervisory committee, or credit committee, chief executive officer (typically this individual holds the title of president or treasurer/manager), any assistant chief executive officers (e.g., assistant president, vice president, or assistant treasurer/manager) and the chief financial officer (comptroller).

History: Effective December 1, 1992.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-13-06. Application. An application to establish a credit union service organization must be submitted to the board in writing and must contain the following:

1. A full explanation and complete documentation of the proposed credit union service organization.
2. A listing of proposed management and their qualifications.
3. A proposed business plan with financial projections for at least three years.
4. Any additional information as requested by the board or commissioner.

Once an application is determined to be complete by the commissioner, it must be submitted to the board for consideration. The board shall issue an order to either approve or disapprove the application. Upon notice of disapproval, the applicant has fifteen days to petition for a hearing before the board.

History: Effective December 1, 1992.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-13-07. Hearing. A public hearing by the board may be required on applications to invest in credit union service organizations whenever the board or commissioner determines that it is in the public interest to hold such a hearing or whenever a credit union or party requests an opportunity to be heard is granted. Notice of hearing on an application will be issued at least thirty days prior to the hearing on the application.

History: Effective December 1, 1992.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-13-08. Permissible services and activities. A state credit union may invest upon approval by order of the board in those credit union service organizations that provide one or more of the following services and activities:

1. The credit union service organization can conduct the following services and activities without approval of the board, but subject to applicable state licensing requirements: credit card and debit card services; check cashing and wire transfers; internal audits for credit unions; automated teller machine services; electronic funds transfer services; accounting services; data processing; shared credit union branch (service center) operations; sale of repossessed collateral; management, development, sale or lease of fixed assets; sale, lease, or servicing of computer hardware or software; management and personnel training and support; payment item processing; locator services; marketing services; research services; record retention and storage; microfilm and microfiche services; alarm-monitoring and other security services; debt collection services; credit analysis; coin and currency services; provision of forms and supplies; income tax preparation; and provision of vehicle warranty programs.
2. The credit union service organization may not initiate the following services and activities after December 1, 1992, without approval of the board, and subject to applicable state licensing requirements: consumer mortgage loan origination; loan processing, servicing, and sales; financial planning and counseling; retirement counseling; investment counseling; securities brokerage services; estate planning; acting as administrator for prepaid legal service plans, developing, and administering individual retirement account, Keogh, deferred compensation and other personnel benefit plans, trust services; acting as trustee, guardian, conservator, estate administrator, or in any other fiduciary capacity; real estate brokerage services; travel agency services; agency for sale of insurance; and personal property leasing.

3. The board may approve any service or activity which is not authorized in subsection 1 or 2, subject to approval by the national credit union administration.
4. The board in granting approval for a service or activity shall consider all relevant factors including:
  - a. Whether the credit union service organization management or staff possesses adequate expertise or skills to perform the service or activity; and
  - b. Whether the proposed activity or service is reasonably expected to be profitable.

History: Effective December 1, 1992.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-13-09. Limitations on investments in credit union service organizations. The following limitations apply to state credit unions for investments in credit union service organizations:

1. A credit union may not invest in shares, stocks, or obligations of credit union service organizations in an amount exceeding ten percent of its equity. The board may waive this limitation for a credit union investment in a credit union service organization existing before December 1, 1992.
2. Credit unions may not make loans to a credit union service organization in which it is affiliated in an amount exceeding ten percent of its equity. North Dakota central credit union may make a loan to its credit union service corporation, subject to approval of the board.
3. Any credit union currently holding an investment in a credit union service organization shall apply to the board for approval to engage in any additional service or activity.

History: Effective December 1, 1992.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-13-10. Conflict of interest. Individuals who serve as officials or senior management employees of an affiliated state credit union, and immediate family members of such individuals, may not receive any salary, commission, investment income, or other income or compensation from a credit union service organization either directly or indirectly, or from any person being served through the credit union service organization. This provision does not prohibit an official or senior management employee of a state credit union from assisting in the operation of a credit union service organization, provided the

individual is not compensated by the credit union service organization. Further, the credit union service organization may reimburse the state credit union for the services provided by the individual.

History: Effective December 1, 1992.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-13-11. Examinations. A credit union shall allow the commissioner or the commissioner's examiner, at the commissioner's discretion, to inspect or examine all the books or records of the credit union service organization for the purpose of determining compliance with this chapter and to determine the value of the credit union's investment or loans.

History: Effective December 1, 1992.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-01-04, 6-01-09, 6-06-06, 6-06-08

## CHAPTER 13-03-16

STAFF COMMENT: Chapter 13-03-16 contains all new material but is not underscored so as to improve readability.

### CHAPTER 13-03-16 MEMBER BUSINESS LOAN LIMITS

#### Section

13-03-16-01	Definitions
13-03-16-02	Requirements
13-03-16-03	Loan Limits
13-03-16-04	Allowance for Loan Losses
13-03-16-05	Construction and Development Lending
13-03-16-06	Prohibitions
13-03-16-07	Recordkeeping

#### 13-03-16-01. Definitions.

1. "Member business loans" means any loan, line of credit, or letter of credit, the proceeds of which will be used for a commercial, corporate, business, investment property or venture, or agricultural purpose, except that the following may not be considered member business loans for the purposes of this section:
  - a. A loan or loans fully secured by a lien on a one to four family dwelling that is the member's primary residence.
  - b. A loan that is fully secured by shares in the credit union or deposits in other financial institutions.
  - c. A loan meeting the general definition of member business loans under subsection 1 and, made to a borrower or an associated member as defined in subsection 3, which, when added to other such loans to the borrower or associated member, is less than twenty-five thousand dollars.
  - d. A loan, the repayment of which is fully insured or fully guaranteed by, or where there is an advance commitment to purchase in full by, any agency of the federal government or of a state or any of its political subdivisions.
  - e. A loan granted by a corporate credit union operating under the provisions of part 704 of the national credit union administration rules and regulations to another credit union.

2. "Reserves" mean all reserves, including the allowance for loan losses and undivided earnings or surplus.
3. "Associated member" means any member with a shared ownership, investment or other pecuniary interest in a business or commercial endeavor with the borrower.
4. "Immediate family member" means a spouse or other family member living in the same household.
5. "Loan-to-value (LTV)" ratio means the quotient of the aggregate amount of all sums borrowed from all sources on an item of collateral divided by the market value of the collateral used to secure the loan.
6. "Construction or development loan" means a financing arrangement for the purpose of acquisition of property or rights to property including land or structures with the intent of conversion into income-producing property including residential housing for rental or sale, commercial, or industrial use, or a similar use.

History: Effective December 1, 1992.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

#### 13-03-16-02. Requirements.

1. **Written loan policies.** The board of directors shall adopt specific business loan policies and review them at least annually. The policies must, at a minimum, address the following:
  - a. Types of business loans that will be made;
  - b. The credit union's trade area for business loans;
  - c. Maximum amount of credit union assets, in relation to reserves, that will be invested in business loans;
  - d. Maximum amount of credit union assets, in relation to reserves, that will be invested in a given category or type of business loan;
  - e. Maximum amount of credit union assets, in relation to reserves, that will be loaned to any one member or group of associated members, subject to subsection 1 of section 13-03-16-03;
  - f. Qualifications and experience of personnel involved in making and administering business loans with a minimum of two years direct experience with this type of lending;

- g. Analysis of the ability of the borrower to repay the loan;
  - h. Documentation supporting each request for an extension of credit or an increase in an existing loan or line of credit shall, except where the board of directors finds that such documentation requirements are not generally available for a particular type of business loan and states the reasons for those findings in the credit union's written policies, include the following: balance sheet, cash flow analysis, income statement, tax data; leveraging; comparison with industry averages; receipt and periodic updating of financial statements and other documentation; including tax returns;
  - i. Collateral requirements, including loan-to-value ratios; appraisal, title search, and insurance requirements; steps to be taken to secure various types of collateral; and how often the value and marketability of collateral is reevaluated;
  - j. Appropriate interest rates and maturities of business loans;
  - k. Loan monitoring, servicing, and followup procedures, including collection procedures;
  - l. Provision for periodic disclosure to the credit union's members of the number and aggregate dollar amount of member business loans; and
  - m. Identification, by position, of those senior management employees prohibited by subsection 1 of section 13-03-16-06 from receiving member business loans.
2. Other policies. The following minimum limits and policies must also be established in writing and reviewed at least annually for loans granted under this section:
- a. Loans, except with respect to credit card line of credit programs offered to nonnatural person members which are limited to routine purposes made available under such programs, must be granted on a fully secured basis by collateral as follows:
    - (1) Second lien for loan-to-value ratios of up to seventy percent;
    - (2) First lien for loan-to-value ratios of up to eighty percent;
    - (3) First lien with a loan-to-value ratio in excess of eighty percent shall be granted only where the value in excess of eighty percent is covered through

acquisition of private mortgage, or equivalent type, insurance provided by an insurer acceptable to the credit union or insurance or guarantees by or subject to advance commitment to purchase by, an agency of the federal government or of a state or any of its political subdivisions, and in no event may the loan-to-value ratio exceed ninety-five percent;

- b. Loans may not be granted without the personal liability and guarantees of the principals (natural person members) except where the borrower is a not-for-profit organization as defined by the Internal Revenue Service Code [26 U.S.C. 501];

History: Effective December 1, 1992.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

#### 13-03-16-03. Loan limits.

1. **Loans to one borrower.** Unless a greater amount is approved by the state credit union board, the aggregate amount of outstanding member business loans to any one member or group of associated members may not exceed fifteen percent of the credit union's reserves (less the allowance for loan losses account), or seventy-five thousand dollars, whichever is higher. A credit union may lend an additional ten percent of the credit union's reserve to any one member or group of associated members if such credit is extended for seasonal advances associated with operating purposes for the production of farm products and repayment of which is required to be made within a normal business cycle not to exceed twelve months. In no event can the credit union lend, or the state credit union board approve an exception for a credit union resulting in a loan to any one member in excess of the limitation specified in subsection 7 of North Dakota Century Code section 6-06-12. If any portion of a member business loan is secured by shares in the credit union, or deposits in another financial institution, or fully or partially insured or guaranteed by, or subject to an advance commitment to purchase by, any agency of the federal government or of a state or any of its political subdivisions, such portion may not be calculated in determining the fifteen percent limit.
2. **Exceptions.** Credit unions seeking an exception from the limits of subsection 1 or section 13-03-16-05 must present the state credit union board with, at a minimum: the higher limit sought; an explanation of the need by the members to raise the limit and ability of the credit union to manage this activity; and analysis of the credit union's prior experience making member business loans; and a copy of its business lending policy. The analysis of credit union experience in making

member business loans shall document the history of loan losses, loan delinquency, volume and cyclical or seasonal patterns, diversification, concentrations of credit to one borrower or group of associated borrowers in excess of fifteen percent of reserves (less the allowance for loan losses account), underwriting standards and practices, types of loans grouped by purpose and collateral and qualifications of personnel responsible for underwriting and administering member business loans. State credit union board shall consider, in addition to the information submitted by the credit union, the historical CAMEL ratings. If the credit union does not receive notification of the action taken within ninety calendar days of the date the request was received by the state credit union board, the credit union may assume approval of the request to exceed the limit.

3. **Maturity.** Member business loans must be granted for periods consistent with the purpose, security, creditworthiness of the borrower and sound lending policies.
4. **Monitoring requirement.** Credit unions with member business loans in excess of one hundred percent of reserves (less the allowance for loan losses account) shall submit the following information regarding member business loans to the national credit union administration regional director on a quarterly basis: the aggregate total of loans outstanding; the amount of loans delinquent in excess of thirty days; the balance of the allowance for member business loan losses; the aggregate total of all concentrations of credit to one borrower or group of associated borrowers in excess of fifteen percent of reserves (less the allowance for loan losses account); the total number and amount of all construction, development, or speculative loans; and any other information pertinent to the safe and sound condition of the member business loan portfolio.

History: Effective December 1, 1992.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

**13-03-16-04. Allowance for loan losses.**

1. The determination whether a member business loan will be classified as substandard, doubtful, or loss, for purposes of the valuation allowance for loan losses, will rely on factors not limited to the delinquency of the loan. Nondelinquent loans may be classified, depending on an evaluation of factors, including the adequacy of analysis and documentation.
2. Loans classified must be reserved as follows:
  - a. Loss loans at one hundred percent of outstanding amount;

- b. Doubtful loans at fifty percent of outstanding amounts; and
- c. Substandard loans at ten percent of outstanding amount unless other factors, e.g., history of such loans at the credit union, indicate a greater or lesser amount is appropriate.

History: Effective December 1, 1992.  
General Authority: NDCC 6-01-04  
Law Implemented: NDCC 6-06-06

#### 13-03-16-05. Construction and development lending.

- 1. Loans granted under this section to finance the construction or development of commercial or residential property are subject to the following additional provisions:
  - a. The aggregate of all such loans, excluding any portion of a loan secured by shares in the credit union, or deposits in another financial institution, or fully or partially insured or guaranteed by, or subject to an advance commitment to purchase by, any agency of the federal government or of a state or any of its political subdivisions, may not exceed fifteen percent of reserves less the allowance for loan losses account;
  - b. The borrower shall have a minimum of thirty-five percent equity interest in the project being financed;
  - c. Funds for such projects must be released following onsite inspections by independent, qualified personnel in accordance with a preapproved draw schedule.

History: Effective December 1, 1992.  
General Authority: NDCC 6-01-04  
Law Implemented: NDCC 6-06-06

#### 13-03-16-06. Prohibitions.

- 1. Senior management employees. A credit union may not make member business loans to the following:
  - a. Any member of the board of directors who is compensated as such;
  - b. The credit union's chief executive officer (typically this individual holds the title of president or treasurer/manager);

- c. Any assistant chief executive officers (e.g., assistant president, vice president, or assistant treasurer/manager);
  - d. The chief financial officer (comptroller);
  - e. Any associated member or immediate family member of the senior management employees listed in subdivisions a through d.
2. Equity kickers or joint ventures. A credit union shall not grant a member business loan where a portion of the amount of income to be received by the credit union in conjunction with such loan is tied to the profit or sale of business or commercial endeavor for which the loan is made.

History: Effective December 1, 1992.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-16-07. Recordkeeping. All loans, lines of credit, or letters of credit, the proceeds of which will be used for a commercial, corporate, business, investment property or venture, or agricultural purpose, must be separately identified in the records of the credit union and reported as such in financial and statistical reports required by the national credit union administration and commissioner.

History: Effective December 1, 1992.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

May 1993

CHAPTER 13-01.1-02

13-01.1-02-04. Application. An application is a proceeding seeking some right, privilege, or authorization which the board may give under statutory or other authority administered by it.

1. Contents. All applications shall be in writing and, under oath, shall: (a) set forth the full name and post-office address of the applicant; (b) state clearly and concisely the authorization or permission sought; (c) cite by appropriate reference the statutory provision or other authority which the board authorization or permission is sought; and (d) comply with the applicable statutory provision or rule specifying form or content.
2. Application forms. When the board requires the application to be submitted on a form specifically designed for the particular application, such application shall be submitted on that form. Forms are available from the board upon request.
3. Additional documents. When the submission of documents is required in addition to an application, all such documents must be submitted to the board in proper form before the application will be accepted for filing.
4. Fees. Application fees must be submitted before the application is accepted for filing.
5. Signature. Every application must be signed by the party filing the same.

6. Number of copies. At the time the original application is filed, ~~seven~~ ten additional copies thereof must also be filed.

History: Effective January 1, 1980; amended effective May 1, 1993.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 6-01-04

13-01.1-02-05. Protest. In any formal application proceeding, any person having substantial interest in the application may protest the application upon compliance with the provisions of this section.

1. Notice of intent to protest. Any person intending to protest an application must notify the board and the applicant of that intent.
2. Content. The notice ~~shall~~ must be in writing, ~~unless made at the commencement of a hearing,~~ and must set forth the grounds of the protest and the position and interest of the protestant.
3. When made. Notice of intent to protest ~~shall~~ must be made no later than five business days prior to ~~or at~~ the commencement of the hearing.
4. Number of copies. The protestant shall furnish a copy of the notice of intent to protest to each party to the proceeding and shall furnish the board with the original and ~~seven~~ ten copies thereof.

History: Effective January 1, 1980; amended effective May 1, 1993.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 6-01-04

13-01.1-02-06. Intervention. In any formal proceeding, any person having substantial interest in the subject matter of any proceeding may petition the commissioner for leave to intervene in such proceeding and may become a party thereto upon compliance with the provisions of this section. In general such petitions will not be granted unless it shall be found: (1) that such person has a statutory right to be made a party to such proceeding; or (2) that such person has a property or financial interest which may not be adequately represented by existing parties, and such intervention would not unduly broaden the issues or delay the proceeding.

1. Contents of petition to intervene. A petition for leave to intervene shall be in writing, ~~unless made at the commencement of a hearing,~~ and must set forth the grounds of the proposed intervention, the position and interest of the petitioner in the proceeding, and whether the petitioner's position is in support of or in opposition to the relief sought.

2. **When filed.** A petition for leave to intervene in any proceeding ~~shall~~ must be filed no later than five business days prior to ~~or at~~ the commencement of the hearing, ~~but not after~~ except for good cause shown.
3. **Number of copies.** The petitioner shall furnish a copy of the petition to each party to the proceeding and shall furnish the board with the original and ~~seven~~ ten copies thereof.
4. **Effect.** Admission as an intervenor ~~shall~~ must not be construed as recognition by the board that ~~such~~ the intervenor might be aggrieved by an order of the board in ~~such~~ the proceeding.

History: Effective January 1, 1980; amended effective May 1, 1993.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 6-01-04

13-01.1-02-08. Extensions of time for satisfaction of conditions subsequent. A request for an extension of time in which to satisfy any condition subsequent to an order of the board granting an application shall be by motion in writing timely filed with the board.

1. **Content of motion.** The motion shall specify the particular conditions subsequent which have not been satisfied and upon which an extension of time is requested, and shall state the facts upon which the motion rests.
2. **Service.** All such motions shall be served by the movant on the other parties to the original application proceeding.
3. **Number of copies.** At the time the original motion is filed, ~~seven~~ ten additional copies shall be filed with the board.
4. **Argument.** The movant or any other party may argue the motion before the board.
5. **Disposition.** Such motions will be granted or denied by the board in its discretion.

History: Effective January 1, 1980; amended effective May 1, 1993.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 6-01-04

## CHAPTER 13-01.1-04

13-01.1-04-01. Notice. In those proceedings in which a hearing is to be held, the board will, by order or otherwise, assign a time and place for hearing, and notice will be issued. Where specified by statute, notice will be given as specified in the statute. When the notice procedure is not specified by statute, notice will be given at least ~~fourteen~~ fifteen days prior to the date of the hearing, except in cases of emergency.

The notice procedures of the board are as follows, unless emergency circumstances require otherwise:

1. Proposed rules. Notice of proposed rules, inviting comments, will be given to all known interested parties by mail. Notice will also be published in the following newspapers:
  - a. Bismarck Tribune, Bismarck.
  - b. Devils Lake Daily Journal, Devils Lake.
  - c. Dickinson Press, Dickinson.
  - d. The Forum, Fargo.
  - e. Grand Forks Herald, Grand Forks.
  - f. Jamestown Sun, Jamestown.
  - g. ~~The~~ Minot Daily News, Minot.
  - h. Williston ~~Plains Reporter~~ Daily Herald, Williston.
  - i. Valley City Times-Record, Valley City.
  - j. The Daily News, Wahpeton.

If a hearing is held on a proposed rule, notice of hearing will be given in the same manner and to the same parties as was notice of proposed rule, and in addition, notice of hearing will be given to anyone who submitted oral or written comments. The notice will be given at least fifteen days prior to the date of the hearing.

2. Bank applications. Notice of hearing on an application for an organization certificate for a new bank will be issued at least thirty days prior to the hearing on the application. Notice will be mailed to all banks within the same service area as the location of the proposed new bank and published three times in the official newspaper of the county where the proposed bank is to be located.

3. Paying and receiving station applications. Notice of hearing on an application for a paying and receiving station will be issued in the same manner and to the same parties as specified in subsection 2.
4. Separate facility applications. Notice of application for a separate drive-in and walk-up facility will be issued as specified in sections 13-02-05-05 and 13-02-05-08.
5. Electronic funds transfer center applications. Notice of intent to apply for authorization to establish an electronic funds transfer center shall be issued as specified in section 13-02-06-12.
6. Move of bank to new location. Notice of hearing on an application to move a bank to some place within the state other than the town in which it is presently located will be issued in the same manner and to the same parties as specified in subsection 2.
7. Trust company and powers applications. Notice of hearing on an application for an organization certificate for a trust company, or for authority for a bank to exercise trust powers will be issued in the same manner and to the same parties as specified in subsection 2.
8. Savings and loan branch applications. Notice of hearing on an application for a savings and loan branch will be issued at least thirty days prior to the hearing on the application, and will be published three times in the official newspaper of the county in which the proposed branch is to be located.

The board may mail a copy of the notice to the chairperson of the board of county commissioners in each county wherein citizens who are or will be affected reside, and to the chief executive officer of each city affected in the county.

In addition, the board may, in those instances where it regularly issues notice to the official newspaper of the county to be affected, also issue the same notice to the official newspapers of the adjoining counties, if those areas would similarly be affected.

The board may also give additional notice where it deems such action appropriate.

The procedures outlined above may be altered by the commissioner in cases of an emergency.

History: Effective January 1, 1980; amended effective May 1, 1993.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 6-01-04, 6-02-05, 6-03-02(8), 6-03-13, 6-03-13.3, 6-03-16, 6-05-01, 7-01-01, 28-32-02

CHAPTER 13-02-07

13-02-07-01.1. Limitations. State-chartered savings and loan associations are authorized to establish a branch within the same county, or any adjoining county in any city organized under the laws of this state, not having an established banking institution.

History: Effective May 1, 1993.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-01-01, 6-01-04, 7-01-01

13-02-07-06. Hearing procedure. Hearing upon the application and any protests, and appeal from any determination made, shall be had in accord with the provisions of North Dakota Century Code ~~section 28-32-05(2)~~ and North Dakota Century Code ~~sections 28-32-06 through 28-32-21~~ chapter 28-32.

History: Amended effective May 1, 1993.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-01-01, 6-01-04, 7-01-01

## CHAPTER 13-02-15

STAFF COMMENT: Chapter 13-02-15 contains all new material but is not underscored so as to improve readability.

### CHAPTER 13-02-15 LOAN PRODUCTION OFFICES

Section	
13-02-15-01	Definitions
13-02-15-02	Authorization of Loan Production Offices
13-02-15-03	Limitation
13-02-15-04	Permissible Activity
13-02-15-05	Loan Production Office Application
13-02-15-06	Revocation of Certificate of Authority
13-02-15-07	Appeal

13-02-15-01. Definitions. "Loan production office" means an office in North Dakota which is apart from a North Dakota state-chartered bank's main bank, banking house or office, walk-in and drive-up facility, or paying and receiving station, where loans are solicited but are not approved or disbursed.

History: Effective May 1, 1993.  
General Authority: NDCC 6-01-04, 6-03-02  
Law Implemented: NDCC 6-03-38

13-02-15-02. Authorization of loan production offices. The commissioner or the board shall authorize the establishment of loan production offices by state-chartered banks.

History: Effective May 1, 1993.  
General Authority: NDCC 6-01-04, 6-03-02  
Law Implemented: NDCC 6-03-38

13-02-15-03. Limitation. Loan production offices may not be established when the establishment of such offices would impair the applicant bank's capital structure. There are no population or geographic restrictions applied to such offices in the state of North Dakota. This chapter does not authorize the establishment of a loan production office in North Dakota by state-chartered banks located in other states.

History: Effective May 1, 1993.  
General Authority: NDCC 6-01-04, 6-03-02  
Law Implemented: NDCC 6-03-38

13-02-15-04. Permissible activity. Loan production offices are limited to the following activity:

1. Soliciting loans on behalf of a bank, banking house or office, walk-in and drive-up facility, or paying and receiving station.
2. Assembling credit information.
3. Conducting property inspections and appraisals.
4. Securing title information.
5. Preparing applications for loans, including making recommendations with respect to action.

History: Effective May 1, 1993.

General Authority: NDCC 6-01-04, 6-03-02

Law Implemented: NDCC 6-03-38

13-02-15-05. Loan production office application. A loan production office may not be established, or operated, by a state-chartered bank until after the bank has submitted a written application to the commissioner or board and received a certificate of authority to operate such office. The application must describe with regard to the loan production office the following:

1. The location.
2. A general description of the area where located, e.g., shopping center, supermarket, department store, etc.
3. The proposed activity for the location.
4. Whether the location will be staffed, and if so, the nature of employee compensation, whether an employee of the bank or a fee and commission basis.
5. Description as to the types of loans to be solicited.
6. Any other information the commissioner determines necessary.

History: Effective May 1, 1993.

General Authority: NDCC 6-01-04, 6-03-02

Law Implemented: NDCC 6-03-38

13-02-15-06. Revocation of certificate of authority. The commissioner shall revoke the certificate of authority for a loan production office where it has been determined a loan production office

has engaged in any activity not specifically provided for in section 13-02-15-04.

History: Effective May 1, 1993.  
General Authority: NDCC 6-01-04, 6-03-02  
Law Implemented: NDCC 6-03-38

13-02-15-07. Appeal. A bank whose certificate of authority has been revoked may appeal the commissioner's decision for consideration of the board if the appeal is filed within fifteen days after receipt of notice of certificate revocation. Consideration of the board must occur within sixty days after the date the appeal is filed.

History: Effective May 1, 1993.  
General Authority: NDCC 6-01-04, 6-03-02  
Law Implemented: NDCC 6-03-38



TITLE 17  
Chiropractic Examiners, Board of



MAY 1993

CHAPTER 17-02-01

17-02-01-01.2. Definitions.

1. Unless specifically stated otherwise, all definitions found in North Dakota Century Code section 43-06-01 are applicable to this title.
2. "Actual consultation" as used in North Dakota Century Code section 43-06-02 means seeking or giving professional advice, opinions, or assistance in conjunction with a licensed chiropractor in this state with regard to a specific patient for the purpose of providing chiropractic treatment to the patient.
3. In this title, unless the context or subject matter otherwise requires:
  - a. "National board" means the national board of chiropractic examiners.
  - b. "Special purposes examination for chiropractic" means the special purposes examination for chiropractic offered by the national board.

History: Effective May 1, 1993.

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

Law Implemented: NDCC 43-06-02

17-02-01-02.1. Reciprocity. An applicant for reciprocal licensure will be considered by the board if the following conditions are met:

1. The applicant has a license and is in good standing to practice chiropractic in another state or jurisdiction;
2. The applicant has been licensed to practice chiropractic for at least two years in the other state or jurisdiction;
3. The applicant has successfully passed the national board on an earlier occasion; and
4. The applicant successfully passes the special purposes examination for chiropractic.

History: Effective May 1, 1993.

General Authority: NDCC 43-06-04.1, 43-06-10.1, 28-32-20

Law Implemented: NDCC 43-06-10, 43-06-10.1

17-02-01-13. License renewal and fees. Every chiropractor who has been licensed by the board shall renew the license by remitting a renewal fee not to exceed two hundred dollars on or before September first of each year. A license which has not been renewed as a result of nonpayment of the annual registration fee may be reinstated upon payment to the board of 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 two-year period, no renewal of the license may be issued unless the applicant passes the special purposes examination for chiropractic. 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; May 1, 1993.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-06-04.1

17-02-01-14. License renewal - Special purposes examination for chiropractic. If a license has not been renewed for a period of two years, no renewal of the license may be issued unless the applicant passes the special purposes examination for chiropractic.

History: Effective May 1, 1993.

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

Law Implemented: NDCC 43-06-13

## CHAPTER 17-02-04

### 17-02-04-06. Needle acupuncture.

1. "Needle acupuncture" means a system of diagnosis and treatment for the purpose of restoring the body back to health which includes the utilization of needles which may be manipulated or stimulated by hand as well as by electric, magnetic, light, heat, or ultrasound. "Needle acupuncture" does not include electric point stimulation, the use of pressure adjunctive techniques for muscle, ligamentous, or neurologic stimulation or inhibition, or the drawing of blood for the purpose of clinical diagnostic laboratory evaluation.
2. A chiropractor may only practice needle acupuncture if the chiropractor is certified to practice needle acupuncture by the board.
3. A minimum of one hundred hours of training in needle acupuncture sponsored by a council of chiropractic education accredited college of chiropractic is required before a chiropractor may be certified to practice needle acupuncture.
4. The one hundred hours of training in acupuncture must be certified by the sponsoring college and registered by the sponsoring college with the secretary of the board.
5. When the required hours of training are registered by the sponsoring college, the board will issue the chiropractor a letter certifying that the chiropractor is authorized to practice needle acupuncture.

History: Effective May 1, 1993.

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

Law Implemented: NDCC 43-06-04.1

CHAPTER 17-03-01

17-03-01-02. Telemarketing.

1. Chiropractors who use telemarketing, either personally or through a professional company, are responsible for any representations made or statements given.
2. All telemarketing must comply with the rules pertaining to advertising adopted by the board.
3. Chiropractors who use telemarketing are required to keep records regarding the telemarketing for a period of two years. The records must include the script used, the name of the individual or company conducting the telemarketing, and the dates the telemarketing was conducted.
4. Chiropractors must make available to the board a copy of their telemarketing records upon the board's request.

History: Effective May 1, 1993.

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

Law Implemented: NDCC 43-06-04.1, 43-06-15

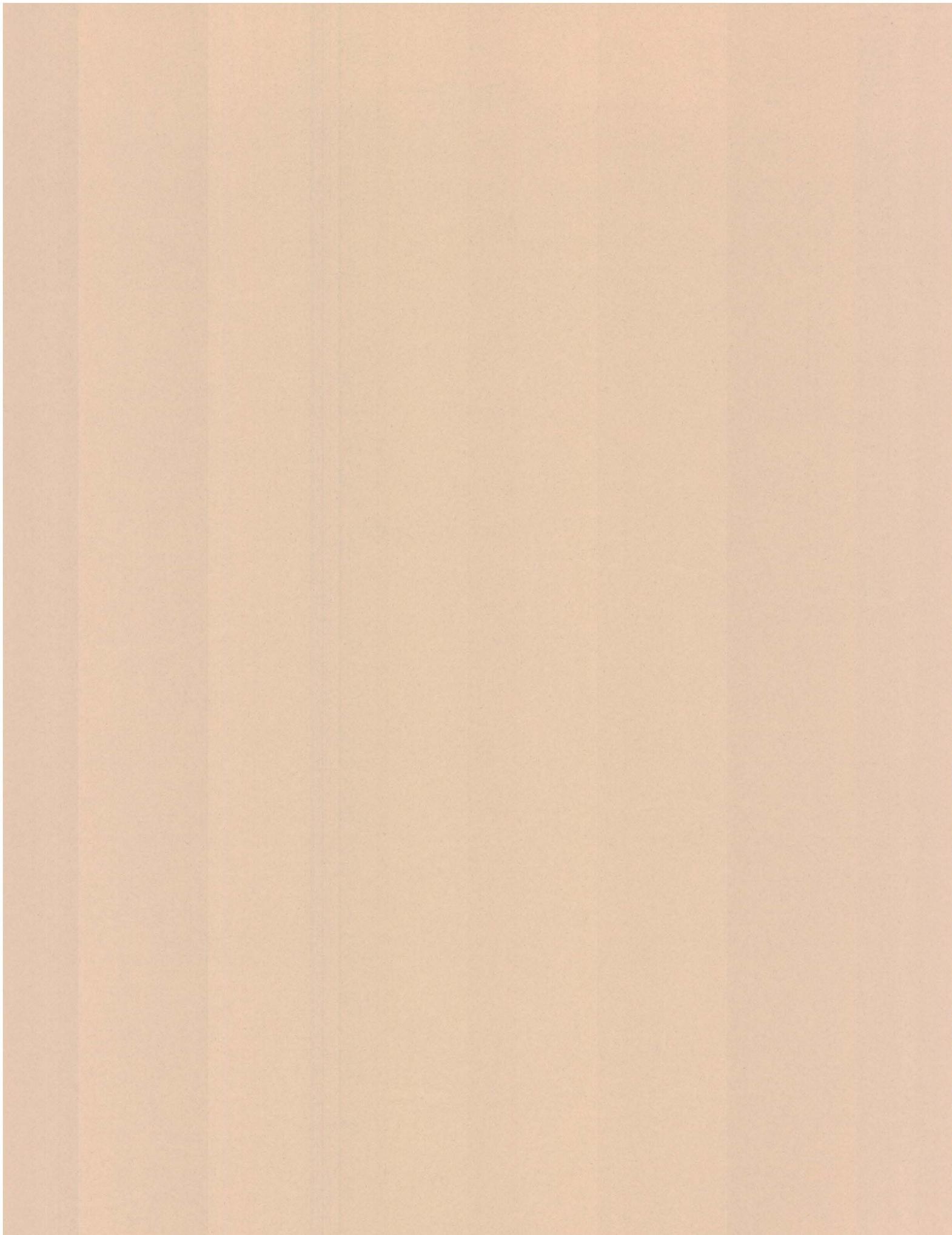
17-03-01-03. Use of special purposes examination for chiropractic for disciplinary purposes. The board may require any person who is found to have committed unprofessional conduct to take the special purposes examination for chiropractic. Passing the special purposes examination for chiropractic may be made a requirement for continued licensure or to unencumber a suspended license.

History: Effective May 1, 1993.

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

Law Implemented: NDCC 43-06-15

TITLE 24  
Electrical Board



DECEMBER 1992

CHAPTER 24-02-01

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. Licensed electrician may supervise not more than three apprentices.

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 ~~1990~~ 1993 edition, National Electrical Code and the 1988 edition, Life Safety Code NFPA no. 101, the more restrictive requirements shall be the minimum.

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 ~~1990~~ 1993 edition, National Electrical Code, and the 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 ~~1990~~ 1993 edition, National Electrical Code, and the 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 ~~1990~~ 1993 edition, National Electrical Code, and the 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 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; January 1, 1993.

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. Hospitals, nursing homes, homes for the aged, and all dormitories ~~which~~ designed to 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), ~~1990~~ 1993 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.

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.
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; January 1, 1993.

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, ~~1990~~ 1993 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, ~~1990~~ 1993 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, ~~1990~~ 1993 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~~ any approved wiring method in chapter 3 of the National Electrical Code. (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 with a two-hour fire rating. 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, ~~1990~~ 1993 edition, National Electrical Code, sound reproduction and similar equipment; in article 800, ~~1990~~ 1993 edition, National Electrical Code, communication circuits, and in article 725, ~~1990~~ 1993 edition, National Electrical Code, for class 1, class 2, and class 3 remote control and signaling circuits, and in article 760, ~~1990~~ 1993 edition, National Electrical Code, for fire protective signaling systems.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993.

General Authority: NDCC 43-09-05

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

24-02-01-05. 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, ~~1990~~ 1993 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.
  - 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.
  - b. Where necessary to employ flexible connections in grain elevators, dusttight flexible connectors and conduit must be used.
  - c. Receptacles and switches installed in grain elevators must be labeled and approved for a class II, division 1 dusty location.
  - 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, ~~1990~~ 1993 edition, National Electrical Code.

- 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, ~~1990~~ 1993 edition, National Electrical Code.
- 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, ~~1990~~ 1993 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; January 1, 1993.

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, ~~1990~~ 1993 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, ~~1990~~ 1993 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, ~~1990~~ 1993 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 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 ~~1990~~ 1993 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 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; January 1, 1993.

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, ~~1990~~ 1993 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 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, ~~1990~~ 1993 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, ~~1990~~ 1993 edition, National Electrical Code.
  - a. Lighting outlets in dwelling type occupancies must be installed in accordance with section 210-70, ~~1990~~ 1993 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), ~~1990~~ 1993 edition, National Electrical Code.
  - d. Ground-fault protection for personnel must comply with section 210-8, ~~1990~~ 1993 edition, National Electrical Code.
6. Branch circuit and feeder calculations must comply with article 220, ~~1990~~ 1993 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; January 1, 1993.

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, ~~1990~~ 1993 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, ~~1990~~ 1993 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~~ must 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, 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, ~~1990~~ 1993 edition, National Electrical Code.
9. Clearances from buildings for conductors not over six hundred volts. See section 225-19, ~~1990~~ 1993 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, ~~1990~~ 1993 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 comply with the ~~1990~~ 1993 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, ~~1990~~ 1993 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, ~~1990~~ 1993 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, ~~1990~~ 1993 edition, National Electrical Code.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993.

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, ~~1990~~ 1993 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; January 1, 1993.

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, ~~1990~~ 1993 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, ~~1990~~ 1993 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 effect 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, ~~1990~~ 1993 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; January 1, 1993.  
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, ~~1990~~ 1993 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, ~~1990~~ 1993 edition, National Electrical Code.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993.  
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, ~~1990~~ 1993 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. Except as provided for in article 604, ~~1990~~ 1993 edition, 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; January 1, 1993.  
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 ~~1990~~ 1993 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), ~~1990~~ 1993 edition, National Electrical Code.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993.

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, ~~1990~~ 1993 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, ~~1990~~ 1993 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; January 1, 1993.

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, ~~1990~~ 1993 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, ~~1990~~ 1993 edition, National Electrical Code.)

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993.

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 supervising the installation is made of electrical wiring. 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~~ five 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. Before work commences on any electrical installation where a

new entrance is installed, an existing entrance is altered, a building is moved, or where the cost of the 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 gold copy of the certificate must be forwarded to the electrical inspector and the canary copy to power company before work is commenced. Within fifteen days of completion, use, or occupancy, whichever is foremost, the white and green copies must be forwarded to the office of the state electrical board, along with the proper fee. The pink copy must be retained by the master or class "B" electrician and the manila copy must be left in, or on the panel or given to the owner. All six copies must contain a description of the work and the legal description of the location.

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 \$3,000.00	\$15.00 for the first \$300.00 plus 2% on balance up to \$3,000.00
\$3,000.00 to \$10,000.00	\$69.00 for the first \$3,000.00 plus 1.5% on balance up to \$10,000.00
\$10,000.00 to \$15,000.00	\$174.00 for the first \$10,000.00 plus 1% on balance up to \$15,000.00
\$15,000.00 to \$100,000.00	\$224.00 for the first \$15,000.00 plus 1/2 of 1% on balance up to \$100,000.00
Over \$100,000.00	\$649.00 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 commenced or in use without submitting an electrical wiring certificate, as directed in subsection 2, 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~~ In addition, 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.

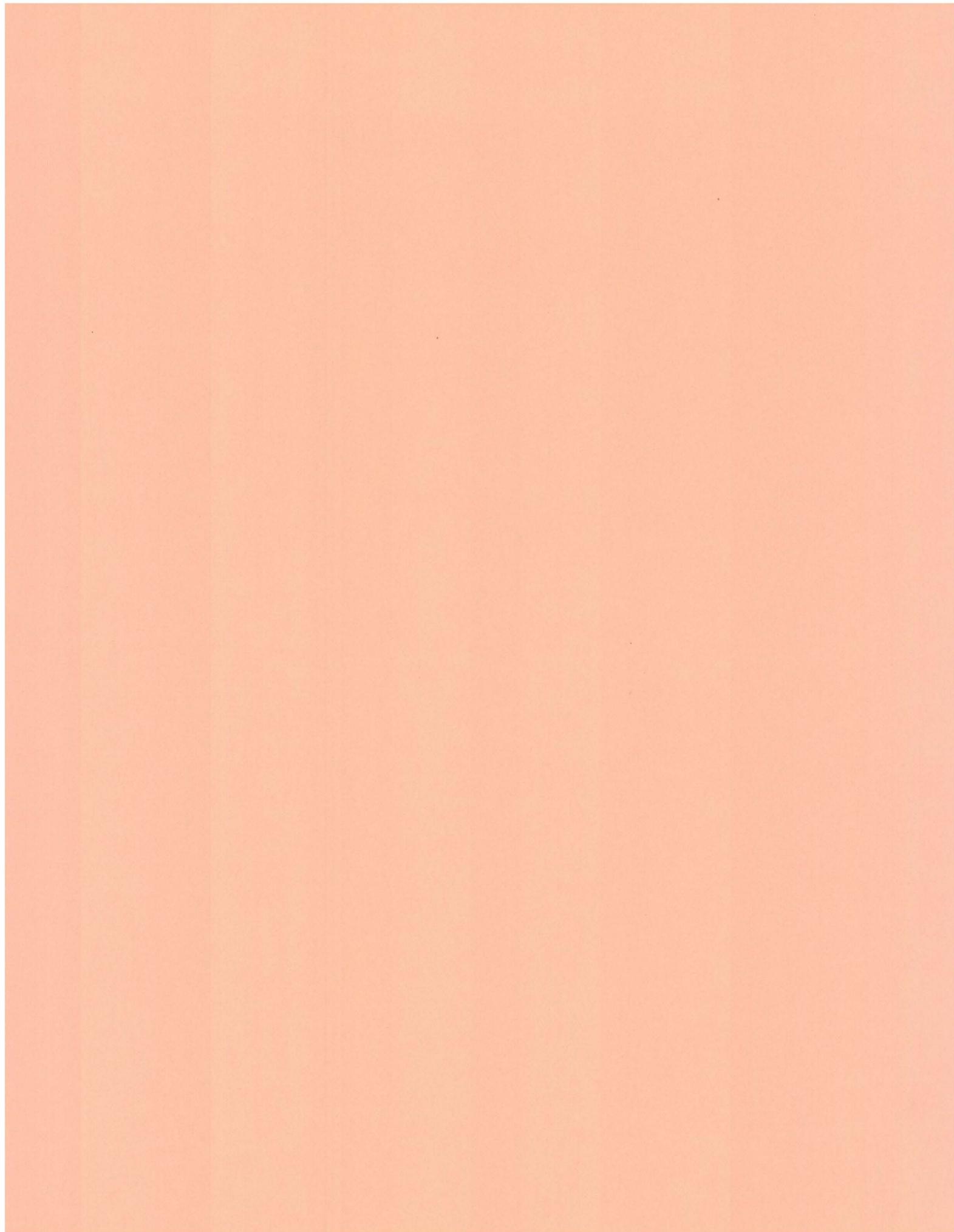
13. Electrically driven irrigation machines. Each center pivot system, a flat fee of fifty dollars. All other types, the fee must be based on cost of electric material and labor (see section 24-02-01-19).
14. Requested inspections. For inspections not covered in this section or special services, the 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; January 1, 1993.

General Authority: NDCC 43-09-05

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

TITLE 25  
State Board of Funeral Service



MAY 1993

CHAPTER 25-01-01

25-01-01-01. Organization of state board of funeral service.

1. History. The 1905 legislative assembly enacted legislation providing for a state board of embalmers and regulating the licensure and practice of embalming. The 1963 legislative assembly enacted legislation empowering the board of embalmers to license and regulate funeral establishments in this state. The 1989 legislative assembly redefined rules for licensed embalmers and funeral directors and placed crematories under their jurisdiction. These enactments are codified as North Dakota Century Code chapter 43-10. It is the responsibility of the board to uphold high ethical and professional standards in the practice of embalming and in the conduct of business of funeral establishments in this state.
2. Board membership. The board consists of the state health officer and three practicing embalmers appointed by the governor. The appointed members of the board serve four-year terms, with not more than one term expiring on June thirtieth of each year.
3. Officers of the board and executive secretary. The members of the board elect from board membership a president, a secretary, and a treasurer. The board may hire an executive secretary, who may be an officer of the board, to transact the business of the board. The board may also hire any other individual deemed necessary for special work relating to the business of the board.

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

Mr. Rodger E. Haugen  
Executive Secretary and Treasurer  
State Board of Funeral Service  
P.O. Box ~~663~~ 633  
Devils Lake, North Dakota 58301

**History:** Amended effective January 1, 1982; July 1, 1983; October 1, 1989; May 1, 1993.

**General Authority:** NDCC 28-32-02.1

**Law Implemented:** NDCC 28-32-02.1

CHAPTER 25-01-02

25-01-02-01. Compliance with rules and statutes. All licensees shall comply with the requirements of this title and laws on embalming, and the laws, rules, and regulations of the state department of health and consolidated laboratories, for the purpose of protecting the public health.

History: Amended effective May 1, 1993.  
General Authority: NDCC 43-10-05  
Law Implemented: NDCC 43-10-05, 43-10-06

25-01-02-03. Amendment of rules. This title may be amended by the board of ~~embalmers~~ funeral service at any time and in any manner it shall deem necessary, and any new or amended regulations shall be effective when promulgated by the board, approved for legality by the attorney general, adopted by the board, all licensed embalmers duly notified, and ten days after publication in the North Dakota Administrative Code.

History: Amended effective May 1, 1993.  
General Authority: NDCC 43-10-05  
Law Implemented: NDCC 43-10-05, 43-10-06

CHAPTER 25-02-01

25-02-01-01. Definitions. As used in this article:

1. "Approved school of embalming" means one accredited by the American board of funeral service education or the national conference of funeral service examiners.
2. "Embalmer" means a person duly licensed as such under the laws of North Dakota to practice mortuary science or who engages in the practice of embalming.
3. "Funeral director or funeral service practitioner" means a person duly licensed under the laws of North Dakota to practice mortuary science who engages in the practice of funeral service or funeral directing.
4. "Funeral service establishment" means any place of business conducted at a specific street address or location devoted to care and preparation for burial or transportation of dead human bodies.
5. "Intern embalmer" means a person engaged in learning the practice of embalming under the instruction and personal supervision of a duly licensed and registered embalmer, except no person shall serve or attempt to serve as an intern embalmer until the person has filed a registration with the board of ~~embalmers~~ funeral service.
- ~~4~~ 6. "Practice of embalming" means preparing dead human bodies for burial or removal by the injection of antiseptic or preservative preparations into the skin, the blood vessels, or cavities of the body, and the external application of antiseptic solution, or taking charge of the remains of those dead of any communicable disease, preparing dead human bodies for shipment, or holding oneself out to do any of the above acts by advertising or any other means.
- ~~5~~ 7. "Preparation of dead human bodies for burial" includes preparation of dead human bodies by cremation.
8. "Practice of funeral service" means:
  - a. Supervising the receipt of custody and transportation of a dead body for its disposition or for shipment to another location;
  - b. Entering into contracts with a third party for the providing of professional services regulated under this chapter;

- c. Embalming or otherwise preparing a dead human body for disposition or transportation;
  - d. Supervising arrangements for or conduction of a funeral service, graveside service, or memorial service;
  - e. Cremation, calcification, or pulverization of the dead human body or its remains;
  - f. Supervising arrangement for or actually facilitating the disposition or direct disposition or transportation of a dead human body;
  - g. Supervising sales or funeral merchandise by a funeral establishment;
  - h. Managing or otherwise being responsible for the practice of funeral service in a licensed funeral establishment; and
  - i. Supervising sale of prearranged funeral plans or contracting with or employing individuals to sell prearranged funeral plans through a licensed funeral establishment.
9. "Practice of funeral directing" means the work of preparing for the burial or disposal of dead human remains by embalming or otherwise, or for the case of dead human remains for funeral services, transportation, burial, or cremation, or the holding oneself out as being engaged in such work or being in the general control, supervision, or management of the operations of a funeral establishment or the practice of funeral service.
10. "Practice of mortuary science" means engaging in the practice of embalming, funeral service, or funeral directing, or using the word "funeral director", "director", "undertaker", "mortician", "funeral service practitioner", or any other title implying one is engaged in the business of the practice of embalming, practice of funeral service, or the practice of funeral directing.
11. Wherever in this chapter the licensee is referred to as "him" or "his" or in such reference as to the male gender it can also be substituted for "she" or "her" or in such reference to the female gender with equal significance.

History: Amended effective April 1, 1979; May 1, 1993.  
 General Authority: NDCC 43-10-05  
 Law Implemented: NDCC 43-10-05

25-02-01-02. Preparation room. The North Dakota board of funeral service recommends that all funeral directors contact either prime health care facilities in their area or waste disposition companies established to to handle wastes to arrange suitable disposition pending further state and federal regulations. Every preparation room shall be provided with proper and convenient receptacles for refuse. Waste material shall be packaged in a plastic or nonporous bag and sealed at the conclusion of each case and the public health thereby maintained.

History: Amended effective July 1, 1983; May 1, 1993.

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

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

25-02-01-03. Preparation room equipment. Every preparation room shall be equipped with a sanitary embalming table, and such table shall be provided with running water. Every plumbing fixture, receptacle, and water supply tank shall be provided with a proper air gap or other acceptable device to prevent backflow into the water supply. All plumbing shall comply with North Dakota Administrative Code article 62-03, the State Plumbing Code. Every embalming room must be equipped with an exhaust fan below tabletop height and an eyewash station with the potential for running cold water only, continuously for fifteen minutes, in an unobstructed area.

Every embalmer must:

1. Maintain a formaldehyde monitor report;
2. Post hazardous signs on the outside preparation room door;
3. Label storage area for chemicals or hazardous chemicals;
4. Keep a cover on any embalming machine;
5. Store and utilize a safety shield or mask, protective clothing, and rubber gloves;
6. Maintain a splash tube on a functioning hydroaspirator; and
7. Maintain data sheets, training records, and Sharp's trainer.

History: Amended effective March 1, 1985; May 1, 1993.

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

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

25-02-01-04. Instruments and appliances. All instruments and appliances used in the embalming of a dead human body shall be thoroughly cleansed and sterilized by boiling or by immersion for ten minutes in a one percent solution of chlorinated soda, or other suitable and effective disinfectant, immediately at the conclusion of each individual case and or autoclave.

History: Amended effective May 1, 1993.  
General Authority: NDCC 43-10-05, 43-10-06  
Law Implemented: NDCC 43-10-05, 43-10-06

25-02-01-05. Mortuaries Funeral establishments. All mortuaries funeral establishments shall be kept and maintained in a clean and sanitary condition and all embalming tables, hoppers, sinks, receptacles, instruments, and other appliances used in the embalming of dead human bodies shall be thoroughly cleansed and disinfected with a one percent solution of chlorinated soda, or other suitable and effective disinfectant, immediately at the conclusion of each individual case.

History: Amended effective May 1, 1993.  
General Authority: NDCC 43-10-05, 43-10-06  
Law Implemented: NDCC 43-10-05, 43-10-06

25-02-01-06. Attire while embalming. Every person, while engaged in actual embalming, shall be attired in a clean and disposable sanitary smock or gown and should, while so engaged, wear rubber impervious gloves, disposable facial mask, or safety shield, and disposable shoe covers.

History: Amended effective May 1, 1993.  
General Authority: NDCC 43-10-05, 43-10-06  
Law Implemented: NDCC 43-10-05, 43-10-06

25-02-01-09. Shipment of bodies. Only under supervision of a North Dakota licensed embalmer funeral service practitioner can bodies be shipped or transported from point to point in North Dakota, or from any point in North Dakota to any other state upon compliance with shipping regulations of the state department of health and consolidated laboratories.

History: Amended effective July 1, 1983; May 1, 1993.  
General Authority: NDCC 43-10-05, 43-10-06  
Law Implemented: NDCC 43-10-05, 43-10-06

25-02-01-10. Refusal to provide service. A licensed practitioner may not refuse service to anyone because of a significant contagious or infectious disease. Refusal of any licensed practitioner to provide service to anyone because of a significant contagious or infectious disease may result in a revocation of that practitioner's license in accordance with North Dakota Century Code section 43-10-16.

History: Effective May 1, 1993.  
General Authority: NDCC 43-10-05, 43-10-06, 43-10-16  
Law Implemented: NDCC 43-10-05, 43-10-06, 43-10-16

CHAPTER 25-02-02

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

History: Amended effective March 1, 1985; May 1, 1993.

General Authority: NDCC 43-10-05

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

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

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

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

Sophomore Year

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

The applicant must complete courses in communications, twelve semester hours including speech and English; social science, fifteen semester hours, including sociology and psychology; natural science, eighteen semester hours, including general or inorganic chemistry, biology or zoology, microbiology or anatomy; business, nine semester hours, including accounting, business law and business management; and electives, six semester hours.

4. **Has completed** Show evidence of completion of a course of instruction and graduated from a school of embalming as accredited by the American board of funeral service education or any successor recognized by the United States office of education for funeral service education.
5. Furnish a certified record containing a list of subjects completed with the individual grades or rating from the school described in subsection 4.
6. **Has served** Demonstrate completion of at least twelve months internship after completion of educational requirements during which time the applicant has assisted in the preparation of not less than twenty-five bodies as evidenced by reports on file with the executive secretary and has been present at ten funeral arrangements and submit a report on the completed funeral services.
7. Demonstrate to a licensed embalmer proficiency in the art of embalming. Final embalming report to indicate by affidavit signed by a licensed North Dakota embalmer that the intern is proficient in embalming.

History: Amended effective April 1, 1979; July 1, 1983; March 1, 1985; May 1, 1993.

General Authority: NDCC 43-10-05

Law Implemented: NDCC 43-10-11

25-02-02-03. Examination for licensure.

1. Questions used.

- a. Conference questions may be used in the examination. Written answers to these questions shall be examined and passed upon at the direction of the board. ~~Examination of the laws, rules, and regulations of the state department of health shall be given at the regular time of examination and shall be prepared by the office of statistical services.~~ A general average of seventy-five percent correct answers must be attained by the applicant.
- b. A passing grade on any single subject shall be sixty-five percent.
- c. The national board examinations as provided by the American conference of funeral service examining board and approved by the state board of ~~embalmers~~ funeral service may be used in lieu of the examinations on the following subjects: anatomy, embalming, chemistry, pathology, bacteriology, mortuary administration, and restorative arts as provided by the state board.

2. Failure to pass examination.

- a. Should the applicant fail in one or more of the subjects covered by the examination, the applicant shall be allowed to again appear before the board within a year of the time of the applicant's first examination and be examined only on the subjects in which the applicant failed, with a passing mark. If the applicant then passes in all subjects so taken, the applicant shall be entitled to a license without the payment of any additional fees.
- b. Should the applicant fail in any one subject on the second reexamination, the applicant shall submit any additional credentials as required, shall be reexamined in all subjects, and shall accompany the applicant's request for reexamination with a designated fee of fifteen dollars. In addition, the applicant shall pay for the actual cost of the examination.

3. Examination dates. Examination of North Dakota laws and rules must be given by the division of vital records, North Dakota state department of health and consolidated laboratories, state capitol, 600 east boulevard, Bismarck, ND 58505. Time of examination must be arranged by the examinee and the department. The board of funeral service shall issue a card indicating eligibility of the examinee to take the examination. The board shall hold at least one meeting annually for the purpose of examining applicants for embalmer's license. Applicants of record shall be duly notified a reasonable time prior to an examination as to the time and place of the examination. The secretary of the board

with the assistance of other members of the board may give special examinations during any regular meeting when in the opinion of the board it is necessary to prevent undue hardship upon applicants who may wait many months for the regular examination. These special examinations shall be consistent with all provisions of law and the rules and regulations for the examination for licensure.

History: Amended effective April 1, 1979; May 1, 1993.

General Authority: NDCC 43-10-05

Law Implemented: NDCC 43-10-12

25-02-02-04. License renewal, destruction, suspension, and reinstatement, and renewal of lapsed license.

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

assistants or employees of the licensee. This subdivision does not prohibit general advertising.

- d. Gross immorality.
  - e. Aiding or abetting an unlicensed person to practice embalming.
  - f. Violation of any provision of North Dakota Century Code chapter 43-10.
  - g. Violation of any state law or municipal ordinance or regulation affecting the handling, custody, care, or transportation of dead human bodies.
  - h. Refusing to surrender promptly the custody of a dead human body upon the express order of a person lawfully entitled to its custody.
  - i. Gross negligence or gross incompetency in the practice of embalming or funeral directing.
  - j. ~~Failure to pay the license fee prior to February first of ensuing year.~~ Knowingly violating any state or federal laws regarding funeral service.
4. Reinstatement of revoked license. A licensee whose license has been revoked can be reinstated only by the unanimous consent of the board and upon passing such examination and investigation as the board may deem necessary and proper under all circumstances.
  5. Peer review committee. The board may appoint a peer review committee as needed consisting of not more than four persons who are licensed to practice funeral service and an assistant attorney general assigned to the state department of health and consolidated laboratories to advise the board on standards of practice and other matters relating to specific complaints as requested by the board. Peer committee's so appointed must be paid mileage and per diem and other necessary expenses as established by North Dakota Century Code section 54-06-09 by the board.
  6. Renewal of lapsed license. A person who formerly was licensed under this chapter may apply for relicensure on the lapsed license renewal form furnished by the board after paying the yearly late fee for each year that the license has been lapsed, not to exceed five years. If the period that the license has been lapsed is longer than five years, the applicant must pass such examination, investigation, and fees as the board may deem necessary and proper under the circumstances.

History: Amended effective July 1, 1983; March 1, 1985; May 1, 1993.  
General Authority: NDCC 43-10-05, 43-46-02  
Law Implemented: NDCC 43-10-13, 43-10-15, 43-10-16, 43-10-17, 43-10-18, 43-10-19

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

1. Education and experience requirements. Applicants for license through reciprocity with other states must meet educational and experience requirements in conformity with the requirements of the North Dakota state board of embalmers funeral service.
2. License through examination. Consideration for reciprocity will be given only to embalmers an embalmer or funeral director who secured through examination the license on which they apply for reciprocal license, who were at the time of taking such examination and securing such license an actual and legal resident of the state that issued the license, and who have been actively engaged in the practice of their profession as a licensed embalmer or funeral director for a period of not less than one year preceding the filing of an application for reciprocity.
3. Fee. The applicant must pay the fee of one hundred dollars designated licensure fee determined by the board.
4. Submit to examination. A licensee through reciprocity shall submit to an examination at the time and place designated by the board for the purpose of taking a written examination on the laws, and rules, and regulations of North Dakota regarding the practice of embalming funeral service.

History: Amended effective July 1, 1983; March 1, 1985; May 1, 1993.  
General Authority: NDCC 43-10-05  
Law Implemented: NDCC 43-10-14

25-02-02-06. Intern embalmer or funeral director.

1. Application.
  - a. The application for registration as an embalmer's or funeral director's intern shall be made upon a form approved by the board and verified by the applicant and accompanied by the designated fee. This registration will be valid for one year only provided the intern is under the supervision of a registered embalmer holding a North Dakota license residing in North Dakota. Such registration may not be renewed more than three times.
  - b. The intern license shall be issued for a period of twelve months.

2. Qualifications for internship. In order to qualify as an embalmer's or funeral director's intern, the applicant shall comply with the following requirements:
  - a. Be eighteen years of age.
  - b. Be of good moral character.
  - c. Furnish evidence of having completed an accredited four-year high school course of study and evidence of completion of two years of accredited college or university studies.
  - d. Reside in same city in which the licensed embalmer under whom the intern is registered maintains a fully equipped embalming establishment.
  - e. Graduated from an accredited college of mortuary science.
3. Certification. The state board of embalmers funeral service shall pass upon every application for internship at its regular meeting. The applicant shall be duly notified whether the applicant has been accepted or rejected after a majority vote of the board has been received. The executive secretary may approve internship enrollment subject to final approval of the board.
4. Intern register. The executive secretary of the board shall keep a separate register for interns.
5. Lapsed certificate. In case an intern has allowed the certificate of internship to lapse for thirty days or more, no reregistration shall be permitted so as to make the intern's registration continuous from the date of the intern's original registration.
6. Monthly report. Each registered intern must submit a report to the executive secretary of the state board of embalmers funeral service by the fifteenth of the month stating all cases in which the intern has assisted during the preceding month. This report is to be made on forms furnished by the state board of embalmers funeral service. Ten reports of funeral arrangements and funeral services must be submitted during the final six months of internship.
7. Employment of one intern embalmer funeral service practitioner. In order to maintain a high standard of instruction, a licensed embalmer funeral service practitioner shall be permitted to have only one registered intern embalmer funeral service practitioner working for the embalmer funeral service practitioner at any one time.

History: Amended effective April 1, 1979; July 1, 1983; May 1, 1993.

General Authority: NDCC 43-10-05  
Law Implemented: NDCC 43-10-05

25-02-02-07. Prohibited acts. It is unlawful for:

1. Any individual who is not licensed under this chapter to embalm or otherwise use a method or technique which invades the dead human body to prepare that human body for burial or other disposition.
2. Any individual who is not licensed under this chapter to act as or represent himself to be a funeral director, director, funeral service practitioner, embalmer, or apprentice.
3. Any person not issued a funeral establishment license under this chapter to operate or manage, or to hold oneself out as operating or managing, a funeral establishment.

History: Effective May 1, 1993.  
General Authority: NDCC 43-10-05  
Law Implemented: NDCC 43-10-10, 43-10-22

25-02-02-08. Exemptions from licensure. The following activities are exempt from licensure under this chapter:

1. Transportation of a dead human body in accordance with other applicable state and federal laws.
2. Ambulance or other emergency transportation of a dead human body.
3. Performing funeral, graveside, or memorial services by members of the clergy.
4. Assisting a North Dakota licensed embalmer regarding disasters or special emergencies by individuals licensed in other states as embalmers or funeral directors if applicable.
5. Nonprofessional tasks or activities which do not require independent, professional judgment which are required of persons employed by a funeral establishment under the supervisor of a North Dakota licensed embalmer.

History: Effective May 1, 1993.  
General Authority: NDCC 43-10-05  
Law Implemented: NDCC 43-10-10

## CHAPTER 25-03-01

25-03-01-01. Funeral home license. A funeral home license shall not be transferred from one owner to another. The new owner shall submit an application for a new license to the executive secretary of the state board of embalmers funeral service, accompanied by ~~a license fee of fifty dollars~~ the designated licensure fee. The funeral home license is issued in conjunction with a North Dakota ~~embalmer's~~ funeral service license. Should the licensee signing the funeral home license application no longer be associated with the funeral home, the licensee shall notify the state board of embalmers funeral service. No funeral home license shall be valid unless the funeral home is under the supervision of a licensed embalmer or funeral director. A change in licensed personnel or funeral home name change or location supervising the funeral home shall require a new funeral home license.

History: Amended effective July 1, 1983; May 1, 1993.

General Authority: NDCC 43-10-05

Law Implemented: NDCC 43-10-05

## CHAPTER 25-03-03

25-03-03-01. Disclosure of merchandise and services. Each funeral home, at the time of selection of merchandise and services from the funeral home, shall disclose in writing to the person or persons making the selection:

1. The total price at retail of the merchandise and services selected and a listing of what merchandise and services are included in the total.
2. The price at retail of each item of supplemental service or merchandise requested.
3. The amount of cash advance to the extent that it is known or can be ascertained at the time of the selection.
4. The terms by which payment for merchandise and services is to be made.
5. A listing of the funeral goods and services selected must be given to each family after making funeral arrangements and prior to leaving the funeral home. Price information may be given over the telephone. Upon request, a copy of the general price list must be available.

In addition, the funeral home shall ensure that permission to embalm is received prior to embalming and have available a general price list of all caskets on hand in the funeral home including those in the display room and in the warehouse. A similar list must be available for vaults and alternative containers on hand.

History: Amended effective May 1, 1993.  
General Authority: NDCC 43-10-05  
Law Implemented: NDCC 43-10-05

### 25-03-03-02. Other service requirement.

1. It is the duty of all licensed funeral service practitioners to be familiar with title 16, Code of Federal Regulations, part 453 (1984), Federal Trade Commission Trade Regulation Rule for Funeral Industry Practices, and to abide by these rules.
2. The North Dakota state board of funeral service can review present and past cases of any and all funeral homes under its jurisdiction in North Dakota to ensure proper implementation under title 16, Code of Federal Regulations, part 453 (1984), Federal Trade Commission Trade Regulation Rule for Funeral

Industry Practices. In the event of apparent noncompliance, the board will conduct a formal review of the funeral home.

History: Effective May 1, 1993.  
General Authority: NDCC 43-10-05  
Law Implemented: NDCC 43-10-05

STAFF COMMENT: Articles 25-04, 25-05, and 25-06 contain all new material but are not underscored so as to improve readability.

ARTICLE 25-04

ANATOMICAL GIFT

Chapter  
25-04-01            Eye Enucleation

CHAPTER 25-04-01  
EYE ENUCLEATION

Section  
25-04-01-01            Eye Enucleation

25-04-01-01. Eye enucleation. Any funeral service practitioner licensed in North Dakota who has successfully completed a course in eye enucleation conducted by the department of ophthalmology of an accredited college of medicine that has been approved by the state board of medical examiners is authorized to enucleate eyes from anybody when the gift of such eye has been made in accordance with the terms of the North Dakota anatomical gift act. Funeral homes shall have liability insurance to protect itself and all employees of the funeral home regarding this service.

History: Effective May 1, 1993.  
General Authority: NDCC 43-10-05  
Law Implemented: NDCC 43-10-05, 23-06.2

ARTICLE 25-05

CREMATORIUMS

Chapter  
25-05-01           Licensure of Crematoriums

CHAPTER 25-05-01  
LICENSURE OF CREMATORIUMS

Section  
25-05-01-01           Licensure of Crematoriums  
25-05-01-02           Crematorium Establishment  
25-05-01-03           Insurance Requirements  
25-05-01-04           Inspection of Crematoriums  
25-05-01-05           Bond Required  
25-05-01-06           Crematoriums Must Apprise Funeral Directors  
                          and Consumer Families of Requirements  
25-05-01-07           Cremation Requirements  
25-05-01-08           Permits  
25-05-01-09           Penalty  
25-05-01-10           Prohibitions  
25-05-01-11           Written Release

25-05-01-01.   Licensure of crematoriums. All crematoriums established in the state of North Dakota shall be subject to yearly licensure from the North Dakota state department of health and consolidated laboratories. The fee for the license must be determined by the board, and is due on the first of January of each year. The license must be posted.

History:   Effective May 1, 1993.  
General Authority: NDCC 43-10-05, 43-10-25  
Law Implemented: NDCC 43-10-05

25-05-01-02.   Crematorium establishment. Any crematorium in the state of North Dakota shall comply with all criteria of federal and state law regarding environmental impact on the area in which it is located, including interior design and placement of the crematoria retort which must be in a completely fireproof building, and exterior design which includes size and placement of smokestack and emissions of

sediment or smoke from it. The crematorium shall also conform to all applicable federal, state, and local building codes.

History: Effective May 1, 1993.  
General Authority: NDCC 43-10-05, 43-10-25  
Law Implemented: NDCC 43-10-05

25-05-01-03. Insurance requirements. All crematoriums in the state of North Dakota must carry liability and fire protection insurance in accordance with nationally accepted levels suitable for operation.

History: Effective May 1, 1993.  
General Authority: NDCC 43-10-05, 43-10-25  
Law Implemented: NDCC 43-10-05

25-05-01-04. Inspection of crematoriums. Any crematorium in the state of North Dakota for the disposition of human remains through the process of cremation must be open for inspection by any authorized representative of the North Dakota state department of health and consolidated laboratories, or any representative of the North Dakota state board of funeral service.

History: Effective May 1, 1993.  
General Authority: NDCC 43-10-10, 43-10-22, 43-10-25  
Law Implemented: NDCC 43-10-05

25-05-01-05. Bond required. All crematoriums in the state of North Dakota must bond their employees in the performance of the actual cremation.

History: Effective May 1, 1993.  
General Authority: NDCC 43-10-05, 43-10-25  
Law Implemented: NDCC 43-10-05

25-05-01-06. Crematoriums must apprise funeral directors and consumer families of requirements. All crematoriums in the state of North Dakota must fully apprise funeral directors and consumer families of the type of container the crematorium can cremate, and that a minimum cremation unit as adjudged practical by the national cremation association of America be used. Should caskets be used in cremation, the crematorium must apprise the funeral director and family in writing what materials in caskets will be completely consumed and what caskets cannot be consumed. The crematorium must apprise the funeral director and consumer family if caskets or casket hardware are nonconsumable. It is the responsibility of the cremation authority involved to destroy on a daily basis and through proper sanitation and disposition channels available to it those caskets or their dependent parts that may remain

after the cremation process. No stockpile of used caskets or parts may remain in or around the crematorium facility.

History: Effective May 1, 1993.  
General Authority: NDCC 43-10-05, 43-10-25  
Law Implemented: NDCC 43-10-05

25-05-01-07. Cremation requirements. All cremation facilities shall clean their retorts at the conclusion of each cremation, and bone fragments that remain must be duly reduced by equipment sanctioned by the National Cremation Association of America, and placed in a tight sealed container of fiberglass, stendex or plastic, and duly marked with the name of the person cremated, the ultimate disposition of the cremains, the name of the funeral director involved in the cremation, the age and date of birth and death of the person cremated, and the name and complete address of the cremation authority. Cremains sent through the mail must be duly marked, registered, insured, and sealed in the form for mailing and delivery as devised by the United States postal service. Cost of mailing is to be borne by the cremation authority together with the registration and insurance costs involved.

History: Effective May 1, 1993.  
General Authority: NDCC 43-10-05, 43-10-25  
Law Implemented: NDCC 43-10-05

25-05-01-08. Permits. Cremation permits must be signed by the legal representative or representatives of the deceased, and all information with full name of decedent, date and place of birth, and date and place of death, and cause of death, and final disposition of cremains instructions, together with funeral director signature and signature of acceptance of the cremation authority shall appear on this form, together with the full legal name and legal address of the cremation authority, and the completion date and time of cremation. Copies of these forms must be kept by the cremation authority, and sent to the funeral home that has contracted the cremation authority.

History: Effective May 1, 1993.  
General Authority: NDCC 43-10-05, 43-10-25  
Law Implemented: NDCC 43-10-05

25-05-01-09. Penalty. Any crematorium or cremation authority is forbidden to perform any multiple cremations of any type of human remains. Multiple cremations may result in suspension or loss of license by the state regulatory board.

History: Effective May 1, 1993.  
General Authority: NDCC 43-10-05, 43-10-25  
Law Implemented: NDCC 43-10-05

25-05-01-10. Prohibitions. Crematoriums are forbidden to cremate fetuses, limbs, and body parts from private or public health agencies or medical schools or medical doctors unless appropriate releases are given to the crematoriums by those agencies. Copies of releases must remain with the cremation authority and the parties contracting for cremations mentioned in this section.

Cremation of animals and pets of any type is strictly forbidden in a crematorium designed for cremation of human remains.

History: Effective May 1, 1993.  
General Authority: NDCC 43-10-05, 43-10-25  
Law Implemented: NDCC 43-10-05

25-05-01-11. Written release. Funeral directors holding cremations for over ninety days must have written release from legal next of kin before the funeral director disposes of remains in any manner other than that suggested on the cremation form. The release must clearly remove liability of the funeral director, the cremation facility or authority, or the state regulatory agency from responsibility. Copies of these forms must be retained by the next of kin, the funeral director, and the cremation authority, and made available to the state board of funeral service upon request. Failure to comply may result in prosecution and loss of license. Any cremated remains existing prior to May 1, 1993, may be disposed of ninety days after a written attempt to contact next of kin for written approval.

History: Effective May 1, 1993.  
General Authority: NDCC 43-10-05, 43-10-25  
Law Implemented: NDCC 43-10-05

ARTICLE 25-06  
BRANCH FACILITIES

Chapter  
25-06-01      Branch Facilities

CHAPTER 25-06-01  
BRANCH FACILITIES

Section	
25-06-01-01	Definition
25-06-01-02	Accessibility
25-06-01-03	Restroom Facilities
25-06-01-04	Plumbing
25-06-01-05	Insurance
25-06-01-06	Approaches
25-06-01-07	Electrical Design
25-06-01-08	Seating
25-06-01-09	Aspiration System
25-06-01-10	Fire Codes
25-06-01-11	Responsibility of Funeral Service Establishment

25-06-01-01.    **Definition.** For purposes of this chapter, a branch facility means a facility which is affiliated with a funeral service establishment and is equipped for preparation and embalming of dead human bodies.

History: Effective May 1, 1993.  
General Authority: NDCC 43-10-05  
Law Implemented: NDCC 43-10-05

25-06-01-02.    **Accessibility.** All facilities shall have appropriate entrance and exit doors clearly marked and lighted. All exterior and interior doors must be of appropriate width and length.

History: Effective May 1, 1993.  
General Authority: NDCC 43-10-05  
Law Implemented: NDCC 43-10-05

25-06-01-03. Restroom facilities. All facilities shall have restroom facilities which meet state and local requirements.

History: Effective May 1, 1993.  
General Authority: NDCC 43-10-05  
Law Implemented: NDCC 43-10-05

25-06-01-04. Plumbing. All facilities shall have running water and adequate plumbing facilities.

History: Effective May 1, 1993.  
General Authority: NDCC 43-10-05  
Law Implemented: NDCC 43-10-05

25-06-01-05. Insurance. All facilities shall have complete liability and comprehensive building insurance.

History: Effective May 1, 1993.  
General Authority: NDCC 43-10-05  
Law Implemented: NDCC 43-10-05

25-06-01-06. Approaches. All facilities shall have concrete sidewalk areas and approaches to the building for all entrances and exits.

History: Effective May 1, 1993.  
General Authority: NDCC 43-10-05  
Law Implemented: NDCC 43-10-05

25-06-01-07. Electrical design. All facilities shall have electrical design that conforms to applicable state and local codes.

History: Effective May 1, 1993.  
General Authority: NDCC 43-10-05  
Law Implemented: NDCC 43-10-05

25-06-01-08. Seating. All facilities shall have furnishings to seat fifty people.

History: Effective May 1, 1993.  
General Authority: NDCC 43-10-05  
Law Implemented: NDCC 43-10-05

25-06-01-09. Aspiration system. All branch facilities shall have a functional aspiration system in place as of September 1, 1991.

History: Effective May 1, 1993.  
General Authority: NDCC 43-10-05  
Law Implemented: NDCC 43-10-05

25-06-01-10. Fire codes. All new branch facilities shall meet appropriate state and local fire codes.

History: Effective May 1, 1993.  
General Authority: NDCC 43-10-05  
Law Implemented: NDCC 43-10-05

25-06-01-11. Responsibility of funeral service establishment. It is the responsibility of the funeral service establishment to ensure that its branch facilities meet board requirements.

History: Effective May 1, 1993.  
General Authority: NDCC 43-10-05  
Law Implemented: NDCC 43-10-05

TITLE 33  
Health and Consolidated Laboratories,  
Department of



DECEMBER 1992

CHAPTER 33-20-01  
GENERAL PROVISIONS

[Repealed effective December 1, 1992]

STAFF COMMENT: Chapter 33-20-01.1 contains all new material but is not underscored so as to improve readability.

CHAPTER 33-20-01.1  
GENERAL PROVISIONS

Section	
33-20-01.1-01	Purpose
33-20-01.1-02	Applicability
33-20-01.1-03	Definitions
33-20-01.1-04	Care and Disposal of Solid Waste
33-20-01.1-05	Collection and Transportation Vehicles
33-20-01.1-06	Hazardous Waste
33-20-01.1-07	Pesticide Waste
33-20-01.1-08	Asbestos Waste
33-20-01.1-09	Radioactive Waste
33-20-01.1-10	Variances

33-20-01.1-01. Purpose. It is the purpose of this article to provide performance criteria and standards for the management of solid waste in a manner that will control nuisance and litter, protect the public health, safety, and welfare, and prevent or minimize injury of environmental resources from exposure to solid waste or constituents of solid waste.

History: Effective December 1, 1992.  
General Authority: NDCC 23-29-04  
Law Implemented: NDCC 23-29-04

33-20-01.1-02. Applicability. Any person who operates or proposes to operate any type of solid waste management system, unit, or facility and any person who transports solid waste, is subject to the provisions of this article.

1. This article does not apply to the following:
  - a. The management of hazardous waste at hazardous waste management units or facilities as defined by chapter 33-24-01;
  - b. Solid waste management units which do not receive solid waste after October 9, 1993, except closure standards apply;
  - c. Agricultural waste generated by farming operations, unless handling of this waste by these operations is not in keeping with the purpose of this article;
  - d. The disposal of household waste generated by any individual who resides on unplatted land in unincorporated areas of this state, on that person's property, unless

handling of this waste is not in keeping with the purpose of this article;

- e. The beneficial use or reuse of materials, substances, energy, or other products derived from a resource recovery activity; or
  - f. Additional exemptions of certain requirements as specified in provisions of this article.
2. Solid waste management units or facilities having permits on December 1, 1992, shall comply with section 33-20-03.1-04.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04, 23-29-14

33-20-01.1-03. Definitions. The terms used throughout this title have the same meaning as in North Dakota Century Code chapter 23-29, except:

- 1. "Agricultural waste" means solid waste derived from the production and processing of crops and livestock such as manure, spoiled grain, grain screenings, undigested rumen material, livestock carcasses, fertilizer, and fertilizer containers, but does not include pesticide waste or pesticide containers.
- 2. "Airport" means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.
- 3. "Aquifer" means a geological formation, group of formations, or portion of formation capable of yielding significant quantities of ground water to wells or springs.
- 4. "Closed unit" means a landfill or surface impoundment or a portion thereof that has received solid waste for which closure is complete.
- 5. "Closure" means the taking of those actions to close and reclaim a solid waste management unit or facility. Closure actions may include, but are not limited to, sloping filled areas to provide adequate drainage, applying final cover, providing erosion control measures, grading and seeding, installing monitoring devices, constructing surface water control structures, installing gas control systems, and measures necessary to secure the site.
- 6. "Commercial waste" means solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing

- activities exclusive of household waste, inert waste, infectious waste, industrial waste, and hazardous waste.
7. "Compliance boundary" means the vertical planar surface that circumscribes the waste management units at which the ground water protection standards apply. The compliance boundary may be either the facility boundary or an alternative boundary within the facility.
  8. "Composting" means the controlled biological decomposition of organic solid waste under aerobic conditions.
  9. "Detachable container" means a reusable container for the collection, storage, or transportation of solid waste that is mechanically loaded or handled (for example, "dumpsters" and "rolloffs").
  10. "Drop box facility" means a facility used for the placement of a detachable container including the area adjacent for necessary entrance and exit roads, unloading, and turn-around areas. Drop box facilities normally serve the general public with loose loads and receive solid waste from off-site.
  11. "Existing unit" means a landfill or surface impoundment or a portion thereof that is receiving or has received solid waste for which closure has not been completed.
  12. "Facility" means all contiguous land and structures, other appurtenances, and improvements on land which include one or more solid waste management units, such as a transfer station, solid waste storage building, a solid waste processing system, a resource recovery system, an incinerator, a surface impoundment, a surface waste pile, a land treatment area, or a landfill. A facility may or may not be used solely for solid waste management.
  13. "Final cover" means any combination of compacted or uncompacted earthen material, synthetic material, and suitable plant growth material which, after closure, will be permanently exposed to the weather and which is spread on the top and side slopes of a landfill or facility.
  14. "Free liquid" means the liquid which separates from the solid portion of a solid waste under ambient pressure and normal, above freezing temperature. The environmental protection agency paint filter liquids test method or visual evidence must be used to determine if a waste contains free liquid.
  15. "Garbage" means putrescible solid waste such as animal and vegetable waste resulting from the handling, preparation, cooking, and consumption of food, including wastes from markets, storage facilities, and processing plants.

16. "Ground water" means water below the land surface in a geologic unit in which soil pores are filled with water and the pressure of that water is equal to or greater than atmospheric pressure.
17. "Hazardous waste" has the meaning given by North Dakota Century Code section 23-20.3-02 and further defined in chapter 33-24-02.
18. "Household waste" means solid waste, such as trash and garbage, normally derived from households, single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day use recreation areas.
19. "Incinerator" has the meaning given by section 33-15-01-04.
20. "Industrial waste" has the same meaning as special waste given by North Dakota Century Code section 23-29-03.
21. "Inert waste" means nonputrescible solid waste which will not generally contaminate water or form a contaminated leachate. Inert waste does not serve as food for vectors. Inert waste includes, but is not limited to: construction and demolition material such as metal, wood, bricks, masonry and cement concrete; asphalt concrete; tires; metal; tree branches; bottom ash from coal fired boilers; and waste coal fines from air pollution control equipment.
22. "Land treatment" means the controlled application of solid waste, excluding application of animal manure, into the surface soil to alter the physical, chemical, and biological properties of the waste.
23. "Landfill" has the meaning given by North Dakota Century Code section 23-29-03 and that is not a land treatment unit, surface impoundment, injection well, or waste pile.
24. "Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble, suspended or miscible materials removed from such waste.
25. "Leachate collection system" means any combination of landfill base slopes, liners, permeable zones, pipes, detection systems, sumps, pumps, holding areas or retention structures, treatment systems, or other features that are designed, constructed, and maintained to contain, collect, detect, remove, and treat leachate.
26. "Municipal waste incinerator ash" means the residue produced by the incineration or gasification of municipal waste.

27. "Plan of operation" means the written plan developed by an owner or operator of a facility detailing how a facility is to be operated during its active life.
28. "Postclosure period" means the period of time following closure of a solid waste management unit during which the owner or operator must perform postclosure activities.
29. "Radioactive waste" means solid waste containing radioactive material and subject to the requirements of article 33-10.
30. "Recover or recycle" means any method, technique, or process utilized to separate, process, modify, convert, treat, shred, compress, or otherwise prepare solid waste so that component materials or substances may be beneficially used or reused.
31. "Recyclable materials" means all solid waste material that has been converted into a raw material or a substitute for a raw material or a commodity.
32. "Scavenging" means uncontrolled removal of solid waste materials from any solid waste management facility.
33. "Sequential partial closure" means bringing discrete, usually adjacent, portions of a disposal facility to elevation and grade in an orderly, continually progressing process as part of the operations of the facility for facilitating closure.
34. "Sludge" means solid waste in a semisolid form consisting of a mixture of solids and water, oils, or other liquids.
35. "Solid waste processing" means an operation for the purpose of modifying the characteristics or properties of solid waste to facilitate transportation, resource recovery, or disposal of solid waste including any process designed to recover or recycle waste.
36. "Suitable plant growth material" means that soil material (normally the A and the upper portion of B horizons which are dark colored due to organic staining) which, based upon a soil survey, is acceptable as a medium for plant growth when respread on the surface of regraded areas.
37. "Surface impoundment" means a human-made excavation, diked area, or natural topographic depression designed to hold an accumulation of solid waste which is liquid, liquid bearing, or sludge for containment, treatment, or disposal.
38. "Transfer station" means a site or building used to transfer solid waste from a vehicle or a container, such as a rolloff box, into another vehicle or container for transport to another facility.

39. "Waste pile or pile" means any noncontainerized accumulation of nonflowing solid waste.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

33-20-01.1-04. Care and disposal of solid waste.

1. Any person who owns any premises, business establishment, or industry is responsible for the handling, care, and disposal of solid waste generated or managed at his premises, business establishment, or industry.
2. No solid waste may be delivered to a facility which is not in compliance with this article or abandoned upon any street, alley, highway, public place, or private premises.
3. Solid waste must be stored, collected, and transported in a manner that provides for public safety, prevents uncontrolled introduction into the environment, and minimizes harborage for insects, rats, or other vermin.
4. Except in unincorporated areas of this state, household waste must be removed from the premises or containers at regular intervals not to exceed seven days and transported to a solid waste management unit or facility.
5. Used oil, lead-acid batteries, major appliances, and scrap metal may not be collected or transported for disposal to any solid waste disposal unit or facility unless such unit or facility has provision for intermediate storage and recycling of these materials and all such materials are appropriately segregated for recycling.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

33-20-01.1-05. Collection and transportation vehicles.

1. Vehicles used for the commercial collection and transportation of any residue, sludge, agricultural, inert, or industrial solid waste must be loaded and moved in such a manner that the contents will not fall, leak, or spill therefrom. Where spillage does occur, the collector or transporter shall immediately return spilled waste to the vehicle or container and, if necessary, clean and decontaminate the area.
2. Vehicles used for the commercial collection and transportation of regulated infectious waste, household waste, or municipal

waste incinerator ash must be fully leakproof and fully enclosed or covered to prevent scattering of material. Regulated infectious waste may not be subject to mechanical stress or compaction during loading, unloading, and transit. Any spilled material must be immediately returned to the transport vehicle or container and, if necessary, the area must be cleaned and decontaminated.

3. The cargo-carrying body of a vehicle used for commercial collection or transportation of solid waste must be maintained in good repair and in sanitary condition.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04, 23-29-05.2

33-20-01.1-06. Hazardous waste. The management of hazardous waste is regulated under article 33-24, except as otherwise provided in this article and section.

1. Containers having hazardous waste in excess of normal household quantities, which are not managed under article 33-24, must be marked to designate the content as toxic, explosive, or otherwise hazardous in a manner designed to give adequate warning to any person conducting the collection, transport, resource recovery, or disposal of the waste.
2. Every person who transports hazardous waste shall have a valid solid waste transporters permit, unless exempted by section 33-20-02-01.
3. Owners and operators of disposal, resource recovery, or solid waste processing facilities may not knowingly store, treat, handle, or dispose of hazardous waste in amounts that are in excess of quantities normally in household waste, unless the requirements of article 33-24 are met.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

33-20-01.1-07. Pesticide waste. Every person who handles surplus agricultural pesticides and pesticide containers shall comply with this article, section 33-15-10-02, and North Dakota Century Code section 4-35-20. Surplus pesticides may not be discarded in any manner which endangers humans, animals, and the environment. Pesticide containers

must be drained empty according to label directions and power or triple-rinsed before processing or disposal.

History: Effective December 1, 1992.  
General Authority: NDCC 23-29-04  
Law Implemented: NDCC 23-29-04

33-20-01.1-08. Asbestos waste. Every person who handles and disposes of asbestos waste shall comply with section 33-15-13-02 and this article.

History: Effective December 1, 1992.  
General Authority: NDCC 23-29-04  
Law Implemented: NDCC 23-29-04

33-20-01.1-09. Radioactive waste. Every person who handles and disposes of radioactive waste shall comply with article 33-10.

History: Effective December 1, 1992.  
General Authority: NDCC 23-29-04  
Law Implemented: NDCC 23-29-04

33-20-01.1-10. Variances. Whereupon written application the department finds that by reason of exceptional circumstances strict conformity with any provisions of this article would cause undue hardship or would be unreasonable, impractical, or not feasible under the circumstances, the department may permit a variance from this article upon such conditions and within such time limitations as it may prescribe.

History: Effective December 1, 1992.  
General Authority: NDCC 23-29-04  
Law Implemented: NDCC 23-29-04

CHAPTER 33-20-02

STORAGE

[Repealed effective December 1, 1992]

STAFF COMMENT: Chapter 33-20-02.1 contains all new material but is not underscored so as to improve readability.

CHAPTER 33-20-02.1  
PERMIT PROVISIONS AND PROCEDURES

Section

33-20-02.1-01	Solid Waste Management Permit Required
33-20-02.1-02	Permits-By-Rule
33-20-02.1-03	Permit Compliance
33-20-02.1-04	Record of Notice
33-20-02.1-05	Property Rights
33-20-02.1-06	Permit Modification, Suspension, or Revocation
33-20-02.1-07	Renewal of Permit

33-20-02.1-01. Solid waste management permit required. Every person who transports solid waste or operates a solid waste management unit or facility is required to have a valid permit issued by the department, unless the activity is an emergency, exemption, or exception as provided in this section.

1. If the department determines an emergency exists, it may issue an order citing the existence of such emergency and require that certain actions be taken as necessary to meet the emergency in accordance with the provisions of North Dakota Century Code section 23-29-10.
2. A solid waste management permit is not required for the following activities or facilities:
  - a. Backyard composting of leaves, grass clippings, or wood chips;
  - b. A collection point for parking lot or street sweepings;
  - c. Collection sites for wastes collected and received in sealed plastic bags from such activities as periodic cleanup campaigns for cities, rights of way, or roadside parks;
  - d. Collection sites which receive recyclable materials solely from the voluntary participation of other persons;
  - e. Onsite incinerators used by hospitals, clinics, laboratories, or other similar facilities solely for incineration of commercial waste or infectious waste generated onsite;
  - f. Rock and dirt fills that receive any combination of rock, dirt, or sand; and

- g. Surface impoundments for storage, handling, and disposal of oil and gas exploration and production wastes on a lease or area permitted through the North Dakota industrial commission under North Dakota Century Code section 38-08-04.
3. A permit for the transportation of solid waste is not required by persons who:
- a. Transport solely their own waste to a solid waste management unit or facility;
  - b. Transport waste entirely within a facility regulated under this article or entirely on their property; and
  - c. Transport recyclable materials other than waste oil.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04, 23-29-07

33-20-02.1-02. Permits-by-rule. The owner or operator of the following facilities is deemed to have obtained a permit for a solid waste management facility without making application for it, unless the department finds that the facility is not in compliance with section 33-20-04.1-01 and the listed rules:

- 1. A facility for inert waste operated for municipalities which together have one thousand or fewer people provided:
  - a. The owner or operator of a new facility or lateral expansion of a landfill notifies the department, on forms available from the department, ninety days prior to any construction;
  - b. A permanent sign must be posted at the entrance of the facility, which indicates the following:
    - (1) The name of the facility's owner;
    - (2) The name and telephone number of a person responsible for the facility;
    - (3) The wastes accepted at the facility; and
    - (4) The days and hours the facility is open for access; and
  - c. The facility is in compliance with sections 33-20-02.1-04 and 33-20-04.1-09 and with chapter 33-20-05.

2. A drop box facility in compliance with subsection 2 of section 33-20-04.1-06.
3. A waste pile for composting only grass and leaves that is operated for ten thousand or fewer people in compliance with section 33-20-04.1-07 provided the owner or operator notifies the department, on forms available from the department, ninety days prior to construction.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04, 23-29-07

33-20-02.1-03. Permit compliance. All solid waste management facilities and activities must be performed, constructed, operated, and closed in a manner consistent with the permit application and subject to any modifications specified through permit conditions.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04, 23-29-07

33-20-02.1-04. Record of notice.

1. Within thirty days of the issuance of a permit for any landfill, surface impoundment or land treatment unit if not already completed, the owner or operator shall record a notarized affidavit with the county register of deeds. The affidavit must specify that this facility, as noted in the legal description, is permitted to accept solid waste for disposal. This affidavit must specify that another affidavit must be recorded upon the facility's final closure.
2. Within sixty days of completion of final closure of any landfill, surface impoundment or land treatment facility and prior to sale or lease of the property on which the facility is located, the owner shall comply with North Dakota Century Code section 23-29-13. The record or plat shall, in perpetuity, notify any person conducting a title search that the land has been used as a solid waste disposal facility. The record or plat must indicate the types and quantities of solid waste placed in the site and details on the site's construction, operation, or closure (including precautions against any building, earth moving, or tillage on the closed site) that are necessary to ensure the long-term maintenance and integrity of the closed facility.

3. The department must be provided a certified copy of any affidavit or plat within sixty days of recording.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04, 23-29-07

33-20-02.1-05. Property rights. An applicant for a permit for a solid waste management unit or facility shall acquire or possess a right to the use of the property for which a permit is sought, including the access route thereto. After closure, the applicant shall maintain the right of access to the site throughout the postclosure period.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04, 23-29-07

33-20-02.1-06. Permit modification, suspension, or revocation.

1. A permit may be modified, suspended, revoked, or denied by the department for reasons pertaining to: circumstances which do not meet the purpose and provisions of this article, the provisions of the permit, or the plans and specifications submitted as part of the application for permit; or, violations of any applicable laws or rules. The department shall provide written notice to the permittee.
2. If a change occurs during the life of a permit for transporting solid waste (such as the number or type of vehicles used to transport waste, the service area, the waste categories transported, or the solid waste management facilities use), the permittee shall notify the department in writing within thirty days.
3. If a change occurs during the life of a permit for a solid waste management unit or facility, as specified in subsection 4, the permittee shall apply for and receive a modification of the permit prior to enacting the change. Routine maintenance, repair, or replacement, or an increase in hours of operations may not be considered a construction or operation change.
4. The following changes at a permitted solid waste management unit or facility require a permit modification:
  - a. A change to the facility boundaries or acreage;
  - b. An increase in average daily waste volume received;
  - c. A change in the waste characteristics or categories;

- d. An increase or decrease in finished height or finished slope of a landfill;
  - e. Any increase in landfill trench or excavation depth;
  - f. A change in facility site development which will result in impact to or encroachment into a one-hundred-year floodplain, a ravine, a wetland, or a drainageway or which will adversely impact surface water or ground water;
  - g. A change in site drainage or management of surface water, ground water, or leachate;
  - h. A change in facility site development which will result in disposal of wastes closer to site boundaries than originally approved;
  - i. The addition of solid waste management units, which, if sited independently, would require a permit; or
  - j. Other changes that could have an adverse affect on the safety, health, or welfare of nearby residents, property owners, or the environment.
5. An application for modification of a solid waste management unit or facility shall follow the procedures and provisions of chapter 33-20-03.1-02.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04, 23-29-07

33-20-02.1-07. Renewal of permit. An application for renewal of any permit must be submitted at least sixty days prior to the expiration date. The application for renewal must follow the procedures and provisions of chapter 33-20-03.1-02. The conditions of an expired permit continue in force until the effective date of a new permit, if the permittee has submitted a timely and complete application for a new permit and the department, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04, 23-29-07

CHAPTER 33-20-03  
COLLECTION AND TRANSPORTATION

[Repealed effective December 1, 1992]

STAFF COMMENT: Chapter 33-20-03.1 contains all new material but is not underscored so as to improve readability.

CHAPTER 33-20-03.1  
PERMIT APPLICATION PROVISIONS

Section	
33-20-03.1-01	Preapplication Procedures
33-20-03.1-02	Permit Application Procedures
33-20-03.1-03	Permit Application Review and Action
33-20-03.1-04	Amendment of Existing Permits
33-20-03.1-05	Existing Nonpermitted Facilities
33-20-03.1-06	Permit Application Review Timeline

33-20-03.1-01. Preapplication procedures.

1. For all new solid waste management facilities, a preapplication consisting of a preliminary facility description and a site assessment must be submitted to the department for review prior to submitting a permit application.
  - a. The preliminary facility description must include, at a minimum, the location of the facility; a projection of capacity, size, daily waste receipts, type of waste accepted, years of operation, description of operation, and costs; and a discussion of the proposed facility's compliance with local zoning requirements and the district waste management plan.
  - b. The preliminary site assessment must include available information pertaining to the site's geology, hydrogeology, topography, soils, and hydrology based on existing information.
2. Within sixty days of receipt of a preapplication, the department will provide written notification of approval or disapproval of the preapplication. If, after review of all information received, the department makes the determination to disapprove the preapplication, the department shall inform the applicant in writing of the reasons for the disapproval. If the preapplication is disapproved, the applicant may submit a new preapplication. A disapproval must be without prejudice to the applicant's right to a hearing before the department pursuant to North Dakota Century Code chapter 28-32.
3. An application may be filed only after approval of the preapplication and a finding by the department, after consultation with the state geologist and state engineer, that

the site is geologically and hydrogeologically suitable for further evaluation and consideration.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04, 23-29-07

**33-20-03.1-02. Permit application procedures.**

1. An application for a permit must be submitted on forms provided by the department by any person desiring to transport solid waste or to establish, construct, or operate a solid waste management unit or facility.
2. The application for a permit must be prepared by the applicant or the applicant's authorized agent and signed by the applicant.
3. Four copies of the application and supporting documents are required to be submitted to the department with the fee specified in chapter 33-20-15.
4. Upon the submission of an application for a permit for a new solid waste management unit or facility, the applicant shall publish a public notice indicating that an application has been submitted to the department. The public notice must indicate the type and location of the unit or facility and must be made by two separate publications in the official county newspaper in the county in which the site or operation is located. The applicant shall provide proof of publication by submitting to the department, within thirty days after the second publication of the notice, an affidavit from the publisher accompanied by a copy of the published notice, which shows the date of publication. The department may require public notice for major modifications of permitted units or facilities.
5. Applicants proposing a solid waste management facility in a mining permit area for disposal of coal processing waste must also file a copy of the application with the public service commission in accordance with subdivision a of subsection 1 of section 69-05.2-19-02.
6. Applications for a solid waste management unit or facility permit must include the following information where applicable:
  - a. A description of the categories of solid waste to be accepted;
  - b. Detailed geologic and hydrogeologic evaluation;

- c. Soil survey and segregation of suitable plant growth material;
- d. Site engineering plans and facility specifications;
- e. Plan of operation;
- f. Surface water and ground water protection provisions;
- g. Odors, dust, and open burning control provisions;
- h. Accident prevention and safety provisions;
- i. Fire protection provisions;
- j. Inspection, recordkeeping, and reporting procedures;
- k. Access control and facility sign descriptions;
- l. Operator training procedures;
- m. Construction quality assurance and quality control procedures;
- n. Closure and postclosure period procedures;
- o. Financial assurance provisions; and
- p. Documentation of conformance with the district solid waste management plan.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04, 23-29-07

33-20-03.1-03. Permit application review and action.

- 1. The department will review the applications, plans, and specifications for solid waste management facilities and information submitted as a result of the public notices.
- 2. Upon completion of the department's review, the application for permit will be approved, returned for clarification and additional information, or denied.
  - a. The basis for approval must be an application which demonstrates compliance with this article and the North Dakota Century Code chapter 23-29.
  - b. The basis for return must be an application which is procedurally or technically incomplete, inaccurate, or deficient in detail, or which precludes an orderly review

and evaluation. If the application is returned, the applicant may resubmit an application, complete with all necessary information to satisfy deficiencies. If the applicant does not resubmit an application within six months, the department shall consider the application withdrawn, and any subsequent application must be considered a new application.

- c. The basis for denial must be an application which contains false, misleading, misrepresented, or substantially incorrect or inaccurate information; fails to demonstrate compliance with this article; proposes construction, installation, or operation of a solid waste management unit or facility which will result in a violation of any part of this article; or is made by an applicant for whom an environmental compliance background review reveals any of the circumstances listed in subsection 14 of North Dakota Century Code section 23-29-04.
3. If the department makes a preliminary determination to issue a permit, the department shall prepare a draft permit. The draft permit will be available for public review and comment after the department publishes a notice of its intent to issue the permit. The public notice must be published in the official county newspaper in the county in which the solid waste management unit or facility is located and in a daily newspaper of general circulation in the area of the facility.
  4. Interested persons may submit written comments to the department on the draft permit within thirty days of the public notice. All written comments will be considered by the department in the formulation of its final determinations.
  5. The department shall hold a hearing if it determines there is significant public interest in holding such a hearing. Public notice for a hearing will be made in the same manner as for a draft permit. The hearing will be before the department and will be held at least fifteen days after the public notice has been published.
  6. If, after review of all information received, the department approves the permit application, the department shall issue a permit. The department may impose reasonable conditions upon a permit.
  7. If, after review of all information received, the department makes the determination to deny the permit, the applicant will be notified, in writing, of the denial. The department shall set forth in any notice of denial the reasons for denial. If the application is denied, the applicant may submit a new application, which will require a new public notice. A denial must be without prejudice to the applicant's right to a

hearing before the department pursuant to North Dakota Century Code chapter 28-32.

History: Effective December 1, 1992.  
General Authority: NDCC 23-29-04  
Law Implemented: NDCC 23-29-04, 23-29-07

33-20-03.1-04. Amendment of existing permits. A permittee of an existing permit on December 1, 1992, that is subject to this article shall apply to the department for such permit amendments as are necessary to bring the permit into compliance with this article. The application must be submitted to the department before October 9, 1993, or prior to the expiration of the permit, whichever is later. The department may establish a permit compliance schedule to achieve compliance with this article. Any permittee that makes timely application for a permit amendment under this section may not be deemed in violation of this article solely because the permit does not meet the requirements of this article.

History: Effective December 1, 1992.  
General Authority: NDCC 23-29-04  
Law Implemented: NDCC 23-29-04, 23-29-07

33-20-03.1-05. Existing nonpermitted facilities. The owner of an existing facility which does not have a permit on December 1, 1992, and which is required to be permitted by North Dakota Century Code chapter 23-29 and this article shall apply to the department for a permit within twenty-four months of December 1, 1992.

History: Effective December 1, 1992.  
General Authority: NDCC 23-29-04  
Law Implemented: NDCC 23-29-04, 23-29-07

33-20-03.1-06. Permit application review timeline. Upon receipt of a permit application, the department has one hundred twenty days to review and approve or disapprove the application and notify the applicant of the decision. The department may extend the period an additional one hundred twenty days if the applicant submits a significant change that in the department's judgment requires additional time to review.

History: Effective December 1, 1992.  
General Authority: NDCC 23-29-04  
Law Implemented: NDCC 23-29-04, 23-29-07

CHAPTER 33-20-04  
RESOURCE RECOVERY

[Repealed effective December 1, 1992]

STAFF COMMENT: Chapter 33-20-04.1 contains all new material but is not underscored so as to improve readability.

CHAPTER 33-20-04.1  
GENERAL PERFORMANCE STANDARDS

Section	
33-20-04.1-01	General Location Standards
33-20-04.1-02	General Facility Standards
33-20-04.1-03	Plan of Operation
33-20-04.1-04	Recordkeeping and Reporting
33-20-04.1-05	General Closure Standards
33-20-04.1-06	Transfer Stations, Baling and Compaction Systems, and Drop Box Facilities
33-20-04.1-07	Piles Used for Storage and Treatment - Standards
33-20-04.1-08	Solid Waste Processing and Resource Recovery - Standards
33-20-04.1-09	General Disposal Standards
33-20-04.1-10	Other Methods of Solid Waste Management - Standards

33-20-04.1-01. General location standards.

1. No solid waste management facility may be located in areas which result in impacts to human health or environmental resources or in an area which is unsuitable because of reasons of topography, geology, hydrology, or soils.
2. Sites for new, or for lateral expansions of, land treatment units, surface impoundments closed with solid waste in place, municipal waste landfills, and industrial waste landfills must emphasize favorable geologic conditions and engineered improvements. Sites should be underlain by thick sequences of materials with low permeability to provide a barrier to contaminant migration.
  - a. The following geographic areas or conditions must be excluded in the consideration of a site:
    - (1) Where the waste is disposed within an aquifer;
    - (2) Within a public water supply designated wellhead protection area;
    - (3) Within a one-hundred-year floodplain;
    - (4) Where geologic or manmade features, including underground mines, may result in differential settlement or failure of the structural integrity of the facility;

- (5) On the edge of or within channels, ravines, or steep topography whose slope is unstable due to erosion or mass movement;
  - (6) Within woody draws; or
  - (7) In areas designated as critical habitats for endangered or threatened species of plant, fish, or wildlife.
- b. The following geographic areas or conditions may not be approved by the department as a site unless the applicant demonstrates there are no reasonable alternatives:
- (1) Over or immediately adjacent to principal glacial drift aquifers identified by the state engineer;
  - (2) Closer than one thousand feet [304.8 meters] to a down gradient drinking water supply well;
  - (3) Closer than two hundred feet [60.96 meters] horizontally from the ordinary high water elevation of any surface water or wetland;
  - (4) Within final cuts of surface mines; or
  - (5) Closer than one thousand feet [304.8 meters] to any state or national park.
- c. The department may establish alternative criteria based on specific site conditions.
3. No municipal waste landfill or lateral expansion may be located within ten thousand feet [3048 meters] of any airport runway currently used by turbojet aircraft or five thousand feet [1524 meters] of any runway currently used by only piston-type aircraft.
4. A minimum horizontal separation of twenty-five feet [7.62 meters] must be maintained between new or lateral expansions of solid waste management units and any aboveground or underground pipeline or transmission line. The owner shall designate the location of all such lines and easements.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

33-20-04.1-02. General facility standards. An owner or operator of a solid waste management facility, except those permitted by rule, shall comply with these general facility standards:

1. All personnel involved in solid waste handling and in the facility operation or monitoring must be instructed in specific procedures to ensure compliance with the permit, the facility plans, and this article as necessary to prevent accidents and environmental impacts.
2. The solid waste management facility shall comply with the water protection provisions of chapter 33-20-13.
3. The solid waste management facility may not cause a discharge of pollutants into waters of the state unless such discharge is in compliance with requirements of the North Dakota pollutant discharge elimination system pursuant to chapter 33-16-01.
4. The solid waste management facility may not cause a violation of the ambient air quality standard or odor rules, article 33-15, at the facility boundary.
5. Suitable control measures must be taken whenever fugitive dust is a nuisance or exceeds the levels specified in article 33-15.
6. Open burning is prohibited except as allowed under article 33-15.
7. Suitable measures must be taken to prevent and control fires. Arrangements must be made with the local fire department to acquire their services when needed.
8. A permanent sign must be posted at the entrance of a facility, or at the entrance of a solid waste management unit used by a facility for wastes generated onsite, which indicates the following:
  - a. The name of the facility;
  - b. The permit number;
  - c. The name and telephone number of the owner and the operator if different than the owner;
  - d. The days and hours the facility is open for access;
  - e. The wastes not accepted for disposal; and
  - f. Any restrictions for trespassing, burning, hauling, or nonconforming dumping.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

33-20-04.1-03. Plan of operation. All solid waste management facilities, except those permitted by rule, shall meet the requirements of this section.

1. The owner or operator of a solid waste management unit or facility shall prepare and implement a plan of operation approved by the department as part of the permit. The plan must describe the facility's operation to operating personnel and the facility must be operated in accordance with the plan. The plan of operation must be available for inspection at the request of the department. Each plan of operation must include, where applicable:
  - a. A waste acceptance plan detailing categories of solid waste to be accepted at the facility, waste acceptance and rejection procedures, and other information deemed necessary by the owner or operator;
  - b. A description of waste handling procedures;
  - c. A description of inspection and monitoring activities including frequency;
  - d. A contingency plan describing what actions will be taken for the following:
    - (1) Fire or explosion;
    - (2) Leaks;
    - (3) Ground water contamination;
    - (4) Other releases (for example, dust, debris, failure of run-on diversion or runoff containment systems); and
    - (5) Any other issues pertinent to the facility.
  - e. Equipment, operation, and maintenance procedures;
  - f. Safety and health plans or procedures;
  - g. For landfills, implementation of sequential partial closure;
  - h. An industrial waste management plan that describes how industrial waste delivered to a solid waste management facility will be managed. The owner or operator must specify:
    - (1) A procedure for notifying solid waste generators and haulers of the facility operating requirements and restrictions;

- (2) A procedure for evaluating waste characteristics, liquid content, the specific analyses that may be required for specific wastes, and the criteria used to determine when analyses are necessary, the frequency of testing, and the analytical methods to be used;
- (3) A procedure for inspecting and managing the waste and for identifying any special management requirements, and the rationale for accepting or rejecting a waste based on its volume and characteristics;
- (4) The plan must address how the following solid waste will be managed:
  - (a) Bulk chemical containers which contain free product or residue;
  - (b) Asbestos;
  - (c) Waste containing polychlorinated biphenyls at a concentration less than fifty parts per million;
  - (d) Radioactive waste;
  - (e) Rendering and slaughterhouse waste;
  - (f) Wastes that could spontaneously combust or that could ignite other waste because of high temperatures;
  - (g) Foundry waste;
  - (h) Ash from incinerators, resource recovery facilities, and power plants;
  - (i) Paint residues, paint filters, and paint dust;
  - (j) Sludges, including ink sludges, lime sludge, wood sludge, and paper sludge;
  - (k) Fiberglass, urethane, polyurethane, and epoxy resin waste;
  - (l) Spent activated carbon filters;
  - (m) Oil and gas exploration and production waste;
  - (n) Wastes containing free liquids;
  - (o) Contaminated soil waste from cleanup of spilled products or wastes; and

- (p) Any other solid waste that the owner or operator plans to handle.
  - (5) The owner or operator must indicate in the plan any solid waste that will not be accepted at the facility; and
  - (6) The owner or operator must amend the plan whenever the management practices or wastes have changed. The owner or operator shall submit the amended plan to the department for approval or disapproval.
2. The owner or operator shall inspect the facility to ensure compliance with the approved plans and specifications and this article. The owner or operator shall keep an inspection log including at least the date of inspection, the name of the inspector, a notation of observations made, and the date and nature of any repairs or corrective action taken. The log must be kept at the facility or other permanent office from the date of inspection. Inspection records must be made available to the department upon request.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

33-20-04.1-04. Recordkeeping and reporting. The owner or operator of a solid waste management facility, except those permitted by rule, shall comply with these recordkeeping and reporting requirements:

1. A solid waste management facility may not accept solid waste until the department has received and approved a report which includes narrative, drawings, and test results to certify that the facility has been constructed in accordance with the approved plans and specifications and as required by the permit.
2. An owner or operator shall maintain operating records on the categories and weights or volumes of solid waste received at the facility. Any major deviations from the facility plans, the permit and this article must also be noted on the operating records.
3. An owner or operator shall prepare and submit a copy of an annual report to the department by March first of each year. The annual report must cover facility activities during the previous calendar year and must include the following information:
  - a. Name and address of the facility;
  - b. Calendar period covered by the report;

- c. Annual quantity for each category of solid waste in tons or volume;
- d. Identification of occurrences and conditions that prevented compliance with the permit and this article; and
- e. Other items identified in the facility plans and permit.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

33-20-04.1-05. General closure standards. The requirements of this section apply to all solid waste management facilities, unless otherwise specified.

1. Each owner or operator shall close their facility in a manner that achieves the following:
  - a. Minimizes the need for further maintenance; and
  - b. Controls, minimizes, or eliminates any escape of solid waste constituents, leachate, fugitive emissions, contaminated runoff, or waste decomposition products.
2. Sequential partial closure must be implemented to minimize the working face of a landfill.
3. Closure must be implemented within thirty days after receipt of the final volume of waste and must be completed within one hundred eighty days following the beginning of closure activities, unless otherwise specified and approved under subsection 5.
4. When closure of any landfill is completed in part or whole, each owner or operator shall enter into the operating record and submit to the department:
  - a. As-built drawings showing the topography, pertinent design features, extent of waste, and other appropriate information; and
  - b. Certification by the owner or operator and a professional engineer that closure has been completed in accordance with the approved closure plan and this article.
5. Each owner or operator shall prepare and implement a written closure plan approved by the department as part of the permitting process. The closure plan must project time intervals at which closure is to be implemented, describe the resources and equipment necessary for closure, and identify

closure cost estimates and projected fund withdrawals from the financial assurance instrument.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

33-20-04.1-06. Transfer stations, baling and compaction systems, and drop box facilities.

1. Transfer stations, baling and compaction systems must be designed, constructed, and operated to meet the following:
  - a. Control access and maintain aesthetics with a combination of fencing, trees, shrubbery, or natural features;
  - b. Be sturdy and constructed of easily cleanable material;
  - c. Provide effective control of birds, rodents, insects, and other vermin;
  - d. Be adequately screened to prevent and control blowing of litter;
  - e. Provide protection of the tipping floor from wind, rain, or snow;
  - f. Minimize noise and dust nuisances;
  - g. Provide pollution control measures to protect surface water and ground water including runoff and equipment wash down water control measures;
  - h. Provide all-weather access roads and vehicular traffic areas;
  - i. Provide any necessary pollution control measures to protect air quality including odor and dust control and prohibit burning;
  - j. Prohibit scavenging;
  - k. Have communication capabilities to immediately summon fire, police, or emergency personnel in the event of an emergency; and
  - l. Remove all solid waste from the facility at closure to a permitted facility.
2. Drop box facilities must:
  - a. Be accessible by all-weather roads;

- b. Be designed and serviced as often as necessary to ensure adequate capacity. Storage of solid waste outside the detachable containers is prohibited; and
- c. Remove all remaining solid waste to a permitted facility and remove the drop box from the facility at closure.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

### 33-20-04.1-07. Piles used for storage and treatment - Standards.

#### 1. Applicability.

- a. This section is applicable to solid waste stored or treated in piles, composting, sludge piles, tire piles of more than eight hundred tires, garbage which is in place for more than three days, putrescible waste, other than garbage, which is in place for more than three weeks, and other solid waste not intended for recycling which is in place for more than three months.
- b. Waste piles stored in fully enclosed buildings are not subject to these standards provided that no liquids or sludges with free liquids are added to the pile or the facility does not pose a potential threat to human health and the environment.

#### 2. An owner and operator of a waste pile, except composting of grass and leaves, shall:

- a. Comply with the general facility standards of section 33-20-04.1-02; and
- b. Remove all solid waste at closure to a permitted facility, or otherwise manage the waste that is in keeping with the purpose of this article.

#### 3. Requirements for waste piles likely to produce a leachate are:

- a. Waste piles must be underlain by concrete, asphalt, clay, or an artificial liner. The liner must be of sufficient thickness and strength to withstand stresses imposed by waste handling equipment and the pile;
- b. Runoff and run-on control systems must be designed, installed, and maintained to handle a twenty-five-year, twenty-four-hour storm event;

- c. Based on site and waste characteristics and the proposed operation, the department may require that waste piles have the following:
    - (1) A ground water monitoring system that complies with chapter 33-20-13;
    - (2) A leachate collection and treatment system; and
    - (3) Financial assurance; and
  - d. The department may require that the entire base or liner be inspected for wear and integrity and repaired or replaced by removing storage waste or otherwise providing inspection access to the base or liner.
4. An owner or operator of a tire pile shall:
- a. Control access to the tire pile by fencing;
  - b. Limit the tire pile to a maximum basal area of ten thousand square feet [929 square meters] in size;
  - c. Limit the height of the tire pile to twenty feet [6.1 meters];
  - d. Provide for a fifty-foot [15.24-meter] fire lane around the tire pile;
  - e. Provide site access by fire control equipment;
  - f. Provide run-on and runoff control systems adequate to control surface water from a twenty-five-year, twenty-four-hour precipitation event; and
  - g. Comply with subsection 3 if the total accumulation of tires on the site exceeds a basal area of ten thousand square feet [929 square meters].
5. An owner or operator of a composting facility for grass and leaves shall:
- a. Direct surface water or storm water from composting and waste storage areas;
  - b. Control surface water drainage to prevent leachate runoff;
  - c. Store solid waste separated from compostable material in a manner that controls vectors and aesthetic degradation, and remove this solid waste from the site to an appropriate facility at least weekly;

- d. Turn the yard waste periodically to aerate the waste, maintain temperatures, and control odors; and
- e. Prevent the occurrence of sharp objects greater than one inch [2.54 centimeters] in size in finished compost offered for use.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

33-20-04.1-08. Solid waste processing and resource recovery - Standards. In addition to sections 33-20-04.1-02, 33-20-04.1-03, 33-20-04.1-04, and 33-20-04.1-05, the owner or operator of a facility which conducts solid waste processing or operates a resource recovery system shall comply with these standards.

1. All liquids must be collected and treated to meet the water protection provisions of chapter 33-20-13.
2. Surface water must be diverted away from all open storage areas.
3. Solid waste must be confined to storage containers and areas specifically designed to store waste. Waste handling and storage systems must provide sufficient excess capacity to prevent nuisances, environmental impacts, or health hazards in the event of mechanical failure or unusual waste flows.
4. Solid waste processing and resource recovery systems or facilities must be operated on first-in, first-out basis. Stored solid waste containing household waste may not be allowed to remain unprocessed for more than forty-eight hours unless adequate provisions are made to control flies, rodents, odors, or other environmental hazards or nuisances.
5. All solid waste, recovered materials, or residues must be controlled and stored in a manner that does not constitute a fire or safety hazard or a sanitary nuisance.
6. All residues from solid waste processing and resource recovery systems or facilities must be handled and disposed according to this article.
7. All incinerators used for solid waste must be constructed and operated in compliance with article 33-15.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

33-20-04.1-09. General disposal standards.

1. In addition to sections 33-20-04.1-02, 33-20-04.1-03, 33-20-04.1-04, and 33-20-04.1-05, the standards of this section apply to all landfills, surface impoundments closed with solid waste in place, and land treatment units, unless otherwise indicated.
2. Construction and operation standards for solid waste management facilities regulated by this section:
  - a. Every solid waste landfill or facility shall have and maintain, or have access to, equipment adequate for the excavation, compaction, covering, surface water management, and monitoring procedures required by approval plans and this article.
  - b. Roads must be constructed and maintained to provide access to the facility. Access roads must be cleaned and decontaminated as necessary.
  - c. There must be available an adequate supply of suitable cover material, which, if necessary, must be stockpiled and protected for winter operation.
  - d. The final cover of all disposal facilities must be designed and constructed in a manner that ensures the quality and integrity of the hydraulic barrier and the protective vegetative cover.
  - e. The working face or open area of a landfill must be limited in size to as small an area as practicable. Sequential partial closure must be implemented as necessary to keep the disposal area as small as practicable and to close filled areas in a timely manner.
  - f. The disposal of liquids, sludges, and wastes containing free liquids in excess of household quantities is prohibited unless authorized by the department.
  - g. All disposal facilities shall identify, quantify, remove, stockpile, and maintain suitable plant growth material for later use in closure.
  - h. Any recycling or salvage activity must be authorized by the owner or operator and must be in a separate area in a manner to avoid injury and interference with the landfill operation.
  - i. Vehicles, farm machinery, metal appliances, or other similar items brought to the facility for recycling may be stored temporarily in a separate area.

- j. Vector control measures, in addition to the application of cover material, must be instituted whenever necessary to prevent the transmission of disease; prevent bird hazards to aircraft, and otherwise prevent and reduce hazards created by rats, flies, snakes, insects, birds, cats, dogs, and skunks.
  - k. All domestic animals must be excluded from the facility. Feeding of garbage to animals is prohibited.
  - l. All earthen material must be maintained onsite unless removal from the site is authorized by the department.
3. Construction and operation standards, excluding inert waste landfills.
- a. The landfill must be designed and operated to prevent the run-on and runoff of surface waters resulting from a maximum flow of a twenty-five-year, twenty-four-hour storm.
  - b. Facilities receiving on average over twenty tons [18.2 metric tons] per day of solid waste shall make provisions for measuring all waste delivered to and disposed in the facility. Weight measurements are preferable; volume measurements (cubic yards) are acceptable.
  - c. Active areas of the landfill must be surveyed periodically to ensure that filling is proceeding in a manner consistent with the landfill design and that closure grades are not exceeded.
  - d. All surface water resulting from run-on, runoff, snowmelt, infiltration, direct precipitation, or leachate must be properly controlled to avoid any concentration of water on or in the waste and to minimize infiltration of water into the waste material. Waste disposal shall avoid any areas within the facility where surface water is concentrated.
4. Closure standards, excluding land treatment units.
- a. Closed solid waste management units may not be used for cultivated crops, heavy grazing, buildings, or any other use which might disturb the protective vegetative and soil cover.
  - b. All solid waste management units must be closed with a final cover designed to:
    - (1) Have a permeability less than or equal to the permeability of any bottom liner or natural subsoils present;

- (2) Minimize precipitation run-on from adjacent areas;
  - (3) Minimize erosion and optimize drainage of precipitation falling on the landfill. The grade of slopes may not be less than three percent, nor more than fifteen percent, unless the permit applicant or permittee provides justification to show steeper slopes are stable and will not result in excessive erosion. In no instance may slopes exceed twenty-five percent; and
  - (4) Provide a surface drainage system which does not adversely affect drainage from adjacent lands.
- c. The final cover must include six inches [15.2 centimeters] or more of suitable plant growth material which must be seeded with shallow rooted grass or native vegetation.
5. Postclosure standards for solid waste management facilities regulated by this section.
- a. The owner or operator of a landfill or a surface impoundment closed with solid waste in place shall meet the following during the postclosure period:
    - (1) Maintain the integrity and effectiveness of the final cover, including making repairs to the cover to correct effects of settlement, subsidence, and other events, and preventing run-on and runoff from eroding or otherwise damaging the final cover;
    - (2) Maintain and operate the leachate collection system, if applicable;
    - (3) Monitor the ground water and maintain the ground water monitoring system, if applicable; and
    - (4) Operate and maintain the gas control system, if applicable.
  - b. The owner or operator of a municipal waste landfill, an industrial waste landfill, a surface impoundment closed with solid waste remaining in place, or a land treatment facility shall prepare and implement a written postclosure plan approved by the department as a part of the permitting process. The postclosure plan must address facility maintenance and monitoring activities for a postclosure period of thirty years.
    - (1) Postclosure includes appropriate: ground water monitoring; surface water monitoring; gas monitoring; and maintenance of the facility, facility structures, and ground water monitoring systems.

- (2) The postclosure plan must project time intervals at which postclosure activities are to be implemented, identify postclosure cost estimates, and projected fund withdrawals from the financial assurance instrument.
- (3) The department may require an owner or operator to amend the postclosure plan, including an extension of the postclosure period, and implement the changes. If the permittee demonstrates that the facility is stabilized, the department may authorize the owner or operator to discontinue postclosure activities.

History: Effective December 1, 1992.  
General Authority: NDCC 23-29-24  
Law Implemented: NDCC 23-29-04

33-20-04.1-10. Other methods of solid waste management - Standards. New and unique methods developed subsequent to December 1, 1992, which can be utilized without environmental degradation and creation of hazards to public health and safety will be considered by the department.

History: Effective December 1, 1992.  
General Authority: NDCC 23-29-04  
Law Implemented: NDCC 23-29-04

CHAPTER 33-20-05

STANDARDS OF PERFORMANCE FOR DISPOSAL OPERATIONS

[Repealed effective December 1, 1992]

STAFF COMMENT: Chapter 33-20-05.1 contains all new material but is not underscored so as to improve readability.

CHAPTER 33-20-05.1  
INERT WASTE LANDFILLS

Section	
33-20-05.1-01	Applicability
33-20-05.1-02	Performance and Design Criteria
33-20-05.1-03	Lime Sludge Waste
33-20-05.1-04	Closure Criteria
33-20-05.1-05	Postclosure Criteria

33-20-05.1-01. Applicability. An owner or operator of an inert waste landfill, which does not qualify for a permit by rule, shall comply with this chapter and with sections 33-20-04.1-02, 33-20-04.1-03, 33-20-04.1-04, 33-20-04.1-05, and 33-20-04.1-09. An inert waste landfill, which is permitted by rule, shall comply with section 33-20-02.1-02 and with this chapter, but is exempt from sections 33-20-04.1-02, 33-20-04.1-03, and 33-20-04.1-04.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

33-20-05.1-02. Performance and design criteria. The owner or operator of an inert waste landfill shall comply with these design, construction, and operating standards.

1. Access to the facility must be controlled by lockable gates and a combination of fencing, natural barriers, or artificial barriers.
2. Disposal of the following solid waste into inert waste landfills is prohibited: agricultural waste, asbestos waste, hazardous waste, municipal waste, commercial waste, industrial waste, regulated infectious waste, liquid solid waste, radioactive waste, and municipal waste incinerator ash.
3. All wastes deposited at the site must be spread and periodically compacted to promote drainage of surface water.
4. All wastes must be covered at least two times per year with a minimum of six inches [15.2 centimeters] of suitable earthen material.
  - a. The department may exempt the owner or operator of the landfill from this requirement based on the type and amount of waste received at the landfill and the site location.

- b. This requirement does not apply to monofills used solely for bottom ash from coal fired boilers.

History: Effective December 1, 1992.  
General Authority: NDCC 23-29-04  
Law Implemented: NDCC 23-29-04

33-20-05.1-03. Lime sludge waste. Lime sludge from a water treatment plant may be disposed in an inert waste landfill contingent upon proper design, operation, and permitting requirements and contingent upon departmental approval.

History: Effective December 1, 1992.  
General Authority: NDCC 23-29-04  
Law Implemented: NDCC 23-29-04

33-20-05.1-04. Closure criteria. Closure of an existing unit must be completed as outlined in sections 33-20-04.1-05 and 33-20-04.1-09. All existing units must be covered with two feet [61.0 centimeters] or more of earthen material, the lower twelve inches [30.5 centimeters] of which must be compacted clay-rich earthen material, free from cracks and extrusions of solid waste. If a cover of four feet [1.2 meters] or more of clay-rich earthen material is achieved, compaction is not required. At least six inches [15.2 centimeters] of suitable plant growth material must be placed over the covered landfill and planted with adapted grasses.

History: Effective December 1, 1992.  
General Authority: NDCC 23-29-04  
Law Implemented: NDCC 23-29-04

33-20-05.1-05. Postclosure criteria. Owners or operators of inert waste landfills shall conduct annual postclosure inspections for a period of five years after closure.

History: Effective December 1, 1992.  
General Authority: NDCC 23-29-04  
Law Implemented: NDCC 23-29-04

CHAPTER 33-20-06

PERMIT TO CONSTRUCT

[Repealed effective December 1, 1992]

STAFF COMMENT: Chapter 33-20-06.1 contains all new material but is not underscored so as to improve readability.

CHAPTER 33-20-06.1  
MUNICIPAL WASTE LANDFILLS

Section	
33-20-06.1-01	Applicability
33-20-06.1-02	Performance and Design Criteria
33-20-06.1-03	Closure Criteria

33-20-06.1-01. Applicability. The requirements of this chapter and of sections 33-20-01.1-08, 33-20-04.1-02, 33-20-04.1-03, 33-20-04.1-04, 33-20-04.1-05, and 33-20-04.1-09 apply to owners and operators of municipal waste landfills, except that the department may allow alternate design and performance standards for a municipal waste landfill receiving less than twenty tons [18.2 metric tons] per day based upon the site's climate, hydrogeology, topography, geology, and location and the type of wastes received.

History: Effective December 1, 1992.  
General Authority: NDCC 23-29-04  
Law Implemented: NDCC 23-29-04

33-20-06.1-02. Performance and design criteria. The owner or operator of a municipal waste landfill facility shall comply with these design, construction, and operating standards.

1. Access to the facility must be controlled by lockable gates and a combination of fencing, natural barriers, or artificial barriers. The gates must be locked when an attendant is on duty.
2. Any new or lateral expansion of a municipal waste landfill must be underlain with a hydraulic barrier and leachate removal system capable of collecting and removing leachate and contaminated surface water within the landfill.
  - a. The liner and leachate removal system must be compatible with the waste and leachate.
  - b. The liner and leachate removal system must maintain its integrity for the life of the facility and the postclosure period.
  - c. The leachate removal system must have a collection efficiency of ninety percent or better and be capable of maintaining a hydraulic head of twelve inches [30.5 centimeters] or less above the liner.

- d. The liner must consist of one of the following:
- (1) A natural soil liner constructed of at least four feet [1.2 meters] of natural soil having a hydraulic conductivity not to exceed  $1 \times 10^{-7}$  centimeters per second; or
  - (2) A composite liner consisting of two components; the upper component must consist of a minimum thirty mil flexible membrane liner, and the lower component must consist of at least a two-foot [61.0-centimeter] layer of compacted soil with a hydraulic conductivity of no more than  $1 \times 10^{-7}$  centimeters per second. Flexible membrane liner components consisting of high density polyethylene must be at least sixty mil thick. The flexible membrane liner component must be installed in direct and uniform contact with the compacted soil component.
- e. The drainage layer of the leachate removal system must have a hydraulic conductivity of  $1 \times 10^{-3}$  centimeters per second or greater throughout. The drainage layer must have sufficient thickness to provide a transmissivity of  $3.0 \times 10^{-2}$  centimeters squared per second or greater.
- f. Appropriate measures must be provided as necessary for preparation of the liner subgrade, quality assurance, and quality control testing of the construction of the liner and leachate removal system, and protection and maintenance of the liner and leachate removal system to ensure the integrity of the system.
- g. An alternative liner and leachate removal system may be approved by the department based on the proposed system's ability to control leachate migration.
3. The liner and leachate removal system in combination with the final cover must achieve a site efficiency of ninety-five percent or better for rejection or collection of the precipitation that falls on the site.
  4. Methane and other gases from waste decomposition may not be allowed to migrate laterally from the landfill so as to endanger structures, environmental resources, or adjacent properties.
  5. A certified operator must be on duty while the facility is receiving solid waste. Facilities receiving on average over twenty tons [18.2 metric tons] of municipal waste per day shall have an attendant at or near the entrance to the facility to monitor, accept or reject, measure, and record wastes arriving at the facility.

6. Solid waste must be unloaded at the bottom of the working face of the fill. The waste must then be spread in layers and compacted as densely as practicable. Each layer may not exceed a thickness of two feet [61.0 centimeters] of material after compaction is completed.
7. Household pet animal carcasses may be buried along with other municipal household waste. Larger animal carcasses must be disposed of immediately and must be placed at least four feet [1.2 meters] below grade with at least twelve inches [30.5 centimeters] of cover material directly covering the carcass.
8. The following wastes may not be accepted for disposal in municipal waste landfills unless approved by the department:
  - a. Liquids, except in amounts normally in household waste, unless the liquid is leachate or gas condensate derived from the municipal solid waste landfill and the municipal solid waste landfill, whether it is a new or existing landfill or a lateral expansion, is designed with a composite liner and leachate collection system as described in this section;
  - b. Regulated infectious waste, except in amounts normally in household waste;
  - c. Municipal waste incinerator ash;
  - d. Hazardous waste, except in amounts normally in municipal waste;
  - e. Pesticide containers which are not empty and have not been triple-rinsed, except those normally in municipal waste;
  - f. Waste oil;
  - g. Lead acid batteries;
  - h. Major appliances;
  - i. Industrial waste, if not addressed in the industrial waste management plan and the permit;
  - j. Raw or digested sewage sludges, lime sludges, grit chamber cleanings, animal manure, septic tank pumpings, bar screenings, and other sludges, if not included in the permit; and
  - k. Other waste, if the department determines that such waste has toxic or adverse characteristics which can impact public health or environmental resources.

9. A uniform compacted layer of six inches [15.2 centimeters] or more of suitable earthen material or other departmentally approved material must be placed on all solid waste by the end of each working day. All cover must be free of trash, garbage, or other similar waste.
10. On all areas where final cover or additional solid waste will not be placed within one month, an additional six inches [15.2 centimeters] or more of compacted, clay-rich earthen material must be placed. This intermediate cover may be removed when disposal operations resume.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

33-20-06.1-03. Closure criteria. In addition to sections 33-20-04.1-05 and 33-20-04.1-09, at closure, an owner or operator shall cover an existing unit with a layer of compacted soil material having a thickness of eighteen inches [45.7 centimeters] or more and a hydraulic conductivity of  $1 \times 10^{-7}$  centimeters per second or less. The compacted layer must be free from cracks and extrusions of solid waste. A second layer of twelve inches [30.5 centimeters] or more of clay-rich soil material suitable for serving as a plant root zone must be placed over the compacted layer. At least six inches [15.2 centimeters] of suitable plant growth material must be placed over the covered landfill and the facility planted with adapted grasses. The total depth of final cover must be three feet [91.4 centimeters] or more, or as required to achieve subsection 3 of section 33-20-06.1-02.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

CHAPTER 33-20-07

PERMIT TO OPERATE

[Repealed effective December 1, 1992]

STAFF COMMENT: Chapter 33-20-07.1 contains all new material but is not underscored so as to improve readability.

CHAPTER 33-20-07.1  
INDUSTRIAL WASTE LANDFILLS

Section  
33-20-07.1-01 Performance and Design Criteria  
33-20-07.1-02 Closure Criteria

33-20-07.1-01. Performance and design criteria. In addition to the requirements of sections 33-20-01.1-02, 33-20-01.1-08, 33-20-04.1-03, 33-20-04.1-04, 33-20-04.1-05, and 33-20-04.1-09, the owner or operator of an industrial waste landfill shall comply with the design, construction, and operating standards as follows:

1. On all areas of the landfill where final cover or additional solid waste will not be placed within six months, eight inches [20.3 centimeters] or more of compacted clay-rich soil material or a synthetic cover must be placed to minimize infiltration of surface water and to control windblown dust.
2. Waste disposal in industrial waste landfills must be limited to those wastes identified in the permit application or permit. Regulated infectious waste, waste oil, hazardous waste, and radioactive waste may not be accepted for disposal at the landfill.
3. All wastes deposited at the site must be spread and compacted as densely as practicable to minimize waste volume and promote drainage of surface water.
4. Any new or lateral expansion of an industrial waste landfill must be designed with an appropriate hydraulic barrier and leachate management system capable of collecting and removing leachate and contaminated surface water within the disposal unit.
  - a. The liner and leachate removal system must be compatible with the waste and leachate.
  - b. The liner and leachate removal system must maintain its integrity through the postclosure care period.
  - c. The system must have a collection efficiency of ninety-five percent or better and must be capable of maintaining a hydraulic head of twelve inches [30.5 centimeters] or less above the liner.
  - d. For landfills that receive wastes containing water soluble constituents, the liner must consist of at least four feet

[1.2 meters] of compacted natural soil having a hydraulic conductivity not to exceed  $1 \times 10^{-7}$  centimeters per second. This requirement does not apply to landfills receiving only oil field drilling cuttings and drilling mud.

- e. A composite liner is required for landfills receiving wastes which may contain leachable organic constituents. The liner must consist of at least three feet [91.4 centimeters] of recompacted clay with a hydraulic conductivity not to exceed  $1 \times 10^{-7}$  centimeters per second overlain with at least a sixty mil flexible membrane liner.
- f. The drainage layer must have a hydraulic conductivity of  $1 \times 10^{-3}$  centimeters per second or greater throughout. The drainage layer must have a sufficient thickness to provide a transmissivity of  $3 \times 10^{-2}$  centimeters squared per second or greater.
- g. An alternative liner may be approved by the department based on the proposed system's ability to control leachate migration.
- h. The liner and leachate removal system in combination with the final cover must achieve a site efficiency of at least ninety-eight and one-half percent or better for collection or rejection of the precipitation that falls on the site.
- i. The requirements of this subsection for a liner and leachate collection system may be waived by the department if the permit applicant can demonstrate that, based on geology and hydrology of the site, characteristics of the waste, and engineering design, the liner and leachate collection system is not necessary.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

33-20-07.1-02. Closure criteria. In addition to sections 33-20-04.1-05 and 33-20-04.1-09, at closure, an owner or operator shall cover an existing unit with two feet [61.0 centimeters] or more of clay-rich soil material having a hydraulic conductivity of  $1 \times 10^{-7}$  centimeters per second or less placed as a clay cap on the landfill. An additional layer of clay-rich soil material must be placed over the compacted clay cap; the upper twelve inches [30.5 centimeters] of this layer must be suitable for serving as a plant root zone. The department may allow the use of a synthetic material to replace part or all of the compacted clay cap. At least six inches [15.2 centimeters] of suitable plant growth material must be placed over the covered landfill and planted with adapted grasses. The total depth of the final cover must

be five feet [1.5 meters] or more, or as required by subdivision h of subsection 4 of section 33-20-07.1-01.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

CHAPTER 33-20-08

COMMON PROVISIONS APPLICABLE TO BOTH A PERMIT  
TO CONSTRUCT AND PERMIT TO OPERATE

[Repealed effective December 1, 1992]

STAFF COMMENT: Chapter 33-20-08.1 contains all new material but is not underscored so as to improve readability.

CHAPTER 33-20-08.1  
SURFACE IMPOUNDMENT PROVISIONS

Section  
33-20-08.1-01 Performance and Design Criteria  
33-20-08.1-02 Closure and Postclosure Criteria

33-20-08.1-01. Performance and design criteria. In addition to the requirements of section 33-20-04.1-09, the owner or operator of a surface impoundment shall comply with the following:

1. Applicability.
  - a. The design, construction, and operating standards of this section are applicable to surface impoundments that store or treat solid waste, sludges containing free liquids, free liquids containing high concentrations of dissolved solids, or liquids derived from processing or handling solid waste.
  - b. The standards of this section are not applicable to the following units:
    - (1) Surface impoundments which treat wastewater, the discharge of which is subject to federal, state, or local water pollution discharge permits;
    - (2) Surface impoundments which handle agricultural waste generated by farming operations;
    - (3) Lime sludge settling basins;
    - (4) Basins used to collect and store storm water runoff; and
    - (5) Oil and gas exploration and production waste regulated under North Dakota Century Code section 38-08-04.
2. The owner or operator must design, construct, and operate each surface impoundment so as to:
  - a. Comply with the surface water and ground water protection standards of chapter 33-20-13;
  - b. New units must have a compacted soil liner of a minimum two feet [61.0 centimeters] of  $1 \times 10^{-7}$  centimeters per second or lesser hydraulic conductivity or an equivalent

combination of soil thickness, soil hydraulic conductivity, or a flexible membrane liner which would control the migration of waste or waste constituents through the liner during the active life of the surface impoundment;

- c. Have dikes designed to maintain their structural integrity under conditions of a leaking liner and capable of withstanding erosion; and
- d. Have the freeboard equal to or greater than two feet [61.0 centimeters] to avoid overtopping from wave action or precipitation.

3. Monitoring and inspection.

- a. While a surface impoundment is in operation, it must be inspected by the owner or operator monthly and after storms to detect evidence of any of the following:
  - (1) Deterioration, malfunctions, or improper operation of control systems;
  - (2) Sudden drops in the level of the impoundment's contents; and
  - (3) Severe erosion, seepage, or other signs of deterioration in dikes or other containment devices.
- b. Prior to placing a surface impoundment into operation or prior to renewed operation after six months or more during which the impoundment was not in service, a professional engineer must certify that the impoundment's dike and liner have structural integrity.

4. Emergency repairs and contingency plans.

- a. When a malfunction occurs in the waste containment system which can cause a release to land or water, a surface impoundment must be removed from service and the owner or operator must take the following actions:
  - (1) Immediately shut down the flow of additional waste into the impoundment;
  - (2) Immediately stop the leak and contain the waste which has been released;
  - (3) Take steps to prevent catastrophic failure;
  - (4) If a leak cannot be stopped, empty the impoundment;

- (5) Clean up all released waste and any contaminated materials; and
  - (6) Notify the department of the problem within twenty-four hours after detecting the problem.
- b. As part of the contingency plan, the owner or operator must specify a procedure for complying with the requirements of subdivision a of this subsection.
  - c. No surface impoundment that has been removed from service in accordance with the requirements of this section may be restored to service unless the portion of the impoundment which was failing is repaired and the following steps are taken:
    - (1) If the impoundment was removed from service as the result of actual or imminent dike failure, the owner or operator must certify the dike's structural integrity; and
    - (2) If the impoundment was removed from service as the result of a sudden drop in the liquid level, the following actions must be taken:
      - (a) For any existing portion of the impoundment without a liner, a liner must be installed; and
      - (b) For any portion of the impoundment that is lined, the liner must be repaired and the owner or operator must certify that the repaired liner meets the design specification approved in the permit.
  - d. A surface impoundment, that has been removed from service in accordance with the requirements of this subsection and that is not repaired within six months, must be closed in accordance with the provisions of sections 33-20-04.1-05 and 33-20-04.1-09.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

33-20-08.1-02. Closure and postclosure criteria. In addition to the requirements of section 33-20-04.1-09, at closure, the owner or operator shall complete the following:

1. Remove all standing liquids, waste and waste residues, the liners and leak detection system, and any underlying and surrounding contaminated soil. The site must then be

reclaimed by regrading the site, replacing all suitable plant growth material, and properly revegetating the site; and

2. If all impoundment materials are not removed as provided in subsection 1, the owner must treat remaining liquids, residues, and soils by removal of liquids, drying, or other means and then close the impoundment and provide postclosure as provided for an industrial waste landfill under section 33-20-01.1-02.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

STAFF COMMENT: Chapters 33-20-09, 33-20-12, 33-20-13, 33-20-14, 33-20-15, and 33-20-16 contain all new material but are not underscored so as to improve readability.

CHAPTER 33-20-09  
LAND TREATMENT PROVISIONS

Section

33-20-09-01

Applicability

33-20-09-02

Land Treatment Standards

33-20-09-01. Applicability. The standards of this chapter apply to facilities that engage in land treatment of solid waste. These standards do not apply to the following:

1. Facilities utilizing municipal and domestic sludge;
2. Agricultural waste, including animal manure and agricultural residues, resulting from farming operations;
3. Composting grass clippings and leaves; and
4. Inert waste.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

33-20-09-02. Land treatment standards.

1. Owners or operators of land treatment facilities shall meet the location standards of section 33-20-04.1-01.
2. Owners or operators of land treatment facilities shall meet the minimum standards for performance of chapter 33-20-13, the general facility requirements of section 33-20-04.1-02, and the general disposal standards of section 33-20-04.1-09.
3. Owners or operators of land treatment facilities shall design these facilities to meet the following requirements:
  - a. Provide waste storage facilities, if appropriate, that meet the requirements of this article;
  - b. Collect and treat all runoff from a twenty-five-year, twenty-four-hour storm, and divert all run-on for the maximum flow of a twenty-five year, twenty-four-hour storm around the active area;
  - c. Avoid standing water on the active area;

- d. Avoid slopes and other features that will lead to soil and waste erosion, unless contour plowing or other measures are taken to avoid erosion; and
  - e. Control access to the site by fencing or other means.
4. Owners and operators of land treatment facilities shall maintain and operate these facilities in compliance with these following requirements:
- a. Land treatment of garbage or regulated infectious waste is prohibited;
  - b. Analyze solid waste according to departmentally approved methods;
  - c. Avoid applying waste at rates greater than ten times agronomic rates using the proposed cover crop, or depths greater than would allow for tilling the soil by tracked vehicles;
  - d. Provide tilling of soils during the growing season and after each application of waste to maintain aerobic soil conditions;
  - e. Amend the soil and soil nutrients as necessary to promote efficient biological breakdown of waste materials;
  - f. Avoid applying waste to any active area having standing water; and
  - g. Avoid food chain crops during the active life of the facility and after closure until demonstrated to be safe. Specific approval in writing from the department is required for any land treatment disposal facility that is used to raise food crops after closure.
5. All owners or operators of land treatment facilities shall close these facilities in accordance with section 33-20-04.1-05.

History: Effective December 1, 1992.  
General Authority: NDCC 23-29-04  
Law Implemented: NDCC 23-29-04

CHAPTER 33-20-12  
REGULATED INFECTIOUS WASTE

Section	
33-20-12-01	Definitions
33-20-12-02	Management Standards

33-20-12-01. Definitions.

1. As used in this article, "regulated infectious waste" means an infectious waste which is listed in subdivisions a through g of this subsection. Ash from incineration and residues from disinfection processes are not infectious waste once the incineration or the disinfection has been completed.
  - a. Cultures and stocks. Cultures and stocks of infectious agents and associated biologicals, including cultures from medical and pathological laboratories; cultures and stocks of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live and attenuated vaccines; and culture dishes and devices used to transfer, inoculate, and mix cultures.
  - b. Pathological waste. Human pathological waste, including tissues, organs, and body parts and body fluids that are removed during surgery or autopsy, or other medical procedures, and specimens of body fluids and their containers.
  - c. Human blood and blood products. Liquid waste human blood; products of blood; items saturated or dripping with human blood; or items that were saturated or dripping with human blood that are now caked with dried human blood (including serum, plasma, and other blood components, and their containers).
  - d. Sharps. Sharps that have been used in animal or human patient care or treatment or in medical, research, or industrial laboratories, including hypodermic needles, syringes (with or without the attached needle), pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, and culture dishes (regardless of presence of infectious agents). Also included are other types of broken or unbroken glassware that were in contact with infectious agents, such as used slides and cover slips.
  - e. Animal waste. Contaminated animal carcasses, body parts, and bedding of animals that were known to have been exposed to infectious agents during research (including

research in veterinary hospitals), production of biological, or testing of pharmaceuticals.

- f. Isolation waste. Biological waste and discarded materials contaminated with blood, excretion, exudates, or secretions from humans who are isolated to protect others from highly communicable diseases, or isolated animals known to be infected with highly communicable diseases.
  - g. Unused sharps. Unused, discarded sharps, hypodermic needles, suture needles, and scalpel blades.
2. As used in this chapter, "disinfection or disinfect" means to remove, inactivate, or destroy blood borne pathogens on a surface or item to the point where the surface or item is no longer capable of transmitting infectious particles.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

33-20-12-02. Management standards. In addition to sections 33-20-01.1-04, 33-20-01.1-05, 33-20-02.1-01, and 33-20-04.1-08, every person who collects, stores, transports, treats, or disposes of regulated infectious waste shall comply with these standards of performance.

1. At the point of origin, regulated infectious waste must be separated from other wastes and placed in distinctive containers which do not leak and which are impervious, puncture resistant, and tear resistant and which contain obvious markings (for example, red or orange plastic bags or the biohazard label). Bags and containers holding regulated infectious waste must be tied, closed, or sealed securely to prevent leakage.
2. At the point of origin, sharps must be:
  - a. Separated from other regulated infectious waste, disinfected onsite, rendered nonsharp onsite, and then disposed; or
  - b. Placed in rigid and puncture-resistant biohazard containers and handled as required by subsection 5.
3. The handling and storage of regulated infectious waste, before the treatment of subsection 5, must be conducted in a manner which minimizes exposure to employees of the waste generator, the waste transporter, and the public.
4. Recycled containers or devices such as carts used for the handling of wastes must be disinfected after each use.

5. All regulated infectious waste must be incinerated or disinfected and sharps that are not incinerated must be rendered nonsharp before disposal. Incineration and disinfection equipment and facilities shall meet the requirements of article 33-15 and this article.
6. Blood and blood products can be discarded without incineration or disinfection through municipal sewage disposal systems that meet the requirements of article 33-16.
7. The disposal of nonviable human fetuses shall meet the requirements of section 33-03-02-05.
8. An infectious waste which is not regulated by this chapter may be disposed at a permitted municipal waste landfill.
9. Household waste containing regulated infectious waste in amounts normally found in household waste may be disposed of at a permitted municipal waste landfill.

History: Effective December 1, 1992.  
General Authority: NDCC 23-29-04  
Law Implemented: NDCC 23-29-04

CHAPTER 33-20-13  
WATER PROTECTION PROVISIONS

Section	
33-20-13-01	Site Characterization
33-20-13-02	Ground Water Quality Monitoring
33-20-13-03	Water Quality Standards
33-20-13-04	Monitoring Well Construction

33-20-13-01. Site characterization. The department shall require adequate surface and subsurface water quality monitoring and site characterization to ensure that the waters of the state are not or will not be adversely impacted by the solid waste management facility. At a minimum, the initial hydrologic site characterization must address the following:

1. Location and water quality of lakes, rivers, streams, springs, or wetlands within one mile [1.61 kilometers] of the site boundary based on available data;
2. Domestic and livestock wells within one mile [1.61 kilometers] of the site boundary. Information collected should include the location, water quality, depth to water, well depth, screened intervals, yields, and the aquifers tapped;
3. Site location in relation to the one-hundred-year floodplain;
4. Depth to the thicknesses of the uppermost aquifers;
5. Hydrologic properties of the uppermost aquifers beneath the proposed facility including existing water quality, flow directions, flow rates, porosity, coefficient of storage, hydraulic conductivity, and potentiometric surface or water table; and
6. An evaluation of the potential for impacts to surface and ground water quality from the proposed facility.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04, 23-29-07.6

33-20-13-02. Ground water quality monitoring.

1. Based upon the site characteristics and type of facility, applicants may be required to incorporate a ground water monitoring system into the design of the facility. Ground water monitoring systems must be designed to effectively detect the migration of leachate constituents from the

landfill units or other operational areas. At a minimum, a water quality monitoring system shall:

- a. Include one ground water monitoring well located upgradient of the waste handling and storage facility, and at least two wells located downgradient of the waste handling and storage facility. The monitoring wells should be installed at appropriate locations and depths to yield ground water from the uppermost aquifer and all hydraulically connected aquifers below the active portion of the facility;
  - b. Document the elevation of ground water in each well immediately prior to purging and the rate and direction of ground water flow each time ground water is sampled;
  - c. Document the quality of water that has not been affected by solid waste activities; and
  - d. Document the quality of water passing the compliance boundary.
2. Additional wells may be required in complicated hydrogeological settings or to define the extent of contamination detected.
  3. A written ground water monitoring plan should be developed for approval by the department and implemented as part of the permitting process. The plan must include:
    - a. Number and location of wells;
    - b. Procedures for decontamination of drilling and sampling equipment;
    - c. Procedures for sample collection;
    - d. Analytical procedures;
    - e. Chain of custody control;
    - f. Parameters for analysis;
    - g. Quality assurance or quality control procedures;
    - h. A monitoring schedule; and

i. Reporting and data analysis procedures.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

33-20-13-03. Water quality standards. All solid waste management systems, operations, units, and facilities must be designed, constructed, operated, maintained, closed, and maintained after closure so as to be in compliance with North Dakota Century Code chapter 61-28, and standards defined in articles 33-16 and 33-17. The department shall specify monitoring requirements based upon the nature of the waste and site conditions. Compliance with these standards is enforceable at the compliance boundary of the facility, as set forth in the permit, unless otherwise determined by the department.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

33-20-13-04. Monitoring well construction.

1. All monitoring wells must be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing must allow collection of representative ground water samples. Wells must be constructed in such a manner as to prevent contamination of the samples, the sampled strata, and between aquifers and water bearing strata.
2. All soil borings or ground water monitoring wells must be completed by a driller licensed in North Dakota and must meet design and construction requirements as stipulated in North Dakota Century Code chapter 43-35 and article 33-18.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

CHAPTER 33-20-14  
FINANCIAL ASSURANCE REQUIREMENTS

Section	
33-20-14-01	Financial Assurance for Solid Waste Disposal Facilities
33-20-14-02	Cost Estimates for Closure and Postclosure
33-20-14-03	Financial Assurance Mechanism for Closure and Postclosure
33-20-14-04	Closure and Postclosure Financial Assurance Account Establishment and Reporting

**33-20-14-01. Financial assurance for solid waste disposal facilities.**

1. The requirements of this chapter apply to all new and expanded solid waste disposal facilities, and to existing solid waste disposal facilities that have not been closed by April 9, 1994. These requirements do not apply to inert waste landfills.
2. Publicly owned or operated facilities may set up one account for both closure and postclosure care of each facility.
3. Privately owned or operated facilities must set up a separate account for both closure and postclosure care of each facility.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

**33-20-14-02. Cost estimates for closure and postclosure.**

1. Each owner or operator shall prepare separate written closure and postclosure cost estimates to complete identified activities of the facility closure and postclosure plans. These estimates must be updated at least every three years.
2. Each owner or operator shall prepare a new closure or postclosure cost estimate whenever any of the following occurs:
  - a. Changes in operating plans or facility design affect the closure or postclosure plans;
  - b. There is a change in the expected year of closure; and
  - c. The department directs the owner or operator to revise the closure or postclosure plan.

History: Effective December 1, 1992.  
General Authority: NDCC 23-29-04  
Law Implemented: NDCC 23-29-04

33-20-14-03. Financial assurance mechanism for closure and postclosure.

1. Each owner or operator of an applicable solid waste disposal facility shall establish financial assurance mechanisms in an amount equal to the closure cost estimate and postclosure cost estimate prepared in accordance with section 33-20-14-02. The financial assurance mechanism must be approved by the department.
2. Solid waste disposal facilities shall provide one or more of the following financial assurance instruments:
  - a. Reserve account;
  - b. Trust fund;
  - c. Surety bond;
  - d. Irrevocable letter of credit;
  - e. Insurance policy; and
  - f. Corporate guarantee in accordance with the form and content of subdivision a of subsection 10 of section 33-24-05-81.

History: Effective December 1, 1992.  
General Authority: NDCC 23-29-04  
Law Implemented: NDCC 23-29-04

33-20-14-04. Closure and postclosure financial assurance account establishment and reporting.

1. The closure plan and postclosure plan required by this article must specify the financial assurance mechanisms required by this chapter and, if a reserve account, trust fund, surety bond, or insurance policy, the methods and schedules for funding the mechanisms.
2. Publicly owned solid waste disposal facilities shall comply with the following:
  - a. Closure and postclosure financial assurance funds must be generated for each facility as indicated in the closure and postclosure plans;

- b. Each facility owner or operator must establish a procedure with the financial assurance instruments trustee for notification of nonpayment of funds to be sent to the department; and
  - c. Each owner or operator shall file with the department an annual report of the financial assurance accounts established for closure and postclosure activities.
3. Privately owned solid waste disposal facilities shall comply with the following:
- a. Each owner or operator shall file with the department an annual audit of the financial assurance accounts established for closure and postclosure activities; and
  - b. Annual audits must be conducted by a certified public accountant licensed in the state and must be filed with the department no later than March thirty-first of each year for the previous calendar year, including each of the postclosure care years.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

CHAPTER 33-20-15  
SOLID WASTE MANAGEMENT FEES

Section	
33-20-15-01	Application Processing Fee
33-20-15-02	Annual Permit Fee

33-20-15-01. Application processing fee.

1. Applicants for permits for transporting solid waste and for solid waste management facilities shall pay, at the time the permit application is filed, an application processing fee as follows:
  - a. Seventy-five dollars for a solid waste transporter.
  - b. Five thousand dollars for any solid waste processing and resource recovery system or facility.
  - c. One thousand dollars for any municipal waste landfill facility that receives on average less than twenty tons [18.2 metric tons] per day.
  - d. Three thousand dollars for any municipal waste landfill facility that receives on average from twenty tons [18.2 metric tons] per day to fifty tons [45.4 metric tons] per day.
  - e. Five thousand dollars for any municipal waste landfill facility that receives on average more than fifty tons [45.4 metric tons] per day to five hundred tons [453.5 metric tons] per day.
  - f. Twenty thousand dollars for any municipal waste landfill facility that receives on average more than five hundred tons [453.5 metric tons] per day.
  - g. Five thousand dollars for any surface impoundment facility.
  - h. One thousand dollars for any special waste landfill facility that receives on average ten tons [9.1 metric tons] per day or less.
  - i. Ten thousand dollars for any special waste facility that receives on average more than ten tons [9.1 metric tons] but less than one hundred tons [90.7 metric tons] per day.
  - j. Twenty thousand dollars for any special waste facility that receives on average one hundred tons [90.7 metric tons] or more per day.

- k. Two thousand dollars for any inert waste landfill that receives on average more than forty tons [18.1 metric tons] per day.
2. Modifications of existing unexpired permits which are initiated by the department may not require an application processing fee. Modifications of existing unexpired permits not initiated by the department that require major review may be required to submit a processing fee with the modification request.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04, 23-29-07.1

Law Implemented: NDCC 23-29-04, 23-29-07.1

33-20-15-02. Annual permit fee. Beginning July 1, 1993, the owners or operators of an activity or facility required to have a permit under these rules are subject to an annual permit fee for each permit. The fee period must begin each July first and the fee must be paid by July thirty-first. All fees must be made payable to the North Dakota state department of health and consolidated laboratories. The annual permit fee is as follows:

1. For a solid waste processing or facility system five hundred dollars.
2. For a special waste facility five hundred dollars.
3. For a municipal waste landfill facility receiving on average more than twenty tons [18.2 metric tons] per day but less than fifty tons [45.4 metric tons] per day five hundred dollars.
4. For a municipal waste landfill facility receiving on average more than fifty tons [45.4 metric tons] per day and less than five hundred tons [453.5 metric tons] per day one thousand dollars.
5. For a municipal waste landfill facility receiving on average more than five hundred tons [453.5 metric tons] per day five thousand dollars.
6. For a surface impoundment facility five hundred dollars.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04, 23-29-07.1

Law Implemented: NDCC 23-29-04, 23-29-07.1

CHAPTER 33-20-16  
CERTIFICATION OF OPERATORS

Section	
33-20-16-01	Responsibility
33-20-16-02	Certification and Application
33-20-16-03	Training Course and Certification Requirements
33-20-16-04	Certificate Revocation
33-20-16-05	Term and Renewal of Certificates

33-20-16-01. Responsibility. Permittees of all municipal waste landfills and municipal waste incinerators in North Dakota are required to have a certified operator onsite at all times during operation of the facility.

History: Effective December 1, 1992.  
General Authority: NDCC 23-29-04  
Law Implemented: NDCC 23-29-04, 23-29-07.9

33-20-16-02. Certification and application.

1. In order to be certified as a municipal waste landfill operator or as a municipal waste incinerator operator, an applicant must take and pass a written examination given by the department or its authorized representative.
2. The department shall charge certification fees of twenty-five dollars for initial certification and fifteen dollars for annual renewal.
3. An individual desiring to attend the training session and take the certification examination shall file and submit the fee and application form at least thirty days before the scheduled training and certification session.

History: Effective December 1, 1992.  
General Authority: NDCC 23-29-04  
Law Implemented: NDCC 23-29-04, 23-29-07.9

33-20-16-03. Training course and certification requirements.

1. To be eligible for certification, a landfill or incinerator operator must have a minimum of one year experience in operating a municipal waste landfill or incinerator and attend a training session approved by the department for municipal waste facilities.

2. Training sessions will be held at least annually by the department to provide information on municipal waste landfill and incinerator operation and maintenance.
3. An applicant may submit documentation to demonstrate the equivalency of other training courses and certification successfully completed. The applicant may be eligible for certification without taking the training course or written examination if the department finds that the training and certification are substantially equivalent.
4. Applicants who fail an examination may reapply to the department.
5. Upon passage of the examination with a score of seventy percent or better, the department will issue a certificate to the applicant.
6. The certificates of personnel who terminate their employment at a landfill or incinerator facility will remain valid until expiration.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04, 23-29-07.9

33-20-16-04. Certificate revocation. The department may suspend or revoke the certificate of an operator if it is found that the operator has practiced fraud or deception in obtaining the certificate or in the performance of operator duties. No certificate may be revoked or suspended except after a hearing conducted in accordance with North Dakota Century Code chapter 28-32. Upon certificate suspension or revocation, a new application for certification may be considered by the department if the conditions upon which the suspension or revocation was based have been corrected and evidence of this fact has been satisfactorily submitted to the department.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04, 23-29-07.9

33-20-16-05. Term and renewal of certificates. Certificates expire each year on June thirtieth. The holder must reapply for renewal of an expired certificate and pay the renewal fee by August first. To be eligible for renewal, each certified operator must attend at least one departmentally approved training course every three years.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04, 23-29-07.9



JANUARY 1993

CHAPTER 33-07-03.1

33-07-03.1-20. Waiver provision. Rules promulgated pursuant to North Dakota Century Code chapter 23-16 may be waived by the ~~state health council~~ department for a specified period in specific instances, provided such a waiver does not adversely affect the health and safety of the residents and would result in unreasonable hardship upon the long-term care facility. Requirements related to fire safety may only be considered for waiver by the department if the provisions for which the facility is requesting a waiver have been approved in writing by the state fire marshal's office.

History: Effective December 1, 1986; amended effective January 1, 1993.  
General Authority: NDCC 23-01-03, 28-32-02  
Law Implemented: NDCC 23-16-01, 28-32-02

STAFF COMMENT: Chapter 33-07-05 contains all new material but is not underscored so as to improve readability.

CHAPTER 33-07-05  
NURSING FACILITY SANCTIONS

Section	
33-07-05-01	Purpose
33-07-05-02	Authority and Objective
33-07-05-03	Definitions
33-07-05-04	Provision of Sanctions
33-07-05-05	Imposition of Sanctions
33-07-05-06	Scope of Sanctions
33-07-05-07	Determination of Amount of Civil Money Penalties
33-07-05-08	Recommendation of Prohibition on Submission of Claims Through Other Providers
33-07-05-09	Order and Notice of Order
33-07-05-10	Request for Reconsideration
33-07-05-11	Appeals
33-07-05-12	Application

33-07-05-01. Purpose. This chapter is intended to conform North Dakota law to the requirements of 42 U.S.C. 1396r(h) by the creation of an enforcement process to be applied upon a finding, on the basis of a standard, extended, or partial extended survey of a nursing facility, or otherwise, that a nursing facility no longer meets the requirements of 42 U.S.C. 1396r(c) (requirements relating to residents' rights), or 42 U.S.C. 1396r(d) (requirements relating to administration and other matters), or of rules, regulations, or policies adopted to implement those requirements including rules and regulations relating to North Dakota Century Code section 23-16-01.

History: Effective January 1, 1993.  
General Authority: NDCC 23-01-03, 28-32-02  
Law Implemented: NDCC 23-16-01, 23-16-11

33-07-05-02. Authority and objective. The state department of health and consolidated laboratories is authorized by North Dakota Century Code section 23-01-11 to adopt such rules as necessary to enable the state to be in compliance with any federal laws in order to qualify for any federal funds related to medical facilities or agencies licensed by the department.

History: Effective January 1, 1993.  
General Authority: NDCC 23-01-03, 28-32-02  
Law Implemented: NDCC 23-16-01, 23-16-11

33-07-05-03. Definitions.

1. "Class I violation" refers to a requirement found out of compliance that immediately jeopardizes the health or safety of one or more residents.
2. "Class II violation" refers to requirement found out of compliance that has the potential for causing a direct and substantial threat to the health, safety, welfare, rights of one or more residents, or unauthorized removal of a posted notice of sanction.
3. "Class III violation" refers to a requirement found to be or to have been out of compliance on consecutive surveys or visits, or failure to inform a caller inquiring about the availability of beds in the facility of the violations that are the subject of an order imposing sanctions.
4. "Department" means the state department of health and consolidated laboratories.
5. "Director" means the director of the division of health facilities of the state department of health and consolidated laboratories, or the director's designee.
6. "Facility" or "nursing facility" means an institution or a distinct part of an institution which:
  - a. Is primarily engaged in providing to residents:
    - (1) Skilled nursing care and related services for residents who require medical or nursing care;
    - (2) Rehabilitation services for the rehabilitation of injured, disabled, or sick persons; or
    - (3) On a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services (above the level of basic care) that can be made available to them only through institutional facilities;
  - b. Is required to have in effect a transfer agreement (meeting the requirements of 42 U.S.C. 1395x(1) with one or more hospitals having agreements in effect under 42 U.S.C. 1395cc; and
  - c. Is required to meet the requirements for a nursing facility described in 42 U.S.C. 1396r(b), (c), and (d) and North Dakota Century Code section 23-16-01.
7. "Initial deficiency" means the first occurrence of a violation recorded by the survey agency, including violations found

during a standard survey, during an extended survey, in response to a complaint investigation visit, or otherwise.

8. "Repeat deficiency" means a violation which is substantially similar to a violation cited within the thirty-six preceding months.
9. "Secretary" means the secretary of the United States department of health and human services.
10. "Survey agency" means the department of health and consolidated laboratories.

History: Effective January 1, 1993.

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

Law Implemented: NDCC 23-16-01, 23-16-11

33-07-05-04. Provision of sanctions. The department may impose any sanction described in section 33-07-05-06 if it is found that a nursing facility no longer meets a requirement of 42 U.S.C. 1396r(b), (c), or (d), or North Dakota Century Code section 23-16-01, and it is further found that the facility's deficiencies are:

1. A class I violation which immediately jeopardizes the health or safety of its residents, in which case the director shall immediately recommend the appointment of a receiver, as provided for in North Dakota Century Code chapter 23-16.1, and as specified in subsection 8 of section 33-07-05-06, or recommend termination of the facility's participation in the medical assistance program, and may provide, in addition, for one or more of the other sanctions described in section 33-07-05-06; or
2. A class II or class III violation which does not immediately jeopardize the health or safety of its residents, in which case the department may:
  - a. Recommend termination of the facility's participation under the state plan;
  - b. Provide for one or more of the remedies described in section 33-07-05-06; or
  - c. Do both.

History: Effective January 1, 1993.

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

Law Implemented: NDCC 23-16-01, 23-16-11

33-07-05-05. Imposition of sanctions.

1. The department may implement sanctions based on a determination that a nursing facility no longer meets the requirements of 42 U.S.C. 1396r(b), (c), or (d), or of rules or regulations adopted to implement those requirements, including licensure requirements. The determination of appropriate sanctions must be at the discretion of the department. The appointment of a receiver must be as provided in North Dakota Century Code chapter 23-16.1. The department shall provide for the imposition of incrementally more severe sanctions for the violations that are repeated, uncorrected, pervasive, or present a threat to the health, safety, or welfare of the residents. When a determination is made that a civil money penalty will be imposed, the amount of the penalty will be based on recommendations made to the department by a committee composed of a representative from medical services, a representative from aging services, and a representative from health facilities.
2. The following factors must be considered in determining the sanctions to be imposed:
  - a. Seriousness of the violation;
  - b. Extent of the violation;
  - c. History of prior violations;
  - d. Prior imposition of sanctions;
  - e. Prior provision of provider information and training;
  - f. Willingness of facility management to adhere to program rules;
  - g. Agreement to make restitution to residents, the medical assistance program, or other third-party payors; and
  - h. Actions taken or recommended by licensing boards.
3. A sanction, once imposed, must continue until the facility has demonstrated to the department that the conditions or circumstances giving rise to the sanction have been corrected.

History: Effective January 1, 1993.

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

Law Implemented: NDCC 23-16-01, 23-16-11

33-07-05-06. Scope of sanctions. The following sanctions may be imposed upon a finding that a nursing facility no longer meets the

requirements of 42 U.S.C. 1396r(b), (c), or (d) or the requirements of North Dakota Century Code section 23-16-01:

1. Preparation, by the facility, of a directed plan of correction which is subject to approval of the department.
2. Mandatory attendance at provider information sessions.
3. Recommendation to the state medicaid agency to implement one hundred percent review of the facility's claims prior to payment.
4. Recommendation for denial of payment with respect to any individual admitted to the nursing facility after receipt of the order. Denial of payment may not provide a basis for discharge or transfer of the individual.
5. A ban on the admission of residents, except those who were temporarily absent from the facility on hospital or therapeutic leave on the date of receipt of the order or thereafter.
6. Recommendation of denial of payment for any service furnished after receipt of the order. Denial of payment may not provide a basis for discharge, transfer, or denial of service to a resident of the facility.
7. A civil money penalty, not exceeding one hundred fifty dollars per licensed facility bed, assessed, with interest at the legal rate, up to a maximum of ten thousand dollars, for each day the violation existed or continues to exist.
8. The appointment of a receiver to oversee the operation of the facility and to assure the health and safety of the facility's residents, where there is a need for temporary management while:
  - a. There is an orderly closure of the facility; or
  - b. Improvements are made in order to bring the facility into compliance with the requirements of the 42 U.S.C. 1396r(b), (c), and (d) and North Dakota Century Code section 23-16-01
9. In the case of an emergency closure of the facility or transfer of facility residents to other facilities, or both.

History: Effective January 1, 1993.

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

Law Implemented: NDCC 23-16-01, 23-16-11

33-07-05-07. Determination of amount of civil money penalties. A facility which has been subjected to the imposition of a sanction under subsection 7 of section 33-07-05-06 is liable to the state for each day the violation existed or continues to exist. A violation must be presumed to continue to exist from the time it is found until the department finds it to have been corrected. The amount of the civil money penalty must be determined as follows:

1. For each class I violation, not more than fifty dollars per licensed facility bed;
2. For each class II violation, not more than twenty-five dollars per licensed facility bed;
3. For each class III violation, not more than ten dollars per licensed facility bed; and
4. For each repeat violation, not more than three times the amount otherwise provided for under subsection 1, 2, or 3.

History: Effective January 1, 1993.

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

Law Implemented: NDCC 23-16-01, 23-16-11

33-07-05-08. Recommendation of prohibition on submission of claims through other providers. The department shall recommend that any facility which is subject to a suspension or termination from participation or to any limitation or denial of payment shall be prohibited from submitting claims for payment, either directly or through any clinic, group, corporation, or other association, to the division of medical services or any fiscal agent or any services or supplies provided under the medical services program except for any services or supplies provided prior to the effective date of imposition of the remedy. The submission of any claim in violation of this section may subject the provider submitting the claim to sanctions under this chapter.

History: Effective January 1, 1993.

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

Law Implemented: NDCC 23-16-01, 23-16-11

33-07-05-09. Order and notice of order.

1. Upon a determination that the circumstances make the imposition of a sanction appropriate, the department shall issue a written order identifying the violations and the sanction imposed. If the violations are of a nature to require the imposition of an incrementally more severe sanction, the order must identify the reasons therefor. A copy of the order must be sent by registered or certified mail, return receipt requested, to the facility's owner, the

facility's administrator, or head of the facility's governing board; or hand delivered to the facility's owner, the facility's administrator, or the head of the facility's governing board. The order must specify the terms or conditions under which the sanction will be terminated. The order must also advise the facility of the right to seek reconsideration.

2. When a facility has been subjected to a sanction, the department may notify, as appropriate, applicable professional licensing agencies, boards of registration or licensure, and federal, state, or county agencies of the circumstances and the sanctions imposed.
3. When a facility has been subjected to a sanction, the department shall notify the long-term care ombudsman and the county social service board of each county within seventy-five miles [120.7 kilometers] of the location of the facility. Each county social service board so notified shall post, in a prominent place within its office, the name and location of the facility and the sanction. The posting must remain in place for the entire period of any sanction other than closure or termination from the program and for the first ninety days of a closure or termination.
4. When a facility has been subjected to a sanction, the facility shall place notices of the sanction, supplied by the department, at all facility entrances and exits. In the event a sanction was imposed under subsection 5, 8, or 9 of section 33-07-05-06, the facility shall inform every person inquiring by telephone about the availability of beds in the facility of the violations and the sanctions imposed. Unauthorized removal of a posted notice, or failure to so inform a telephone caller, is a class II violation. The director may also require the facility to purchase space in the print media to achieve the public dissemination of information concerning any sanction.

History: Effective January 1, 1993.

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

Law Implemented: NDCC 23-16-01, 23-16-11

#### 33-07-05-10. Request for reconsideration.

1. Within ten days after receipt of the order, the facility may request reconsideration by the department. Within fifteen days after receipt of a request for reconsideration, the department shall grant or deny the request for reconsideration and may suspend the imposition of any sanction except one imposed under subsection 8 or 9 of section 33-07-05-06, pending a decision on reconsideration.

2. A request for reconsideration must, in any event, be denied unless it identifies, with specificity, each disputed violation and states the factual basis for its contention that the violation was erroneously determined. The correction of the factors which led to the determination of a violation may not be asserted as a basis for a request for reconsideration.
3. If the department denies the request for reconsideration the department shall notify the facility in writing of that decision. If the denial was for any reason other than a failure of the request to conform to the requirements of subsection 2, the notice must advise the facility of the right to appeal.
4. If the department determines to undertake reconsideration, the decision on reconsideration must be rendered within forty days after the issuance of the order. The notice of the decision on reconsideration must advise the facility of the right to appeal.
5. If the facility fails to file a timely request for reconsideration which conforms to the requirements of subsection 2, the order is final in all respects, and no further administrative or judicial review is applicable.

History: Effective January 1, 1993.

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

Law Implemented: NDCC 23-16-01, 23-16-11

#### 33-07-05-11. Appeals.

1. A facility dissatisfied with a decision on a timely request for reconsideration, which conforms to the requirements of subsection 2 of section 33-07-05-10, may appeal. An appeal may be perfected by mailing or delivering the information, described in subdivisions a through d, to the department, state capitol, Bismarck, North Dakota, so that the mailed or delivered material arrives at the office of the division of health facilities on or before 5:00 p.m. on the thirty-first day after the date of the determination of the department made with respect to a request for reconsideration. An appeal under this section is perfected only if accompanied by written documents including all of the following information:
  - a. A copy of the notice received from the department advising of the department's decision on the request for reconsideration;
  - b. A statement of each disputed violation and the reason or basis in fact for the dispute;

- c. The authority in statute or rule upon which the appealing party relies for each disputed item; and
  - d. The name, address, and telephone number of the person upon whom all notices will be served regarding the appeal.
2. Except as otherwise provided in this section, the appeal must be considered as provided in article 98-02.
  3. The dispositive issue on appeal must be whether the violation occurred, not whether the violation has been corrected.
  4. The hearing officer must make written findings of fact and conclusions of law, and must recommend a decision to the department. The recommended decision must set forth the reasons for the decision and the evidence upon which the decision is based.
  5. The department may accept, modify, or reject the recommended decision. If the department rejects the recommended decision, it may remand the matter to the office of administrative hearings with directions. The department may, through its directions, require the receipt of additional evidence, and the submission of amended findings of fact, conclusions of law and recommended decision which reflects consideration of additional evidence. The department may, through its directions, require that the matter be referred to the same or a different hearing officer, and the office of administrative hearings shall comply with that direction unless compliance is impossible.

History: Effective January 1, 1993.

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

Law Implemented: NDCC 23-16-01, 23-16-11

33-07-05-12. Application. An appeal may not suspend or delay the imposition of a remedy under this chapter. All civil penalties received pursuant to this chapter must be paid into a special fund of the department for the cost of implementation of this chapter, to be applied to the protection of the health or property of residents or patients of facilities that the department or the secretary finds in violation, including payment for the costs for relocation of patients, maintenance of temporary management to operate a facility pending correction of a violation or closure of the facility, or for reimbursement to residents and patients for personal funds lost due to a cited violation.

History: Effective January 1, 1993.

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

Law Implemented: NDCC 23-16-01, 23-16-11

CHAPTER 33-30-02

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

1. Application fee for an environmental health practitioner license . . . . . \$50.00
2. Renewal fee for an environmental health practitioner license . . . . . 15.00
3. Late renewal penalty fee per month . . . . . 2.00
4. Duplicate or changed license fee . . . . . 10.00

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

History: Effective February 1, 1988; amended effective January 1, 1993.

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-04

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

1. Any applicant must be licensed as an environmental health practitioner who meets these requirements: a baccalaureate degree in an accredited environmental health curriculum or a baccalaureate degree in the physical, chemical, or biological sciences, including at least thirty semester or forty-five quarter credits in the physical, chemical, or biological sciences. Complete an application for licensure and pay the required application fee.
2. A person who has a degree beyond baccalaureate in the physical, chemical, or biological sciences in an accredited curriculum must be considered immediately eligible for licensure. Have received a baccalaureate degree in an accredited environmental health curriculum or a baccalaureate in the physical, chemical, or biological sciences, including at least thirty semester or forty-five quarter credits in a physical, chemical, or biological science, or a degree beyond baccalaureate in environmental health or in a physical, chemical, or biological science.
3. Pass the national environmental health practitioner registry exam administered by the national environmental health association. Persons meeting the licensure requirements in subsections 1 and 2 who have not yet passed the environmental health practitioner registry exam will be considered board

eligible. A person who is board eligible may work in the field of environmental health but such work must be under the direction and supervision of a licensed environmental health practitioner. A person who is board eligible may work under a licensed environmental health practitioner for no more than a total of three years after which such person may work in the field of environmental health only after passing the national environmental health practitioner registry exam. Environmental health practitioners licensed prior to January 1, 1993, will be exempt from the exam requirement.

History: Effective February 1, 1988; amended effective January 1, 1993.

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-04

## CHAPTER 33-30-05

33-30-05-02. Grounds for disciplinary proceedings. The state health officer may refuse to issue or renew, suspend, revoke, or place on probationary status any license issued under this chapter or issue a written warning to a licensee upon proof at a hearing that the applicant or licensed person has engaged in unprofessional conduct. A person has engaged in unprofessional conduct if a person:

1. Obtained a license by means of fraud, misrepresentation, or concealment of material facts.
2. Violated the code of ethics referred to in section 33-30-04-01.
3. Has been convicted of a criminal offense, and the state health officer in accordance with North Dakota Century Code section 12.1-33-02.1, has determined that the person has not been sufficiently rehabilitated or that the offense has a direct bearing on the person's ability to serve the public in the capacity of a licensed environmental health practitioner.
4. Violated any order or rule adopted by the state health officer pertaining to the practice of environmental health.
5. Violated any provision of North Dakota Century Code chapter 43-43.
6. Is grossly negligent in the practice of environmental health.
7. Is addicted to the use of alcoholic beverages, drugs, narcotics, or stimulants to such an extent as to be incapacitated from the practice of environmental health.

History: Effective January 1, 1993.

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-07

33-30-05-03. Hearings and disciplinary proceedings - Appeals.

1. Upon receipt of a written and signed complaint that alleges that a licensee practicing in this state has engaged in unprofessional conduct as defined under section 33-30-05-02 and which sets forth information about which a reasonable person might believe that further inquiries should be made, the state health officer shall investigate the matter.
2. If the investigation reveals grounds to support the complaint, the advisory board shall initiate a disciplinary action by serving upon the licensee by certified mail a complaint

setting forth the allegations upon which the action is based specifying the issues to be determined.

3. If a written response contesting the allegations is not received by the board within twenty days of service of the complaint, the allegations are deemed admitted and appropriate disciplinary sanctions are to be imposed.
4. If a disciplinary action has been initiated as provided in subsection 2, the state health officer may offer to meet with the licensee informally for the purpose of determining whether the disciplinary action, including imposition of appropriate sanctions, can be resolved by mutual agreement.
5. If an informal agreement cannot be reached, or the state health officer elects not to offer the licensee an opportunity for informal resolution of the matter, the licensee is entitled to a hearing under North Dakota Century Code chapter 28-32. Appeal from the board's final decision may be taken in accordance with North Dakota Century Code section 28-32-15.
6. Employers of environmental health practitioners will be notified of any action taken with respect to an environmental health practitioner's license.

History: Effective January 1, 1993.

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-07

FEBRUARY 1993

CHAPTER 33-03-08

33-03-08-01. Plans and specifications required. It is required that plans and specifications be prepared for all water works ~~systems,~~ and sewerage ~~works~~ systems, and ~~swimming pools~~ contemplated for use by the general public. It is further required that such plans and specifications, together with other pertinent information, be submitted to the state health officer for review prior to construction of the facility or facilities.

History: Amended effective February 1, 1993.

General Authority: NDCC 23-01-03

Law Implemented: NDCC 23-01-03

33-03-08-04. Approved plans and specifications required. Water works ~~systems,~~ and sewerage systems, and ~~swimming pools~~ constructed for use by the general public must be constructed in accordance with plans and specifications approved by the state health officer.

History: Amended effective February 1, 1993.

General Authority: NDCC 23-01-03

Law Implemented: NDCC 23-01-03

## CHAPTER 33-17-01

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

1. "Action level" means the concentration of lead or copper in water specified in title 40, Code of Federal Regulations, part 141, subpart I, section 141.80(c), that determines, in some cases, the treatment requirements set forth under title 40, Code of Federal Regulations, part 141, subpart I, that a water system is required to complete.
2. "Best available technology" or "BAT" means the best technology, treatment techniques, or other means which the department finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration). For the purposes of setting maximum contaminant levels for synthetic organic chemicals, any best available technology must be at least as effective as granular activated carbon.
3. "Coagulation" means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into flocs.
- ~~2-~~ 4. "Community water system" means a public water system which serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents.
- ~~3-~~ 5. "Confluent growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion thereof, in which bacterial colonies are not discrete.
- ~~4-~~ 6. "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.
7. "Conventional filtration treatment" means a series of processes including coagulation, flocculation, sedimentation, and filtration resulting in substantial particulate removal.
8. "Corrosion inhibitor" means a substance capable of reducing the corrosivity of water toward metal plumbing materials, especially lead and copper, by forming a protective film on the interior surface of those materials.
- ~~5-~~ 9. "Cross connection" means any connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other either water of unknown or questionable safety or steam, gas, or chemical whereby there may be a flow from one system to the other, the direction of

flow depending on the pressure differential between the two systems.

10. "CT" or "CT calc" means the product of residual disinfectant concentration (C) in milligrams per liter determined before or at the first customer and the corresponding disinfectant contact time (T) in minutes. If disinfectants are applied, at more than one point prior to the first customer, the CT of each disinfectant sequence must be determined before or at the first customer to determine the total percent inactivation or total inactivation ratio. In determining the total inactivation ratio, the residual disinfectant concentration of each disinfection sequence and the corresponding contact time must be determined before any subsequent disinfection application points. CT ninety-nine point nine is the CT value required for ninety-nine point nine percent (three-logarithm) inactivation of Giardia lamblia cysts. CT ninety-nine point nine values for a wide variety of disinfectants and conditions are set for under title 40, Code of Federal Regulations, part 141, subpart H. CT calculated divided by CT ninety-nine point nine is the inactivation ratio. The total inactivation ratio is determined by adding together the inactivation ratio for each disinfection sequence. A total inactivation ratio equal to or greater than one point zero is assumed to provide a three-logarithm inactivation of Giardia lamblia cysts.
- ~~6-~~ 11. "Department" means the North Dakota state department of health and consolidated laboratories.
12. "Diatomaceous earth filtration" means a process resulting in substantial particulate removal in which a precoat cake of diatomaceous earth filter media is deposited on a support membrane or septum, and while the water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the feed water to maintain the permeability of the filter cake.
13. "Direct filtration" means a series of processes including coagulation and filtration but excluding sedimentation resulting in substantial particulate removal.
- ~~7-~~ 14. "Disinfectant" means any oxidant, including, but not limited to, chlorine, chlorine dioxide, chloramines, and ozone added to water in any part of the treatment or distribution process, that is intended to kill or inactivate pathogenic microorganisms.
15. "Disinfectant contact time" (T in CT calculations) means the time in minutes that it takes for water to move from the point of disinfectant application or the previous point of disinfectant residual measurement to a point before or at the point where residual disinfectant concentration (C) is measured. Where only one C is measured, T is the time in

minutes that it takes for water to move from the point of disinfectant application to a point before or at where C is measured. Where more than one C is measured, T, for the first measurement of C, is the time in minutes that it takes the water to move from the first or only point of disinfectant application to a point before or at the point where the first C is measured. For subsequent measurements of C, T is the time in minutes that it takes for water to move from the previous C measurement point to the C measurement point for which the particular T is being calculated. Disinfectant contact time in pipelines must be calculated by dividing the internal volume of the pipe by the maximum hourly flow rate through that pipe. T within mixing basins and storage reservoirs must be determined by tracer studies or an equivalent demonstration.

16. "Disinfection" means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.
- ~~8-~~ 17. "Domestic or other nondistribution system plumbing problem" means a coliform contamination problem in a public water system with more than one service connection that is limited to the specific service connection from which the coliform-positive sample was taken.
18. "Effective corrosion inhibitor residual", for the purpose of title 40, Code of Federal Regulations, part 141, subpart I only, means a concentration sufficient to form a passivating film on the interior walls of pipe.
19. "Filtration" means a process for removing particulate matter from water by passage through porous media.
20. "First draw sample" means a one-liter sample of tap water, collected in accordance with title 40, Code of Federal Regulations, part 141, section 141.86(b)(2), that has been standing in plumbing pipes at least six hours and is collected without flushing the tap.
21. "Flocculation" means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settleable particles through gentle stirring by hydraulic or mechanical means.
- ~~10-~~ 22. "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.
- ~~9-~~ 23. "Ground water under the direct influence of surface water" means any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as Giardia lamblia, or significant and relatively rapid shifts in water

characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions.

- ~~11.~~ 24. "Halogen" means one of the chemical elements chlorine, bromine, or iodine.
25. "Large water system", for the purpose of title 40, Code of Federal Regulations, part 141, subpart I only, means a water system that serves more than fifty thousand persons.
26. "Lead service line" means a service line made of lead that connects the water main to the building inlet and any pigtail, gooseneck, or other fitting that is connected to a lead line.
27. "Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called legionnaires disease.
- ~~12.~~ 28. "Maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to ~~the free flowing outlet of the ultimate~~ any user of a public water system; ~~except in the case of turbidity where the maximum permissible level is measured at the point of entry to the distribution system. Contaminants added to the water under circumstances controlled by the user except those resulting from corrosion of piping and plumbing caused by water quality are excluded from this definition.~~
- ~~13.~~ 29. "Maximum total trihalomethane potential" means the maximum concentration of total trihalomethanes produced in a given water containing a disinfectant residual after seven days at a temperature of twenty-five degrees Celsius [77 degrees Fahrenheit] or above.
30. "Medium-size water system", for the purpose of title 40, Code of Federal Regulations, part 141, subpart I only, means a water system that serves three thousand one to fifty thousand persons.
- ~~14.~~ 31. "Near the first service connection" means at one of the twenty percent of all service connections in the entire system that are nearest the water supply treatment facility as measured by water transport time within the distribution system.
- ~~15.~~ 32. "Noncommunity water system" means a public water system that is not a community water system and that primarily provides service to transients other than year-round residents. A noncommunity water system is either a "nontransient noncommunity" or "transient noncommunity" water system.
- ~~16.~~ 33. "Nontransient noncommunity water system" means a public noncommunity water system that is not a community water system

~~and that~~ regularly serves at least twenty-five of the same persons over six months per year.

34. "Optimal corrosion-control treatment", for the purpose of title 40, Code of Federal Regulations, part 141, subpart I only, means the corrosion-control treatment that minimizes the lead and copper concentrations at users' taps while ensuring that the treatment does not cause the water system to violate any national primary drinking water regulations.
- ~~17-~~ 35. "Person" means an individual, corporation, company, association, partnership, municipality, or any other entity.
36. "Point of disinfectant application" means the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water runoff.
37. "Point-of-entry treatment device" means a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in the drinking water distributed throughout the house or building.
38. "Point-of-use treatment device" means a treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one tap.
- ~~18-~~ 39. "Potable water" means water free from impurities in amounts sufficient to cause disease or harmful physiological effects, with the physical, chemical, biological, or radiological quality conforming to applicable maximum permissible contaminant levels.
- ~~19-~~ 40. "Public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals sixty or more days out of the year. A public water system is either a "community", a ~~"nontransient noncommunity"~~, or a "noncommunity" water system.
41. "Residual disinfectant concentration" (C in CT calculations) means the concentration of disinfectant measured in milligrams per liter in a representative sample of water.
- ~~20-~~ 42. "Sampling schedule" means the frequency required for submitting drinking water samples to a certified laboratory for examination.
- ~~21-~~ 43. "Sanitary survey" means an onsite review of the water source, facilities, equipment, operation, and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation, and maintenance for producing and distributing safe drinking water.

44. "Sedimentation" means a process for removal of solids before filtration by gravity or separation.
45. "Service line sample" means a one-liter sample of water, collected in accordance with title 40, Code of Federal Regulations, part 141, section 141.86(b)(3), that has been standing for at least six hours in a service line.
46. "Single family structure", for the purpose of title 40, Code of Federal Regulations, part 141, subpart I only, means a building constructed as a single-family residence that is currently used either as a residence or a place of business.
47. "Slow sand filtration" means a process involving passage of raw water through a bed of sand at low velocity resulting in substantial particulate removal by physical and biological mechanisms.
48. "Small water system", for the purpose of title 40, Code of Federal Regulations, part 141, subpart I only, means a water system that serves three thousand three hundred or fewer persons.
- ~~22.~~ 49. "Supplier of water" means any person who owns or operates a public water system.
50. "Surface water" means all water which is open to the atmosphere and subject to surface runoff.
- ~~23.~~ 51. "System with a single service connection" means a system which supplies drinking water to consumers with a single service line.
- ~~24.~~ 52. "Too numerous to count" means that the total number of bacterial colonies exceeds two hundred on a forty-seven millimeter membrane filter used for coliform detection.
- ~~25.~~ 53. "Total trihalomethanes" means the sum of the concentration in milligrams per liter of the trihalomethane compounds (trichloromethane [chloroform], dibromochloromethane, bromodichloromethane and tribromomethane [bromoform]), rounded to two significant figures.
54. "Transient noncommunity water system" means a noncommunity water system that primarily provides service to transients.
- ~~26.~~ 55. "Trihalomethane" means one of the family of organic compounds, named as derivatives of methane, wherein three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.
56. "Virus" means a virus of fecal origin which is infectious to humans by waterborne transmission.

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

~~27-~~ 58. "Water system" means all sources of water and their surroundings ~~shall include~~ and includes all structures, conducts, and appurtenances by means of which the water is collected, treated, stored, or delivered.

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

General Authority: NDCC 61-28.1-03

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

33-17-01-03. Coverage. This chapter applies to all public water systems except those public water systems which meet all of the following conditions:

1. Consists only of distribution and storage facilities and does not have any collection and treatment facilities;
2. Obtains all of its water from a public water system to which these regulations apply;
3. Does not sell water to any person; and
4. Is not a carrier which conveys passengers in interstate commerce.

Inorganic chemical monitoring is required of all applicable community water systems. Nitrate monitoring is required of all noncommunity water systems. Organic chemical monitoring is required of all applicable community water systems. Volatile synthetic organic chemical monitoring is required of all nontransient noncommunity water systems. Unregulated contaminants monitoring is required of all applicable community and nontransient noncommunity water systems. Turbidity monitoring is required of all applicable community and noncommunity water systems. Radioactivity monitoring is required of all applicable community water systems. Microbiological monitoring is required of all community and noncommunity water systems.

The department may require confirmation samples for positive or negative results. If a confirmation sample is required by the department, then the sample result should be averaged with the first sampling result and used for compliance determination. The department has the discretion to delete results of obvious monitoring errors from this calculation.

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

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC 61-28.1-03

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

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

General Authority: NDCC 61-28.1-03

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

33-17-01-06. Maximum contaminant levels.

1. Inorganic chemicals. The maximum contaminant levels for inorganic chemical contaminants are as follows:

CONTAMINANT	LEVEL MILLIGRAM(S) PER LITER
Arsenic	0.05
Barium	1
Cadmium	0.010
Chromium	0.05
<del>Lead</del>	<del>0.05</del>
Mercury	0.002
Nitrate (as N)	10
Selenium	0.01
Silver	0.05
Fluoride	4.0

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

- a. Such water will not be available to children under six months of age;
- b. There will be continuous posting of the fact that nitrate levels exceed ten milligrams per liter and the potential health effect of exposure;
- c. Local and state public health authorities will be notified annually of nitrate levels that exceed ten milligrams per liter; and

d. No adverse health effects shall result.

2. Organic chemicals. The maximum contaminant levels for organic chemical contaminants are as follows:

CONTAMINANT	LEVEL MILLIGRAM PER LITER
Chlorinated hydrocarbons:	
Endrin (1,2,3,4,10, 10-hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octa-hydro-1,4-endo,endo-5,8-dimethanonaphthalene)	0.0002
Lindane (1,2,3,4,5,6-hexachloro-cyclohexane, gamma isomer)	0.004
Methoxychlor (1,1,1-Trichloro-2,2-bis [p-methoxyphenyl] ethane)	0.1
Toxaphene (C <sub>10</sub> H <sub>10</sub> Cl <sub>8</sub> -Technical chlorinated camphene, 67-69% chlorine)	0.005
Chlorophenoxys:	
2,4-D (2,4-Dichlorophenoxyacetic acid)	0.1
2,4,5-TP Silvex (2,4,5-Trichloro-phenoxypropionic acid)	0.01
Total trihalomethanes. The sum of the concentrations of:	
Bromodichloromethane, Dibromochloromethane, Tribromomethane (bromoform) and Trichloromethane (chloroform)	0.10
Volatile synthetic organic chemicals:	
Benzene	0.005
Vinyl chloride	0.002
Carbon tetrachloride	0.005
1,2-Dichloroethane	0.005
Trichloroethylene	0.005
1,1-Dichloroethylene	0.007
1,1,1-Trichloroethane	0.20
para-Dichlorobenzene	0.075

3. Turbidity. The maximum contaminant levels for turbidity in drinking water, measured at a representative entry point to the distribution system, are as follows:

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

(1) Interfere with disinfection;

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

(3) Interfere with microbiological determinations.

b. Five turbidity units based on an average for two consecutive days.

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

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

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

(a) Interfere with disinfection;

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

(c) Interfere with microbiological determinations.

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

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

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

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

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

a. Monthly maximum contaminant level violations.

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

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

b. Acute maximum contaminant level violations.

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

c. Compliance must be determined each month that a system is required to monitor. The department hereby identifies the following as the best technology, treatment techniques, or

other means generally available for achieving compliance with the maximum contaminant levels for total coliform bacteria: protection of wells from contamination by appropriate placement and construction; maintenance of a disinfection residual throughout the distribution system; proper maintenance of the distribution system including appropriate pipe replacement and repair procedures, cross-connection control programs, main flushing programs, proper operation and maintenance of storage tanks and reservoirs, and continual maintenance of a positive water pressure in all parts of the distribution system; filtration and disinfection or disinfection of surface water and disinfection of ground water using strong oxidants such as chlorine, chlorine dioxide, or ozone; the development and implementation of a department-approved wellhead protection program.

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

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

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC 61-28.1-03

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

1. Sampling frequency for community water systems.
  - a. Surface water supplies. Community water systems utilizing surface water sources shall sample for inorganic chemical contaminants except lead and copper at yearly intervals.
  - b. Ground water supplies. Community water systems utilizing ground water sources shall sample for inorganic chemical contaminants except lead and copper at three-year intervals.
  - c. Surface and ground water supplies. Community water systems utilizing surface water or ground water sources shall comply with the monitoring and treatment technique requirements for lead and copper set forth under title 40, Code of Federal Regulations, part 141, subpart I.
2. Sampling frequency for noncommunity water systems. Noncommunity water systems shall sample for nitrate (as N). The analysis shall be repeated at intervals determined by the

department. Nontransient noncommunity water systems shall comply with the monitoring and treatment technique requirements for lead and copper set forth under title 40, Code of Federal Regulations, part 141, subpart I.

3. Sampling frequency for check samples.

- a. If the result of an analysis indicates that the level of any contaminant exceeds the maximum contaminant level, the system shall report to the department within seven days and initiate three additional analyses at the same sampling point within one month.

When the average of four analyses exceeds the maximum contaminant level, the system shall notify the department and give notice to the public. Monitoring after public notification shall be at a frequency designated by the department and shall continue until the maximum contaminant level has not been exceeded in two successive samples or until a monitoring schedule as a condition to a variance, exemption, or enforcement action shall become effective.

- b. Compliance with the maximum contaminant level for nitrate shall be determined on the basis of the mean of two analyses. When a level exceeding the maximum contaminant level for nitrate is found, a second analysis shall be initiated within twenty-four hours and if the mean of the two analyses exceeds the maximum contaminant level, the system shall notify the department and give notice to the public.

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

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC 61-28.1-03

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

- ~~+~~ Sampling frequency for surface water systems. Community and noncommunity water systems shall sample at a representative entry point to the water distribution system, at least once a day, for the purpose of making turbidity measurements. The measurements shall be made by a nephelometric method approved by the department.

If the department determines that a reduced sampling frequency in a noncommunity water system will not pose a risk to health, it can reduce the sampling frequency. The option of reducing the turbidity sampling frequency shall be permitted only when the noncommunity water system practices disinfection and maintains an active residual disinfectant in the distribution

system, and when the department has indicated in writing that no unreasonable risk to health exists.

2. Sampling frequency for check samples. If a turbidity analysis indicates that the maximum contaminant level has been exceeded, the analysis shall be confirmed by resampling as soon as practicable and preferably within one hour. If the repeat analysis confirms that the maximum contaminant level has been exceeded, the system shall notify the department within forty-eight hours.

The repeat analysis shall be used for the purpose of calculating the monthly average. If the monthly average of the daily analyses exceeds the maximum contaminant level, or if the average of two analyses taken on consecutive days exceeds the maximum contaminant level, the system shall notify the department and give notice to the public.

1. Interim requirements. The following sampling and monitoring requirements for turbidity in drinking water apply to public water systems that utilize surface water sources and provide filtration treatment until June 29, 1993, and to public water systems that utilize surface water sources but do not provide filtration treatment that the department has determined in writing must install filtration until June 29, 1993, or until filtration is installed, whichever is later:
  - a. Public water systems that utilize surface water sources shall sample at a representative entry point to the water distribution system, at least once a day, for the purpose of making turbidity measurements. The measurements must be made by a nephelometric method approved by the department. The department may, in writing, reduce the sampling frequency for noncommunity systems that practice disinfection and maintain an active distribution system disinfectant residual if it determines that no unreasonable risk to health will result.
  - b. Public water systems that utilize surface water sources shall confirm by resampling any turbidity measurement that exceeds the maximum contaminant level as soon as practicable and preferably within one hour. Systems shall notify the department within forty-eight hours if the results of the confirmation sample exceed the maximum contaminant level. The results of the confirmation sample must be used for the purpose of calculating the monthly average for turbidity. Systems shall notify the department and give notice to the public if the monthly average of the daily analyses or the average of two analyses taken on consecutive days exceed the maximum contaminant level.

2. Final requirements. Beginning June 29, 1993, public water systems that utilize surface water sources or ground water sources deemed by the department to be under the direct influence of surface water shall comply with the turbidity and disinfectant residual sampling and monitoring requirements set forth under title 40, Code of Federal Regulations, part 141, subpart H.

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

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC 61-28.1-03

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

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

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

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

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

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

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

2. Public notification.

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

- (1) By publication in a daily newspaper of general circulation in the area served by the system as soon as possible, but in no case later than fourteen days after notification of the violation or failure. If the area served by the system is not served by a daily newspaper of general circulation, notice must instead be given by publication in a weekly newspaper of general circulation serving the area;
- (2) By mail delivery, or by hand delivery, not later than forty-five days after the violation or failure. The department may waive mail or hand delivery if it determines that the system has corrected the violation or failure within the forty-five-day period; and
- (3) For violations of the maximum contaminant levels for nitrate and total coliform bacteria, when fecal coliforms or E. coli are present in the water distribution system, that may pose an acute risk to human health, by furnishing a copy of the notice to the radio and television stations serving the area served by the system as soon as possible, but in no case later than seventy-two hours after receiving notification of the violation or failure. A copy of the notice must be furnished to the radio and television stations serving the area served by the system as soon as possible, but in no case later than seventy-two hours after receiving notification of the violation or failure, for the following violations or failures that may pose an acute risk to human health: exceedance of the maximum contaminant level for nitrate; exceedance of the maximum contaminant level for coliform bacteria when fecal coliform bacteria or E. coli are present in the water distribution system; occurrence of a waterborne disease outbreak in a

system which utilizes surface water sources or ground water sources deemed by the department to be under the direct influence of surface water that does not provide filtration treatment.

A public water system must give notice at least once every three months by mail delivery or by hand delivery for as long as the violation or failure exists.

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

- b. Other violations, variances, and exemptions. A public water system which fails to perform required monitoring, fails to complete required sanitary surveys, fails to comply with an established testing procedure, is granted a variance, or is granted an exemption shall notify persons served by the system as follows:
- (1) By publication in a daily newspaper of general circulation in the area served by the system within three months after notification of the violation or grant. If the area served by the system is not served by a daily newspaper of general circulation, notice shall instead be given by publication in a weekly newspaper of general circulation serving the area.
  - (2) A public water system must give notice at least once every three months by mail delivery or by hand delivery for as long as the violation exists or the variance or exemption is in existence.
  - (3) A community water system in an area that is not served by a daily or weekly newspaper of general circulation or a noncommunity water system must give notice within three months after notification of the violation or grant by hand delivery or by continuous posting in conspicuous places within the area served by the system. Posting must continue for as long as the violation exists or the variance or exemption remains in effect.
- c. Notice to new billing units. A community water system must give a copy of the most recent public notice for any outstanding violation of any maximum contaminant level, or

any treatment technique requirement, or any variance or exemption schedule to all new billing units or new hookups prior to or at the time service begins.

- d. General notice content. Each notice must provide a clear and readily understandable explanation of the violation, any potential adverse health effects, the population at risk, the steps that the public water system is taking to correct such violation, the necessity for seeking alternative water supplies, if any, and any preventive measures the consumer should take until the violation is corrected. Each notice must be conspicuous and may not contain unduly technical language, unduly small print, or similar problems that frustrate the purpose of the notice. Each notice must include the telephone number of a designee of the public water system as a source of additional information concerning the notice. Notices shall be multilingual where appropriate.
- e. Mandatory health effects language. When providing the information on potential adverse health effects required in notices of violations of maximum contaminant levels or treatment technique requirements, or notices of the granting or the continued existence of variances or exemptions, or notices of failure to comply with a variance or exemption schedule, ~~the public water system~~ systems shall include specific contaminant language, available from the department, for the following contaminants as set forth under title 40, Code of Federal Regulations, part 141, section 32, paragraph E e, and available from the department for the following contaminants and part 143, section 143.5:
- (1) Trichloroethylene.
  - (2) Carbon tetrachloride.
  - (3) 1,2-Dichloroethane.
  - (4) Vinyl chloride.
  - (5) Benzene.
  - (6) 1,1-Dichloroethylene.
  - (7) para-Dichlorobenzene.
  - (8) 1,1,1-Trichloroethane.
  - (9) Fluoride.
  - (10) Total coliform bacteria.

(11) Fecal coliform bacteria or E.coli.

(12) Microbiological.

(13) Lead.

(14) Copper.

~~f. Notification by the department. Notice to the public required by this section may be given by the department on behalf of the system.~~

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

General Authority: NDCC 61-28.1-03

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

33-17-01-14. Record maintenance. Any public water system shall retain on its premises or at a convenient location near its premises, the following records: Public water systems that utilize surface water sources or ground water sources deemed by the department to be under the direct influence of surface water shall comply with the applicable recordkeeping requirements set forth under title 40, Code of Federal Regulations, part 141, subpart H, section 141.75. Community and nontransient noncommunity water systems shall comply with the applicable recordkeeping requirements for lead and copper set forth under title 40, Code of Federal Regulations, part 141, subpart I, section 141.91. All public water systems shall retain on their premises or at a convenient location near their premises, the following additional records to document compliance with the remaining provisions of this chapter:

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

2. **Corrective actions taken.** Records of action taken by the system to correct violations shall be kept for a period of not less than three years after the last action taken with respect to the particular violation involved.
3. **Reports and communications.** Copies of any written reports, summaries, or communications relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by any local, state, or federal agency, shall be kept for a period not less than ten years after completion of the sanitary survey involved.
4. **Variances and exemptions.** Records concerning a variance or exemption granted to the system shall be kept for a period ending not less than five years following the expiration of such variance or exemption.

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

General Authority: NDCC 61-28.1-03

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

#### 33-17-01-15. Variance and exemption.

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

- c. Within one year of the date of variance authorization, a schedule for compliance is issued and under which the system agrees to implement such schedule.
2. **Exemption.** The department may not exempt a public water system from the microbiological maximum contaminant level requirements, or the requirements to provide disinfection set forth under title 40, Code of Federal Regulations, part 141, subpart H. The department may exempt a public water system from the treatment technique requirements for lead and copper only if the conditions set forth under title 40, Code of Federal Regulations, part 141, section 141.62, are met. The department may also exempt a public water system from any other maximum contaminant level or treatment technique requirement requirements, or from both, upon finding that:
  - a. Due to compelling factors, including economic, the system is unable to comply with such maximum contaminant level or treatment technique;
  - b. The system was in operation on the effective date of such maximum contaminant level or treatment technique regulation;
  - c. The granting of the exemption will not result in an unreasonable risk to health; and
  - d. Within one year of the date of exemption authorization, a schedule for compliance is issued and the system agrees to implement such schedule.
3. **Procedure.**
  - a. Action to consider a variance or exemption may be initiated by the department or by the system through a written request submitted to the department.
  - b. Prior to authorization of a variance or a compliance schedule for a variance, the department shall provide notice and opportunity for a public hearing on that proposed variance or compliance schedule for a variance.
  - c. Prior to authorization of a compliance schedule for an exemption, the department shall provide notice and opportunity for a public hearing on the proposed compliance schedule for an exemption.

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

General Authority: NDCC 61-28.1-03

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

33-17-01-18. Operation and maintenance. Public water systems shall be supervised by competent personnel. ~~Certified water system operators are required for systems supplying water to five hundred or more users (North Dakota Century Code chapter 23-26). In addition, systems shall be modified, operated, and maintained in accordance with such guidelines as may be developed or amended by the department.~~ and modified, operated, and maintained in accordance with guidelines that may be developed or amended by the department. Certified operators are required for all water systems serving five hundred or more users under North Dakota Century Code chapter 23-26. Beginning July 1, 1994, North Dakota Century Code chapter 23-26 required certified operators for all public water systems except those that serve other than year-round residents and meet all of the following conditions:

1. The water supply is obtained solely from ground water sources that the department has determined are not under the direct influence of surface water.
2. Treatment, if provided, consists strictly of disinfection, fluoridation, sequestration, corrosion control, or other processes that involve simple chemical addition and minor operational control.
3. The water supply system is not required by the federal Safe Drinking Water Act or its implementing regulations to be operated by qualified personnel.

History: Amended effective July 1, 1988; February 1, 1993.  
General Authority: NDCC 61-28.1-03  
Law Implemented: NDCC 61-28.1-03



APRIL 1993

CHAPTER 33-29-01

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

1. "Appurtenances" means all filtration systems, chlorination systems, pumps, valves, meters, bathhouses or other devices, walkways, or buildings utilized for the proper supervision, operation, and maintenance of a pool facility.
2. "Bather" means any person using the pool and adjoining deck areas for the purpose of water sports or related activities.
3. ~~"Department" means the North Dakota state department of health.~~
- ~~4.~~ 4. "Maximum contaminant level" means the maximum permissible number of organisms as indicated on the standard plate count, membrane filter, or in the fermentation tube test.
- ~~5.~~ 4. "Pool facility" means a public, semipublic, special use pool, or spa.
- ~~6.~~ 5. "Premises" means the area enclosed by a barrier and any adjacent support facilities such as bathhouses, clubhouses, shower rooms, equipment rooms, etc., including the office of operational and maintenance personnel.
- ~~7.~~ 6. "Private" means a pool or spa which is located on private property under the control of the homeowner, the use of which is limited to swimming or bathing by members of the owner's family or their invited guests.

- ~~8-~~ 7. "Public" means a pool or spa intended to be used collectively by the general public for swimming or bathing, regardless of whether a fee is charged for such use.
- ~~9-~~ 8. "Semipublic" means a pool or spa on the premises of, or part of, a motel, mobile home park, apartment, condominium, subdivision, club, camp, institution, school, or similar establishments where the primary business of the establishment is not the operation of a pool or spa and where admission to the use of the pool or spa is included in the fee, or consideration paid or given for the primary use of the premises to such groups and their invited guests.
- ~~10-~~ 9. "Spa" means a pool used exclusively in conjunction with high velocity air or high velocity water recirculation systems utilizing hot, cold, or ambient temperature water including all appurtenances used in connection with the spa.
- ~~10-~~ 10. "Special use" means a pool or spa used exclusively for a particular purpose, including but not limited to treatment pools, therapeutic pools, and special pools for water therapy.
- ~~12-~~ 11. "Swimming pool" means any indoor or outdoor structure, basin, chamber, or tank containing an artificial body of water for swimming, diving, wading, or recreative bathing including all appurtenances used in connection with the swimming pool.

History: Effective January 1, 1985; amended effective April 1, 1993.  
General Authority: NDCC 23-01-03  
Law Implemented: NDCC 23-01-03

33-29-01-02. Designated responsible individuals. The owner or operator is responsible for communicating with the department in matters relating to pool facility construction or alteration, monitoring and sampling, maintenance, operation, recordkeeping, and reporting required by this chapter. Repealed effective April 1, 1993.

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

33-29-01-03. Certified laboratories and analytical procedures. All microbiological samples must be analyzed by a laboratory which has been certified by the department and which uses approved analytical procedures. Repealed effective April 1, 1993.

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

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

1. a. Sampling frequency for public swimming pools or spas. The owner or operator of a public swimming pool or spa is required to submit for analysis, one swimming pool or spa water sample every week during the swimming pool's or spa's period of operation.  
  
b. In cases where public swimming pools or spas have a period of operation of a full twelve months per year, approved disinfection residuals and pH test results may be substituted for fifty percent of the microbiological samples. A minimum of one swimming pool or spa sample must be submitted for microbiological analysis every other week.
2. Sampling frequency for semipublic and special use pools or spas. The owner or operator of a semipublic or special use pool or spa is required to submit for analysis, one swimming pool or spa water sample every month during the swimming pool's or spa's period of operation.
3. All microbiological analyses must be composed of a standard plate count or coliform test. The type or combination of the required testing must be determined by the department.
4. Microbiological contaminant sampling frequency requirements may be increased at the discretion of the department.
5. Microbiological testing requirements required by the department will be provided free of charge by the public health laboratory to all nonprofit organizations in the state.  
Repealed effective April 1, 1993.

History: Effective January 1, 1985.

General Authority: NDCC 23-01-03

Law Implemented: NDCC 23-01-03

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

History: Effective January 1, 1985; amended effective April 1, 1993.

General Authority: NDCC 23-01-03

Law Implemented: NDCC 23-01-03

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

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

History: Effective January 1, 1985; amended effective April 1, 1993.  
General Authority: NDCC 23-01-03  
Law Implemented: NDCC 23-01-03

33-29-01-09. Reporting requirements.

1. ~~Except where a shorter reporting period is specified, the owner or operator of a pool facility shall report to the department the results of any microbiological analysis within seven days of the date of when the owner or operator has received the analytical results.~~
2. ~~The owner or operator shall notify the department within seventy-two hours of the failure to comply with this chapter.~~
3. ~~The owner or operator is not required to report analytical results to the department in cases where a certified laboratory performed the analysis and reported the results to the department.~~ Repealed effective April 1, 1993.

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

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

1. A duly authorized officer, employee or agent of the department may enter and inspect any property, premises, or place on or at which a pool facility is located or is being constructed.
2. The department may conduct tests and take samples of water or other materials which affect or may affect the general health or safety of bathers. The department has access to and may copy any records required under this chapter and may inspect any equipment located on the premises pertaining to the pool facility's operation and maintenance. Repealed effective April 1, 1993

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

33-29-01-11. Right of closure. If a pool facility has been determined to be a health or safety hazard or in the event of a failure to comply with any of the requirements of this chapter, the department may abate or cause the suspension of the use of such a pool facility until such time as the pool facility is no longer deemed a health or safety hazard. Repealed effective April 1, 1993.

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

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

History: Effective January 1, 1985; amended effective April 1, 1993.  
General Authority: NDCC 23-01-03  
Law Implemented: NDCC 23-01-03

33-29-01-13. Administrative procedure and judicial review. Any proceeding under this chapter for the issuance or modification of rules and enforcement procedures of the department shall be conducted in

accordance with article 33-22 and North Dakota Century Code chapter 28-32. Where an emergency exists requiring immediate action to protect the public health and safety, the department may, without notice or hearing, issue an order reciting the existence of such emergency and require such remedial actions as are necessary. The order is effective immediately, but on application to the department within ten days of the order, any person to whom the order is directed must be awarded a hearing. The hearing must be in accordance with article 33-22 and North Dakota Century Code chapter 28-32. On the basis of such hearing, the emergency order must be continued, modified, or revoked, within thirty days after the hearing. Repealed effective April 1, 1993.

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

33-29-01-14. Injunction proceedings. Whenever, in the judgment of the department, any person has engaged in or is about to engage in any acts or practices which constitute a violation of this chapter, or any rule or order issued hereunder, the department may maintain an action in the name of the state enjoining such action or practices or for an order directing compliance and, upon a showing by the department that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted. Repealed effective April 1, 1993.

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

33-29-01-15. Enforcement. If, after the completion of the administrative hearing process, the department determines that a violation of this chapter, or any rule or order of the department issued under this chapter, has occurred, it shall make all of its evidence and findings available to the attorney general for use in any remedial action his office determines to be appropriate, including an action of injunctive relief. Repealed effective April 1, 1993.

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

TITLE 43  
Industrial Commission



DECEMBER 1992

CHAPTER 43-02-01

43-02-01-11. Public availability of permit application information.

1. Except as provided in subdivisions a, b, and c, all information submitted to the commission with a permit application for coal exploration shall be made available for public inspection and copying at the office of the state geologist.
  - a. The state geologist shall not make information submitted with a coal exploration permit application available for public inspection, if the person submitting it requests in writing, at the time of permit application submission, that it not be disclosed and the state geologist determines that the information is confidential. However, such information shall remain confidential only for the time period specified in North Dakota Century Code section 38-12.1-04.
  - b. The state geologist shall determine that permit application information is confidential only if it concerns trade secrets or is privileged commercial or financial information which relates to the competitive rights of the person intending to conduct coal exploration.
  - c. Information requested to be held as confidential under this subsection shall not be made publicly available until after proper notice and hearing before the commission.

2. Basic data collected during the course of the exploration and submitted to the state geologist shall be confidential and available only to the office of the state geologist. The period of confidentiality shall continue for a period of two years, beginning on the expiration date of the permit. One year extensions shall be granted if an application for extension is filed with the state geologist prior to the expiration date of the confidentiality period. In no event shall the total period of confidentiality exceed ~~seven years~~ the time period specified in North Dakota Century Code section 38-12.1-04.
3. The permitholder may waive the holder's right to confidentiality by providing written notice of the waiver to the state geologist.

History: Amended effective August 1, 1980; December 1, 1992.

General Authority: NDCC 38-12.1-04

Law Implemented: NDCC 38-12.1-04

CHAPTER 43-02-07

43-02-07-01. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 38-19, except:

1. "Commission" means the industrial commission of this state.
2. "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.
3. "Deep well" means any well drilled into rocks older than the greenhorn formation or which encounters brackish or saline formation waters to develop or produce geothermal energy.
4. "Injection well" means a well into which fluids are being injected.
5. "Person" means and includes any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind and includes any department, agency or instrumentality of the state, or of any governmental subdivision thereof.
6. "Shallow well" means any well drilled into rocks younger than the belle fouche formation and does not encounter saline or brackish formation waters to develop or produce geothermal energy.
7. "Underground source of drinking water" means an aquifer or its portion which supplies drinking water for human consumption or in which the ground water contains fewer than ten thousand milligrams per liter total dissolved solids.
8. "Well" means a bored, drilled or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension.
9. "Closed-loop system" means any geothermal energy extraction facility, vertical, horizontal, or otherwise, in which a fluid is permanently confined within pipe or tubing and does not come in contact with the outside environment.
10. "Open-loop system" means any geothermal energy extraction facility in which water is extracted for heating or cooling purposes and is reinjected into the subsurface or disposed of at the surface.
11. "Substantial modification" means the construction or installation of any addition, or any restoration or renovation, of a geothermal energy extraction facility which

increases or decreases its heating or cooling capacity, significantly alters its physical configuration, or impairs or improves its physical integrity. In all cases, the determination of "substantial modification" must be made by the state geologist.

History: Effective March 1, 1984; amended effective October 1, 1990; December 1, 1992.

General Authority: NDCC 38-19-03

Law Implemented: NDCC 38-19-03

43-02-07-06. Permit required. A permit is required prior to the commencement of operations for the drilling, boring, excavating, or construction, or substantial modification of a geothermal energy extraction facility. A permit is not required for private residential heating or cooling purposes, nor for facilities that use a treated municipal water supply as its sole source of water. A permit may be required by the state department of health and consolidated laboratories or the water utility, or both, for facilities hooked into a municipal water supply. The state geologist may grant a permit for up to ten years upon receipt of a permit application on a form provided by the commission, the furnishing of a bond (if required) as provided in section 43-02-07-08, and the payment of a fee of one hundred dollars for each permit. The state geologist may waive the fee requirement if the applicant is an instrumentality of the state. The application for a permit must be accompanied by an accurate plat showing the location of the proposed facility with reference to the nearest lines of a governmental section.

The state geologist may deny an application for permit if the construction of a geothermal energy extraction facility would violate correlative rights or would cause, or tend to cause, waste, damage to the environment, or contaminate underground sources of drinking water. The applicant may appeal the decision of the state geologist to the commission.

History: Effective March 1, 1984; amended effective October 1, 1990; December 1, 1992.

General Authority: NDCC 38-19-03

Law Implemented: NDCC 38-19-03, 38-19-04

43-02-07-08. Bond. Before any person receives a permit to drill, bore, excavate, or construct a geothermal energy extraction facility, the person shall submit to the commission and obtain its approval of a bond, on a form approved by the commission, conditioned as provided by law. At the discretion of the state geologist, an installation or facility bond may be required for the substantial modification of a geothermal energy extraction facility in existence prior to December 1, 1992. The state geologist has the discretion to waive the requirement for a facility bond if the applicant is an instrumentality of the state.

Each such bond must be executed by a responsible surety company authorized to transact business in this state.

The amount and type of the bond is as follows:

1. Shallow-well and horizontal-loop facilities. A fifteen thousand dollar facility blanket bond is required for all closed-loop systems using anything other than ~~food grade additives~~ an approved heat transfer fluid, for all open-loop systems which are deemed by the state geologist to be an environmental risk, and for any other shallow-well or horizontal-loop system that the state geologist deems necessary.

The installer of all shallow-well or horizontal-loop facilities which do not require a facility bond shall carry an installation bond. The amount of the installation bond must be as follows:

- a. A ten thousand dollar installation blanket bond for facilities of up to ten shallow wells and for all horizontal-loop facilities.
  - b. A twenty-five thousand dollar installation blanket bond for facilities of more than ten wells but less than fifty shallow wells.
  - c. A fifty thousand dollar installation blanket bond for facilities of more than fifty shallow wells.
2. Deep-well facilities. A facility bond is required for all deep-well facilities. The amount of the facility bond must be ~~as follows:~~
    - a. ~~A~~ a five thousand dollar bond for a ~~single~~ deep-well facility with one supply well. The bond must increase in five thousand dollar increments for each additional supply well and each injection well.
    - b. ~~A twenty five thousand dollar blanket bond for a facility with two or more deep wells.~~

Liability on the facility bond is conditioned on compliance with North Dakota Century Code chapter 38-19 and the rules and orders of the commission, and continues until either of the following occurs: (1) the wells or loop systems have been satisfactorily plugged as provided in this chapter, the sites disturbed by any method of production of geothermal energy have been reclaimed in a manner approved by the state geologist, and all logs, plugging records, and other pertinent data required by statute or rules and orders of the commission are filed and approved or (2) the liability on the bond has been transferred to another bond and such transfer approved by the commission.

The commission shall advise the surety and the principal when liability on a bond is terminated.

Liability on the installation bond is conditioned on compliance with North Dakota Century Code chapter 38-19 and the rules and orders of the commission, and continues until either of the following occurs: (1) the site disturbed during installation of the geothermal energy extraction facility has been reclaimed in a manner approved by the state geologist and a successful pressure test of the geothermal energy extraction facility has been completed and approved by the state geologist. Such tests shall not be conducted without the state geologist first having been given five days' advanced written notice of the date and approximate time of the test or (2) the liability on the bond has been transferred to another bond and such transfer approved by the commission.

The commission shall advise the surety and the principal when liability on a bond is terminated.

The state geologist is authorized to act for the commission as to all matters within this section.

History: Effective March 1, 1984; amended effective October 1, 1990; December 1, 1992.

General Authority: NDCC 38-19-03

Law Implemented: NDCC 38-19-03

43-02-07-10. Technical requirements. All wells must be made by a certified water or monitoring well contractor. All open-loop geothermal energy extraction facility wells must be in compliance with article 33-18. The location and construction of the borehole of closed-loop geothermal energy extraction facilities must be in compliance with article 33-18.

All geothermal energy extraction facilities, including horizontal-loop facilities, must be approved by the state geologist prior to installation.

All heat transfer fluids and additives must be approved for use by the state geologist.

History: Effective March 1, 1984; amended effective December 1, 1992.

General Authority: NDCC 38-19-03

Law Implemented: NDCC 38-19-03

43-02-07-12. Production reports. The producer in of each and every open-loop geothermal energy extraction facility shall on or before the fifteenth day of the succeeding month following the month in which production of geothermal energy occurs first day of February of each year file with the state geologist a sworn statement showing the quantities, temperatures, and nature of products extracted from or by

means of any facility during the month and the ultimate disposition of such products.

History: Effective March 1, 1984; amended effective October 1, 1990; December 1, 1992.

General Authority: NDCC 38-19-03

Law Implemented: NDCC 38-19-03

43-02-07-15. Plugging and abandonment. Notice of intention to abandon any geothermal energy extraction facility must be filed with the state geologist by the producer prior to the commencement of plugging operations, on a form prescribed by the state geologist. The notice must state the name and location of the well or well field and the name of the producer.

Before any geothermal energy extraction facility is abandoned, it must be plugged in a manner which will confine permanently all subsurface minerals, oil, gas, and water in the separate strata originally containing them. This operation must be accomplished by the use of mud-laden fluid, cement, and plugs, used singly or in combination as may be approved by the state geologist. Casing must be cut off three feet [.91 meters] below the surface of the ground. The top plug in any hole must be set at least three feet [.91 meters] below ground level, and the land surface must be restored as nearly as possible to its original condition.

Shallow closed-loop systems using an approved ~~food grade additive~~ heat transfer fluid may, upon approval of the state geologist, be abandoned by permanently sealing all of the loop ends and burying all pipes at least three feet [.91 meters] below ground. Closed-loop systems containing anything other than approved heat transfer fluids must be completely purged of heat transfer fluid prior to plugging. This fluid must be disposed of in accordance with the provisions of North Dakota Century Code chapter 61-28 and other state laws and regulations.

History: Effective March 1, 1984; amended effective October 1, 1990; December 1, 1992.

General Authority: NDCC 38-19-03

Law Implemented: NDCC 38-19-03



TITLE 45  
Insurance, Commissioner of



DECEMBER 1992

STAFF COMMENT: Chapter 45-03-17 contains all new material but is not underscored so as to improve readability.

CHAPTER 45-03-17  
EXAMINATIONS

Section	
45-03-17-01	Definitions
45-03-17-02	Authority, Scope, and Scheduling of Examinations
45-03-17-03	Conduct of Examinations
45-03-17-04	Examination Reports
45-03-17-05	Conflict of Interest

45-03-17-01. Definitions. For purposes of this chapter:

1. "Company" means any foreign or domestic insurance company as defined in North Dakota Century Code section 26.1-02-01.
2. "Examiner" means any individual or firm having been authorized by the commissioner to conduct an examination under this chapter.
3. "Person" means any individual, aggregation of individuals, trust, association, partnership or corporation, or any affiliate thereof.

History: Effective June 4, 1992.  
General Authority: NDCC 28-32-02  
Law Implemented: NDCC 26.1-03-19

45-03-17-02. Authority, scope, and scheduling of examinations.

1. The commissioner or any of the commissioner's examiners may conduct an examination under North Dakota Century Code section 26.1-03-19 of any company whenever the commissioner deems it prudent. In scheduling and determining the nature, scope, and frequency of the examinations, the commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the examiners' handbook adopted by the national association of insurance commissioners and in effect when the commissioner exercises discretion under this section.
2. In lieu of an examination under this chapter of any foreign or alien company licensed in this state, the commissioner may accept an examination report on the company as prepared by the insurance department for the company's state of domicile or port-of-entry state until January 1, 1994. Thereafter, such reports may only be accepted if:
  - a. The insurance department was at the time of the examination accredited under the national association of insurance commissioners' financial regulation standards and accreditation program; or
  - b. The examination is performed under the supervision of an accredited insurance department or with the participation of one or more examiners who are employed by such an accredited state insurance department and who, after a review of the examination workpapers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

History: Effective June 4, 1992.  
General Authority: NDCC 28-32-02  
Law Implemented: NDCC 26.1-03-19

#### 45-03-17-03. Conduct of examinations.

1. This chapter may not be construed to limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination are prima facie evidence in any legal or regulatory action by and before the insurance department.
2. This chapter may not be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other documents, or any other information

discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the commissioner, in the commissioner's sole discretion, deems appropriate.

History: Effective June 4, 1992.  
General Authority: NDCC 28-32-02  
Law Implemented: NDCC 26.1-03-19

45-03-17-04. Examination reports.

1. **General description.** All examination reports must be comprised of only facts appearing upon the books, records, or other documents of the company, its agents or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts.
2. **Filing of examination report.** No later than sixty days following completion of the examination, the examiner in charge shall file with the department a verified written report of examination under oath. Upon receipt of the verified report, the department shall transmit the report to the company examined, together with a notice which must afford the company examined a reasonable opportunity of not more than thirty days to make a written submission or rebuttal with respect to any matters contained in the examination report.
3. **Adoption of report on examination.** Within thirty days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers and enter an order:
  - a. Adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation, or prior order of the commissioner, the commissioner may direct the company to take any action the commissioner considers necessary and appropriate to cure such violation;
  - b. Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, or information, and refiling pursuant to subsection 1; or
  - c. Calling for an investigatory hearing with no less than twenty days' notice to the company for purposes of

obtaining additional documentation, data, information, and testimony.

4. Orders and procedures.

- a. All orders entered pursuant to subdivision a of subsection 3 must be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner workpapers, and any written submissions or rebuttals. The company may, within thirty days of the entry of any such order, request a hearing to vacate or amend the order. Such hearing must be conducted in compliance with North Dakota Century Code chapter 28-32. The order must be served upon the company, together with a copy of the adopted examination report. Within thirty days of the issuance of the adopted report, the company shall acknowledge receipt of the adopted report and related orders.
- b. Any hearing conducted under subdivision c of subsection 3 by the commissioner or authorized representative, must be conducted as a nonadversarial confidential investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner's review of relevant workpapers or by the written submission or rebuttal of the company. Within twenty days of the conclusion of any such hearing, the commissioner shall enter an order pursuant to subdivision a of subsection 3.

5. Publication and use.

- a. Nothing contained in this code may prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report, working papers, recorded information, documents, results, and copies thereof produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under this chapter, or any matter relating thereto, to the insurance department of this or any other state or country, or to law enforcement officials of this or any other state or agency of the federal government or to the national association of insurance commissioners at any time, so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this chapter.
- b. In the event the commissioner determines that regulatory action is appropriate as a result of any examination, the

commissioner may initiate any proceedings or actions as provided by law.

History: Effective June 4, 1992.  
General Authority: NDCC 28-32-02  
Law Implemented: NDCC 26.1-03-19

45-03-17-05. Conflict of interest. No examiner may be appointed by the commissioner if such examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this chapter. This section may not be construed to automatically preclude an examiner from being:

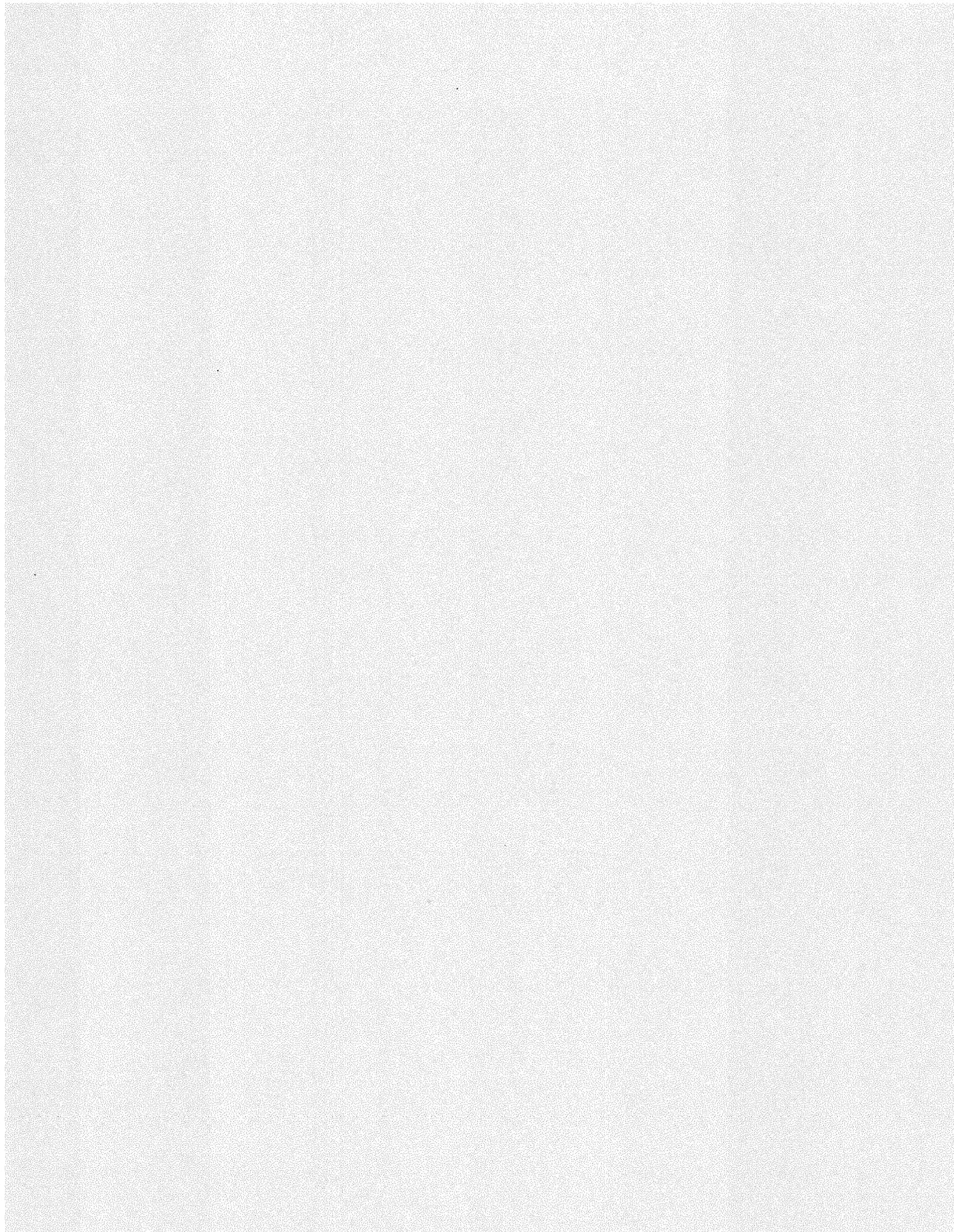
1. A policyholder or claimant under an insurance policy.
2. A grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business.
3. An investment owner in shares of regulated diversified investment companies.
4. A settlor or beneficiary of a "blind trust" into which any otherwise impermissible holdings have been placed.

Notwithstanding the requirements of this section, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though said persons may from time to time be similarly employed or retained by persons subject to examination under this chapter.

History: Effective June 4, 1992.  
General Authority: NDCC 28-32-02  
Law Implemented: NDCC 26.1-03-19, 26.1-03-20



TITLE 46  
Labor, Commissioner of



DECEMBER 1992

CHAPTER 46-02-01

46-02-01-01. Definitions.

1. "Public housekeeping occupation" includes employees in such related occupations as, but not exclusive to, bartenders, bellhops, bus boys or girls, cashiers, chefs, cooks, desk clerks, elevator operators, gaming attendants, hosts, hostesses, housekeepers, housemen, kitchen helpers, janitors or custodians, waiters and waitresses in bars, boarding houses, clubs, dining rooms, fast food businesses, hotels, motels, restaurants, taverns and theaters, attendants employed at ice cream, light lunch and refreshment stands, steamtables and counter work in cafeterias and delicatessens, taxicab drivers, and other such related occupations. A "tipped employee" means any employee engaged in an occupation where the employee customarily and regularly receives more than thirty dollars a month in tips.
2. Administrative. The term "employee employed in a bona fide administrative capacity" means but is not exclusive to any employee whose primary duty consists of:
  - a. The performance of office or nonmanual work directly related to management policies or general business operations of the employer or the employer's customer; or
  - b. Who customarily and regularly exercises discretion and independent judgment.

3. Professional. The term "employee employed in a bona fide professional capacity" means but is not exclusive to any employee whose primary duty consists of:
  - a. Work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes; or
  - b. Work requiring the consistent exercise of discretion and judgment in its performance; and
  - c. Work that is predominately intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.
4. Executive. The term "employee employed in a bona fide executive capacity" means but is not exclusive to any employee whose primary duty consists of:
  - a. The management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof;
  - b. Directing and work of two or more other employees therein; and
  - c. The authority to hire or fire other employees or whose suggestions as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight.

History: Effective August 1, 1991; amended effective December 1, 1992.

General Authority: NDCC 28-32-02(1), 34-06-04

Law Implemented: NDCC 34-06-11, 34-06-12

46-02-01-02. Standards that apply.

1. The North Dakota minimum wage shall be no less than four dollars and twenty-five cents per hour effective August 1, 1991.
2. A tip credit of thirty-three percent may be allowed for tipped employees of any occupation. The employer may consider tips as part of wages, but such a wage credit must not exceed thirty-three percent of the minimum wage. The employer who elects to use the tip credit provision must inform the

employee in advance and must be able to show that the employee receives at least the minimum wage when direct wages and the tip credit allowance are combined. Employees must retain all of their tips, except to the extent that they participate in a valid tip pooling or sharing arrangement. The tip credit does not apply to taxicab drivers.

3. A training wage may be paid to employees seventeen years of age or younger at a rate of eighty-five percent of the minimum wage for sixty days or two hundred forty hours whichever comes first. No individual may be employed at the training wage, in any number of jobs, for more than a total of sixty days. An employee hired at the training wage may not displace an employee earning a regular rate of pay.
4. Overtime must be paid at one and one-half times the regular rate of pay to any employee who works in excess of forty hours in any one week. Individuals employed as drivers by taxicab companies must be compensated at one and one-half times the regular rate of pay for all hours worked in excess of fifty in any one week. Hospitals and residential care establishments may adopt, by agreement with the employees, a fourteen-day overtime period in lieu of the usual seven-day workweek, if the employees are paid at least time and one-half their regular rate for hours worked over eight in a day or eighty in a fourteen-day work period, whichever is the greater number of overtime hours. The following are completely exempt from the overtime provisions of the law:
  - a. Any employee employed in a bona fide executive, administrative, or professional capacity.
  - b. Any employee in technical and clerical occupations who earns more than two hundred fifty dollars per week and spends more than fifty percent of the employee's time supervising two or more employees.
  - c. Any employee engaged in an agricultural occupation.
  - d. Employees of shelters or other such related establishments whose primary responsibilities are to provide temporary shelter, crisis intervention, prevention, education, and fellowship.
  - e. Employees employed in domestic service who reside in the household in which they are employed.
  - f. Straight commission salespersons in retail automobile, trailer, boat, aircraft, truck, or farm implement dealerships unless that salesperson is required to be on the premises for more than forty hours per week.

5. A minimum thirty-minute meal break must be provided to employees, if such is desired, in each shift exceeding five hours when there are two or more employees on duty. Collectively bargained agreements will prevail over this provision. Employees not allowed to leave the business location during the break period must be compensated at the regular rate of pay or provided with in-kind compensation, such as a meal, equal to or greater than the minimum wage.
6. Mandatory meetings and training; standby time on the premises; or "on call" as in an engaged to wait manner, as when the employee is required to remain at a specified location, available to the employer at all times, and unable to carry out day-to-day activities available to the employee when not on call; and traveltime from jobsite to jobsite, or from business to jobsite, are times to be compensated at the regular rate of pay.
7. Every employer must furnish to an employee each pay period a check stub or pay voucher which indicates hours worked, the rate of pay, and required state and federal deductions.
8. An employer may require an employee to purchase uniforms if the cost of such uniform does not bring that employee's wage below the hourly minimum wage for all hours worked during that pay period.
9. Vacation pay must be treated the same as wages after one year of employment and are due the same as other wages upon termination of employment.
10. Tip pooling is allowed if fifty percent plus one of the employees request such.
11. The commissioner may grant subminimum wages for students enrolled in vocational education or related programs as long as the wage is not below three dollars and sixty cents per hour.
12. Any employee employed on a casual basis in domestic service employment to provide babysitting services is exempt from minimum wage and overtime provisions.
13. The reasonable cost or fair value of board, lodging, and other facilities customarily furnished by the employer for the employee's benefit may be considered part of the wages, up to a minimum of fifteen dollars per day and accompanied by a written agreement, if acceptance of facilities is voluntary on the part of the employee.
14. An employer may not discharge, discipline, threaten, discriminate, or penalize an employee regarding the employee's

compensation, conditions, location, or privileges of employment because:

- a. The employee, in good faith, reports a violation or suspected violation of any state or federal law to any governmental agency.
  - b. The employee is requested by a governmental agency to participate in an investigation, hearing, or inquiry.
  - c. The employee informs the employer that the employee is refusing an order to perform an activity that the employee knows violates any state or federal law.
  - d. The employee has or may seek assistance of the department of labor pursuant to the provisions of North Dakota Century Code chapters 34-06 and 34-14.
15. The department of labor shall use the common law test to determine whether or not an individual may be considered an independent contractor. (Subdivisions a and b of subsection 5 of section 27-02-14-01.)
16. When considering and determining when commissions should be paid to salespersons severed from employment, the department of labor will consider the entire employment relationship and history existing between the employer and employee, including the employer's previous practices under similar circumstances.

History: Effective August 1, 1991; amended effective December 1, 1992.

General Authority: NDCC 28-32-02(1), 34-06-04

Law Implemented: NDCC 34-06-11, 34-06-12

## CHAPTER 46-02-02

### 46-02-02-02. Standards that apply.

1. The North Dakota minimum wage shall be no less than four dollars and twenty-five cents per hour effective August 1, 1991.
2. A tip credit of thirty-three percent may be allowed for tipped employees of any occupation. The employer may consider tips as part of wages, but such a wage credit must not exceed thirty-three percent of the minimum wage. The employer who elects to use the tip credit provision must inform the employee in advance and must be able to show that the employee receives at least the minimum wage when direct wages and the tip credit allowance are combined. Employees must retain all of their tips, except to the extent that they participate in a valid tip pooling or sharing arrangement.
3. A training wage may be paid to employees seventeen years of age or younger at a rate of eighty-five percent of the minimum wage for sixty days or two hundred forty hours whichever comes first. No individual may be employed at the training wage, in any number of jobs, for more than a total of sixty days. An employee hired at the training wage may not displace an employee earning a regular rate of pay.
4. Overtime must be paid at one and one-half times the regular rate of pay to any employee who works in excess of forty hours in any one week. Hospitals and residential care establishments may adopt, by agreement with the employees, a fourteen-day overtime period in lieu of the usual seven-day workweek, if the employees are paid at least time and one-half their regular rate for hours worked over eight in a day or eighty in a fourteen-day work period, whichever is the greater number of overtime hours. The following are completely exempt from the overtime provisions of the law:
  - a. Any employee employed in a bona fide executive, administrative, or professional capacity.
  - b. Any employee in technical and clerical occupations who earn more than two hundred fifty dollars per week and spend more than fifty percent of the employee's time supervising two or more employees.
  - c. Any employee engaged in an agricultural occupation.
  - d. Employees of shelters or other such related establishments whose primary responsibilities are to provide temporary

shelter, crisis intervention, prevention, education, and fellowship.

- e. Employees employed in domestic service who reside in the household in which they are employed.
  - f. Straight commission salespersons in retail automobile, trailer, boat, aircraft, truck, or farm implement dealerships unless that salesperson is required to be on the premises for more than forty hours per week.
5. A minimum thirty-minute meal break must be provided to employees, if such is desired, in each shift exceeding five hours when there are two or more employees on duty. Collectively bargained agreements will prevail over this provision. Employees not allowed to leave the business location during the break period must be compensated at the regular rate of pay or provided with in-kind compensation, such as a meal, equal to or greater than the minimum wage.
  6. Mandatory meetings and training; standby time on the premises; or "on call" as in an engaged to wait manner, as when the employee is required to remain at a specified location, available to the employer at all times, and unable to carry out day-to-day activities available to the employee when not on call; and traveltime from jobsite to jobsite, or from business to jobsite, are times to be compensated at the regular rate of pay.
  7. Every employer must furnish to an employee each pay period a check stub or pay voucher which indicates hours worked, the rate of the pay, and required state and federal deductions.
  8. An employer may require an employee to purchase uniforms if the cost of such uniform does not bring that employee's wage below the hourly minimum wage for all hours worked during that pay period.
  9. Vacation pay must be treated the same as wages after one year of employment and are due the same as other wages upon termination of employment.
  10. Tip pooling is allowed if fifty percent plus one of the employees request such.
  11. The commissioner may grant subminimum wages for students enrolled in vocational education or related programs as long as the wage is not below three dollars and sixty cents per hour.
  12. Any employee employed on a casual basis in domestic service employment to provide babysitting services is exempt from minimum wage and overtime provisions.

13. The reasonable cost or fair value of board, lodging, and other facilities customarily furnished by the employer for the employee's benefit may be considered part of the wages, up to a maximum of fifteen dollars per day and accompanied by a written agreement, if acceptance of facilities is voluntary on the part of the employee.
14. An employer may not discharge, discipline, threaten, discriminate, or penalize an employee regarding the employee's compensation, conditions, location, or privileges of employment because:
  - a. The employee, in good faith, reports a violation or suspected violation of any state or federal law to any governmental agency.
  - b. The employee is requested by a governmental agency to participate in an investigation, hearing, or inquiry.
  - c. The employee informs the employer that the employee is refusing an order to perform an activity that the employee knows violates any state or federal law.
  - d. The employee has or may seek assistance of the department of labor pursuant to the provisions of North Dakota Century Code chapters 34-06 and 34-14.
15. The department of labor shall use the common law test to determine whether or not an individual may be considered an independent contractor. (Subdivisions a and b of subsection 5 of section 27-02-14-01.)
16. When considering and determining when commissions should be paid to salespersons severed from employment, the department of labor will consider the entire employment relationship and history existing between the employer and employee, including the employer's previous practices under similar circumstances.

History: Effective August 1, 1991; amended effective December 1, 1992.

General Authority: NDCC 28-32-02(1), 34-06-04

Law Implemented: NDCC 34-06-11, 34-06-12

## CHAPTER 46-02-03

### 46-02-03-02. Standards that apply.

1. The North Dakota minimum wage shall be no less than four dollars and twenty-five cents per hour effective August 1, 1991.
2. A tip credit of thirty-three percent may be allowed for tipped employees of any occupation. The employer may consider tips as part of wages, but such a wage credit must not exceed thirty-three percent of the minimum wage. The employer who elects to use the tip credit provision must inform the employee in advance and must be able to show that the employee receives at least the minimum wage when direct wages and the tip credit allowance are combined. Employees must retain all of their tips, except to the extent that they participate in a valid tip pooling or sharing arrangement.
3. A training wage may be paid to employees seventeen years of age or younger at a rate of eighty-five percent of the minimum wage for sixty days or two hundred forty hours whichever comes first. No individual may be employed at the training wage, in any number of jobs, for more than a total of sixty days. An employee hired at the training wage may not displace an employee earning a regular rate of pay.
4. Overtime must be paid at one and one-half times the regular rate of pay to any employee who works in excess of forty hours in any one week. Hospitals and residential care establishments may adopt, by agreement with the employees, a fourteen-day overtime period in lieu of the usual seven-day workweek, if the employees are paid at least time and one-half their regular rate for hours worked over eight in a day or eighty in a fourteen-day work period, whichever is the greater number of overtime hours. The following are completely exempt from the overtime provisions of the law:
  - a. Any employee employed in a bona fide executive, administrative, or professional capacity.
  - b. Any employee in technical and clerical occupations who earn more than two hundred fifty dollars per week and spend more than fifty percent of the employee's time supervising two or more employees.
  - c. Any employee engaged in an agricultural occupation.
  - d. Employees of shelters or other such related establishments whose primary responsibilities are to provide temporary

shelter, crisis intervention, prevention, education, and fellowship.

- e. Employees employed in domestic service who reside in the household in which they are employed.
  - f. Straight commission salespersons in retail automobile, trailer, boat, aircraft, truck, or farm implement dealerships unless that salesperson is required to be on the premises for more than forty hours per week.
5. A minimum thirty-minute meal break must be provided to employees, if such is desired, in each shift exceeding five hours when there are two or more employees on duty. Collectively bargained agreements will prevail over this provision. Employees not allowed to leave the business location during the break period must be compensated at the regular rate of pay or provided with in-kind compensation, such as a meal, equal to or greater than the minimum wage.
  6. Mandatory meetings and training; standby time on the premises; or "on call" as in an engaged to wait manner, as when the employee is required to remain at a specified location, available to the employer at all times, and unable to carry out day-to-day activities available to the employee when not on call; and traveltime from jobsite to jobsite, or from business to jobsite, are times to be compensated at the regular rate of pay.
  7. Every employer must furnish to an employee each pay period a check stub or pay voucher which indicates hours worked, the rate of pay, and required state and federal deductions.
  8. An employer may require an employee to purchase uniforms if the cost of such uniform does not bring that employee's wage below the hourly minimum wage for all hours worked during that pay period.
  9. Vacation pay must be treated the same as wages after one year of employment and are due the same as other wages upon termination of employment.
  10. Tip pooling is allowed if fifty percent plus one of the employees request such.
  11. The commissioner may grant subminimum wages for students enrolled in vocational education or related programs as long as the wage is not below three dollars and sixty cents per hour.
  12. Any employee employed on a casual basis in domestic service employment to provide babysitting services is exempt from minimum wage and overtime provisions.

13. The reasonable cost or fair value of board, lodging, and other facilities customarily furnished by the employer for the employee's benefit may be considered part of the wages, up to a maximum of fifteen dollars per day and accompanied by a written agreement, if acceptance of facilities is voluntary on the part of the employee.
14. An employer may not discharge, discipline, threaten, discriminate, or penalize an employee regarding the employee's compensation, conditions, location, or privileges of employment because:
  - a. The employee, in good faith, reports a violation or suspected violation of any state or federal law to any governmental agency.
  - b. The employee is requested by a governmental agency to participate in an investigation, hearing, or inquiry.
  - c. The employee informs the employer that the employee is refusing an order to perform an activity that the employee knows violates any state or federal law.
  - d. The employee has or may seek assistance of the department of labor pursuant to the provisions of North Dakota Century Code chapters 34-06 and 34-14.
15. The department of labor shall use the common law test to determine whether or not an individual may be considered an independent contractor. (Subdivisions a and b of subsection 5 of section 27-02-14-01.)
16. When considering and determining when commissions should be paid to salespersons severed from employment, the department of labor will consider the entire employment relationship and history existing between the employer and employee, including the employer's previous practices under similar circumstances.

History: Effective August 1, 1991; amended effective December 1, 1992.  
General Authority: NDCC 28-32-02(1), 34-06-04  
Law Implemented: NDCC 34-06-11, 34-06-12

## CHAPTER 46-02-04

### 46-02-04-02. Standards that apply.

1. The North Dakota minimum wage shall be no less than four dollars and twenty-five cents per hour effective August 1, 1991.
2. A tip credit of thirty-three percent may be allowed for tipped employees of any occupation. The employer may consider tips as part of wages, but such a wage credit must not exceed thirty-three percent of the minimum wage. The employer who elects to use the tip credit provision must inform the employee in advance and must be able to show that the employee receives at least the minimum wage when direct wages and the tip credit allowance are combined. Employees must retain all of their tips, except to the extent that they participate in a valid tip pooling or sharing arrangement.
3. A training wage may be paid to employees seventeen years of age or younger at a rate of eighty-five percent of the minimum wage for sixty days or two hundred forty hours whichever comes first. No individual may be employed at the training wage, in any number of jobs, for more than a total of sixty days. An employee hired at the training wage may not displace an employee earning a regular rate of pay.
4. Overtime must be paid at one and one-half times the regular rate of pay to any employees who work in excess of forty hours in any one week. Hospitals and residential care establishments may adopt, by agreement with the employees, a fourteen-day overtime period in lieu of the usual seven-day workweek, if the employees are paid at least time and one-half their regular rate for hours worked over eight in a day or eighty in a fourteen-day work period, whichever is the greater number of overtime hours. The following are completely exempt from the overtime provisions of the law:
  - a. Any employee employed in a bona fide executive, administrative, or professional capacity.
  - b. Any employee in technical and clerical occupations who earn more than two hundred fifty dollars per week and spend more than fifty percent of their time supervising two or more employees.
  - c. Any employee engaged in an agricultural occupation.
  - d. Employees of shelters or other such related establishments whose primary responsibilities are to provide temporary

shelter, crisis intervention, prevention, education, and fellowship.

- e. Employees employed in domestic service who reside in the household in which they are employed.
  - f. Straight commission salespersons in retail automobile, trailer, boat, aircraft, truck, or farm implement dealerships unless that salesperson is required to be on the premises for more than forty hours per week.
5. A minimum thirty-minute meal break must be provided to employees, if such is desired, in each shift exceeding five hours when there are two or more employees on duty. Collectively bargained agreements will prevail over this provision. Employees not allowed to leave the business location during the break period must be compensated at the regular rate of pay or provided with in-kind compensation, such as a meal, equal to or greater than the minimum wage.
  6. Mandatory meetings and training; standby time on the premises; or "on call" as in an engaged to wait manner, as when the employee is required to remain at a specified location, available to the employer at all times, and unable to carry out day-to-day activities available to the employee when not on call; and traveltime from jobsite to jobsite, or from business to jobsite, are times to be compensated at the regular rate of pay.
  7. Every employer must furnish to an employee each pay period a check stub or pay voucher which indicates hours worked, the rate of pay, and required state and federal deductions.
  8. An employer may require an employee to purchase uniforms if the cost of such uniform does not bring that employee's wage below the hourly minimum wage for all hours worked during that pay period.
  9. Vacation pay must be treated the same as wages after one year of employment and are due the same as other wages upon termination of employment.
  10. Tip pooling is allowed if fifty percent plus one of the employees request such.
  11. The commissioner may grant subminimum wages for students enrolled in vocational education or related programs as long as the wage is not below three dollars and sixty cents per hour.
  12. Any employee employed on a casual basis in domestic service employment to provide babysitting services is exempt from minimum wage and overtime provisions.

13. The reasonable cost or fair value of board, lodging, and other facilities customarily furnished by the employer for the employee's benefit may be considered part of the wages, up to a maximum of fifteen dollars per day and accompanied by a written agreement, if acceptance of facilities is voluntary on the part of the employee.
14. An employer may not discharge, discipline, threaten, discriminate, or penalize an employee regarding the employee's compensation, conditions, location, or privileges of employment because:
  - a. The employee, in good faith, reports a violation or suspected violation of any state or federal law to any governmental agency.
  - b. The employee is requested by a governmental agency to participate in an investigation, hearing, or inquiry.
  - c. The employee informs the employer that the employee is refusing an order to perform an activity that the employee knows violates any state or federal law.
  - d. The employee has or may seek assistance of the department of labor pursuant to the provisions of North Dakota Century Code chapters 34-06 and 34-14.
15. The department of labor shall use the common law test to determine whether or not an individual may be considered an independent contractor. (Subdivisions a and b of subsection 5 of section 27-02-14-01.)
16. When considering and determining when commissions should be paid to salespersons severed from employment, the department of labor will consider the entire employment relationship and history existing between the employer and employee, including the employer's past practices under similar circumstances.

History: Effective August 1, 1991; amended effective December 1, 1992.  
General Authority: NDCC 28-32-02(1), 34-06-04  
Law Implemented: NDCC 34-06-11, 34-06-12

## CHAPTER 46-02-05

### 46-02-05-02. Standards that apply.

1. The North Dakota minimum wage shall be no less than four dollars and twenty-five cents per hour effective August 1, 1991.
2. A tip credit of thirty-three percent may be allowed for tipped employees of any occupation. The employer may consider tips as part of wages, but such a wage credit must not exceed thirty-three percent of the minimum wage. The employer who elects to use the tip credit provision must inform the employee in advance and must be able to show that the employee receives at least the minimum wage when direct wages and the tip credit allowance are combined. Employees must retain all of their tips, except to the extent that they participate in a valid tip pooling or sharing arrangement.
3. A training wage may be paid to employees seventeen years of age or younger at a rate of eighty-five percent of the minimum wage for sixty days or two hundred forty hours whichever comes first. No individual may be employed at the training wage, in any number of jobs, for more than a total of sixty days. An employee hired at the training wage may not displace an employee earning a regular rate of pay.
4. Overtime must be paid at one and one-half times the regular rate of pay to any employees who work in excess of forty hours in any one week. Hospitals and residential care establishments may adopt, by agreement with the employees, a fourteen-day overtime period in lieu of the usual seven-day workweek, if the employees are paid at least time and one-half their regular rate for hours worked over eight in a day or eighty in a fourteen-day work period, whichever is the greater number of overtime hours. The following are completely exempt from the overtime provisions of the law:
  - a. Any employee employed in a bona fide executive, administrative, or professional capacity.
  - b. Any employee in technical and clerical occupations who earn more than two hundred fifty dollars per week and spend more than fifty percent of the employee's time supervising two or more employees.
  - c. Any employee engaged in an agricultural occupation.
  - d. Employees of shelters or other such related establishments whose primary responsibilities are to provide temporary

shelter, crisis intervention, prevention, education, and fellowship.

- e. Employees employed in domestic service who reside in the household in which they are employed.
  - f. Straight commission salespersons in retail automobile, trailer, boat, aircraft, truck, or farm implement dealerships unless that salesperson is required to be on the premises for more than forty hours per week.
5. A minimum thirty-minute meal break must be provided to employees, if such is desired, in each shift exceeding five hours when there are two or more employees on duty. Collectively bargained agreements will prevail over this provision. Employees not allowed to leave the business location during the break period must be compensated at the regular rate of pay or provided with in-kind compensation, such as a meal, equal to or greater than the minimum wage.
  6. Mandatory meetings and training; standby time on the premises; or "on call" as in an engaged to wait manner, as when the employee is required to remain at a specified location, available to the employer at all times, and unable to carry out day-to-day activities available to the employee when not on call; and traveltime from jobsite to jobsite, or from business to jobsite, are times to be compensated at the regular rate of pay.
  7. Every employer must furnish to an employee each pay period a check stub or pay voucher which indicates hours worked, the rate of pay, and required state and federal deductions.
  8. An employer may require an employee to purchase uniforms if the cost of such uniform does not bring that employee's wage below the hourly minimum wage for all hours worked during that pay period.
  9. Vacation pay must be treated the same as wages after one year of employment and are due the same as other wages upon termination of employment.
  10. Tip pooling is allowed if fifty percent plus one of the employees request such.
  11. The commissioner may grant subminimum wages for students enrolled in vocational education or related programs as long as the wage is not below three dollars and sixty cents per hour.
  12. Any employee employed on a casual basis in domestic service employment to provide babysitting services is exempt from minimum wage and overtime provisions.

13. The reasonable cost or fair value of board, lodging, and other facilities customarily furnished by the employer for the employee's benefit may be considered part of the wages, up to a maximum of fifteen dollars per day and accompanied by a written agreement, if acceptance of facilities is voluntary on the part of the employee.
14. An employer may not discharge, discipline, threaten, discriminate, or penalize an employee regarding the employee's compensation, conditions, location, or privileges of employment because:
  - a. The employee, in good faith, reports a violation or suspected violation of any state or federal law to any governmental agency.
  - b. The employee is requested by a governmental agency to participate in an investigation, hearing, or inquiry.
  - c. The employee informs the employer that the employee is refusing an order to perform an activity that the employee knows violates any state or federal law.
  - d. The employee has or may seek assistance of the department of labor pursuant to the provisions of North Dakota Century Code chapters 34-06 and 34-14.
15. The department of labor shall use the common law test to determine whether or not an individual may be considered an independent contractor. (Subdivisions a and b of subsection 5 of section 27-02-14-01.)
16. When considering and determining when commissions should be paid to salespersons severed from employment, the department of labor will consider the entire employment relationship and history existing between the employer and employee, including the employer's previous practices under similar circumstances.

History: Effective August 1, 1991; amended effective December 1, 1992.  
General Authority: NDCC 28-32-02(1), 34-06-04  
Law Implemented: NDCC 34-06-11, 34-06-12

STAFF COMMENT: Chapter 46-02-06 contains all new material but is not underscored so as to improve readability.

CHAPTER 46-02-06  
MOTOR CARRIER EXEMPTION FROM OVERTIME PAY PROVISIONS

Section  
46-02-06-01 Motor Carrier Exemption From Overtime Pay  
Provisions

46-02-06-01. Motor carrier exemption from overtime pay provisions. The overtime pay provisions of this article do not apply to any employee exempted by section 13(b)(1) of the Fair Labor Standards Act [29 U.S.C. 213(b)(1)] from section 7 of the Fair Labor Standards Act [29 U.S.C. 207], as applied to covered employees of motor common, contract, and private carriers specified by the Motor Carriers Act [49 U.S.C. 3102]. These exemptions apply to the same occupations within the authority of the commissioner of labor as provided for in North Dakota Century Code chapter 34-06.

History: Effective December 1, 1992.  
General Authority: NDCC 28-32-02(1), 34-06-04  
Law Implemented: NDCC 34-06-11, 34-06-12

STAFF COMMENT: Article 46-03 contains all new material but is not underscored so as to improve readability.

ARTICLE 46-03

CALCULATION OF A REGULAR RATE AND OVERTIME

Chapter  
46-03-01 Calculation of a Regular Rate and Overtime

CHAPTER 46-03-01  
Calculation of a Regular Rate and Overtime

Section  
46-03-01-01 Formulas for Determining Regular Rate and Overtime

46-03-01-01. Formulas for determining regular rate and overtime.

1. Determining overtime from an hourly rate:

Hourly rate x 1.5 = Overtime hourly rate of pay

Overtime hourly rate of pay x Number of hours worked in excess of 40 = Amount of overtime due

2. Determining hourly rate and overtime from monthly salary:

$\frac{\text{Monthly salary} \times 12}{52} = \text{Weekly salary}$

$\frac{\text{Weekly salary}}{\text{Total hours worked during that week}} = \text{Rate per hour}$

To calculate overtime from this:

Rate per hour x 1/2 x Number of hours worked in excess of 40 = Amount of overtime due

3. Determining hourly rate and overtime for retail employees paid principally from commissions:

$\frac{\text{Total compensation for one week}}{\text{Total hours worked for that same week}} = \text{Regular rate of pay}$

The employer is responsible to ensure that at least four dollars and twenty-five cents per hour is received by the

employee either on a straight commission basis, or with a base hourly wage, or with an addition to the straight commission to equal the required four dollars and twenty-five cents. If the employer requires the employee to work more than forty hours in any given week the employer must pay the employee half the regular pay for all hours worked over forty if the employee is earning less than six dollars and thirty-eight cents per hour. If the employee earns six dollars and thirty-eight cents or more per hour the employer is not responsible for additional compensation over forty hours.

4. Weighted average method of overtime: When an employee performs two jobs for the same employer, with each job having a different rate of pay, the method of computing overtime is as follows:

Job 1: Rate of pay x Number of hours = Compensation

Job 2: Rate of pay x  $\frac{\text{Number of hours}}{\text{Total hours}}$  =  $\frac{\text{Compensation}}{\text{Total compensation}}$

$\frac{\text{Total compensation}}{\text{Total hours}}$  = Average per hour

$\frac{\text{Average per hour}}{1/2}$  = Rate of overtime

The rate of overtime multiplied by the number of overtime hours (hours in excess of 40) is the total overtime due.

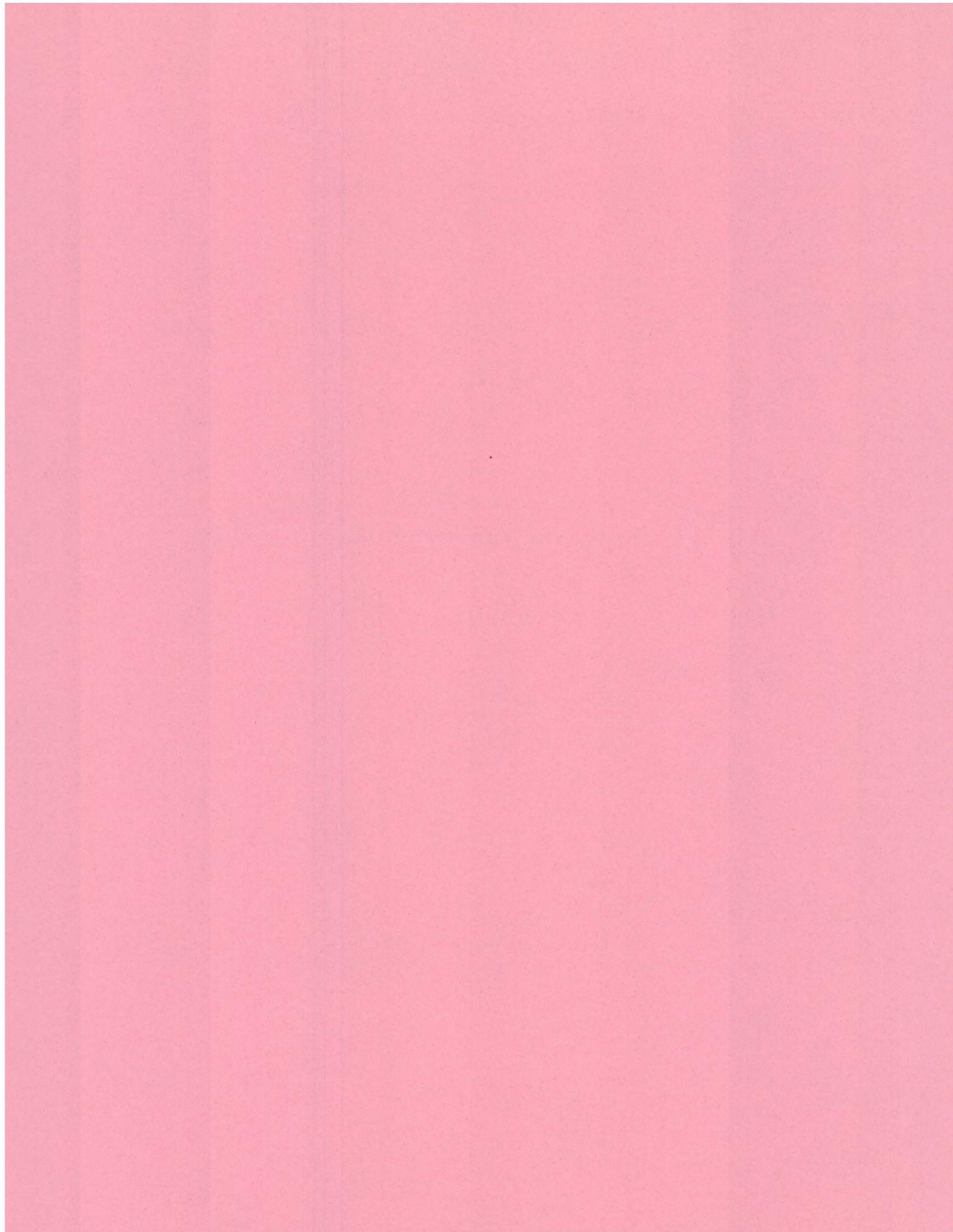
History: Effective December 1, 1992.

General Authority: NDCC 28-32-02(1), 34-06-04

Law Implemented: NDCC 34-06-11, 34-06-12

TITLE 55

Nursing Home Administrators, Board of Examiners



FEBRUARY 1993

CHAPTER 55-02-01

55-02-01-02. General definitions. In this article unless the subject matter or context requires otherwise:

1. "Board" means the North Dakota state board of examiners for nursing home administrators.
2. "General administrative charge of a North Dakota nursing home" means a nursing home administrator whose major responsibility is the complete operation of a nursing home.
3. "Inactive license status" means the period, beginning on or after January 1, 1993, during which a duly licensed nursing home administrator has temporarily abandoned the practice of nursing home administration in the state of North Dakota.
4. "Nursing home" means any institution or facility defined as such for licensing purpose under North Dakota state law or pursuant to the rules for nursing homes by the state department of health and consolidated laboratories, whether proprietary or nonprofit, including but not limited to nursing homes owned or administered by the state government or an agency or political subdivision thereof.
5. "Nursing home administrator" means a person who administers, manages, supervises, or is in general administrative charge of a North Dakota nursing home.
6. "Person" means an individual and does not include the terms firm, corporation, association, partnership, institution,

public body, joint stock association, or any other group of individuals.

History: Amended effective February 1, 1993.

General Authority: NDCC 43-34-09

Law Implemented: NDCC 43-34-01, 43-34-09

55-02-01-04. Board duties. The board shall have the duty and responsibility to: Repealed effective February 1, 1993.

- ~~1. Develop, impose, and enforce standards which must be met by individuals in order to receive a license as a nursing home administrator. The standards shall be designed to ensure that nursing home administrators will be individuals who are of good character and are otherwise suitable and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators.~~
- ~~2. Develop and apply appropriate technics, including examination and investigations, for determining whether an individual meets such standards.~~
- ~~3. Issue licenses to individuals determined, after application of such technics, to meet such standards, and for cause, after due notice and hearing, to revoke or suspend licenses previously issued by the board in any case where the individual holding such license is determined substantially to have failed to conform to the requirements of such standards.~~
- ~~4. Establish and carry out procedures designed to ensure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards.~~
- ~~5. Receive, investigate, and take appropriate action with respect to, and including the revocation of a license if necessary after due notice and hearing and for cause, any charge or complaint filed with the board to the effect that any individual licensed as a nursing home administrator has failed to comply with the requirements of such standards.~~
- ~~6. Conduct a continuing study and investigation of nursing homes and administrators of nursing homes within the state with a view to the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of such standards with respect to administrators of nursing homes who have been licensed as such.~~
- ~~7. Conduct, or cause to be conducted, one or more courses of instruction and training sufficient to meet the requirements of North Dakota Century Code chapter 43-34, and shall make~~

provisions for such courses and their accessibility to residents of this state unless it finds that there are and approves a sufficient number of courses, which courses are conducted by others within this state. In lieu thereof the board may approve courses conducted within and without this state as sufficient to meet the education and training requirements of North Dakota Century Code chapter 43-34.

General Authority: NDCC 43-34-09

Law Implemented: NDCC 43-34-09

55-02-01-05. Board organization Duties of board of officers.

1. The board shall elect from its membership a chairperson, a vice chairperson and a secretary-treasurer, and shall adopt rules to govern its proceedings. Each member shall receive, as compensation for the member's services, an amount agreed upon by the board but not to exceed that of other state boards. All members shall be allowed necessary travel expenses, as may be approved by the board, which shall be payable in the same manner as travel expenses of other state officials. The board may employ and fix the compensation and duties of necessary personnel to assist it in the performance of its duties.
2. The chairperson shall preside at all meetings of the board, and shall sign all official documents of the board, in.
2. In the absence of the chairperson, the vice chairperson shall preside at meetings, and perform all duties usually performed by the chairperson.
3. In addition to the duties imposed by law, the The secretary-treasurer shall attend all meetings of the board, keep is responsible for keeping a full and complete record of the minutes of the meetings, notify the members of the board of the time and place fixed for meetings of the board, and maintain, maintaining the records pertaining to licensees and registrants and this title, and
4. The secretary-treasurer shall conduct all routine correspondence for the board, shall issue all notices of meetings and hearings, shall have custody of all books, records, and property of the board, and shall perform all duties pertaining to the office of secretary-treasurer.
5. The secretary-treasurer shall receive all moneys payable to the board and shall pay the same to the state treasurer as provided by law, and keep maintaining such financial records as are approved by the board and the fiscal authorities of the state.

History: Amended effective February 1, 1993.  
General Authority: NDCC 43-34-07, 43-34-09  
Law Implemented: NDCC 43-34-07, 43-34-09

55-02-01-06. Scheduling of examinations and reexaminations  
Administration of examinations.

1. The board shall ~~determine the subjects of examination of~~ administer examinations to applicants for license licensure as a nursing home administrator, and the. The scope, content, and form, and character of such examinations which in of any examination shall be the same for all candidates applicants.
2. Examinations shall be held as often as deemed necessary but at least once a year, at such time and place as shall be designated by the board. The board shall give a fifteen-day notice prior to the holding of an examination.
3. ~~Following the close of every examination, the questions submitted and the answers made thereto by the applicant, together with a record stating in detail the result of the examination~~ A record of the examination for each candidate, applicant shall be kept by the board for a period of two years. These may be destroyed at the end of such period.

History: Amended effective February 1, 1993.  
General Authority: NDCC 43-34-09  
Law Implemented: NDCC 43-34-09

55-02-01-07. Preexamination requirements - Conditions precedent  
Requirements for licensure. No person, except an individual applying for licensure through endorsement, shall be admitted to or be permitted to take an examination for license as a nursing home administrator unless the person shall have first submitted evidence satisfactory to the board that the person:

1. ~~Is at least eighteen years of age.~~ Has had at least three years' experience as a licensed nursing home administrator; or
2. ~~Is of good moral character.~~ Has a baccalaureate degree in long-term care administration from an accredited college or university or has a baccalaureate degree from an accredited college or university with a minimum of one course in each of the following: management, finance, human resources, and gerontology.
3. ~~Is of sound physical and mental health.~~
4. ~~Has an associate of arts degree or equivalent of sixty semester hours from a regionally accredited college or university or three years active full-time experience as a~~

licensed nursing home administrator or as an assistant administrator in a licensed long-term care facility.

History: Amended effective July 1, 1979; February 1, 1993.  
General Authority: NDCC 43-34-08  
Law Implemented: NDCC 43-34-03

55-02-01-08. Application for examination. An applicant for examination and qualification for a license as a nursing home administrator shall make application ~~therefor~~ in writing, on forms provided by the board, and shall furnish evidence satisfactory to the board that the applicant has met the preexamination licensure requirements as provided for in North Dakota Century Code chapter 43-34 and in section 55-02-01-07. ~~A candidate~~ An applicant for examination shall submit ~~on forms supplied~~ two certifications ~~references~~ from individuals ~~at least twenty-one years of age,~~ engaged in either business, professional, or religious work, who shall ~~certify to the good moral character of the applicant~~ speak, at a minimum, to the applicant's educational preparation or experience related to long-term care administration.

History: Amended effective February 1, 1993.  
General Authority: NDCC 43-34-09  
Law Implemented: NDCC 43-34-03

55-02-01-09. ~~Conditional admission to examination—~~  
~~Disqualification —Reexamination.~~

1. The board may conditionally admit to examination for license as a nursing home administrator an applicant who on the date of a scheduled examination has not fully established the applicant's qualifications; if in the judgment of the board, it appears that the applicant is otherwise qualified. Unless the applicant submits satisfactory evidence that the applicant now meets the qualifications for examination within thirty days following the date of such examination, the board shall notify the applicant that the applicant is not qualified for licensure.
- ~~2.~~ An applicant for examination who has been disqualified shall be given written notification by the board of the applicant's disqualification and the reasons therefore and of the applicant's right to a hearing.
- ~~3.~~ 2. An applicant for examination who has been disqualified may petition the board in writing within thirty days of notification of disqualification for a hearing and a review of the applicant's application in accordance with North Dakota Century Code chapter 28-32.

- ~~4-~~ 3. ~~Where~~ ~~an~~ An applicant for examination who has been disqualified, ~~the applicant~~ may submit a new application for qualification for examination, ~~provided however that the~~. The applicant shall be required to meet the requirements for licensing as shall be licensure in force at the time of such reapplication.

History: Amended effective February 1, 1993.

General Authority: NDCC 43-34-03

Law Implemented: NDCC 43-34-03

55-02-01-10. Subjects for examination Examination. Every applicant for a license as a nursing home administrator, after meeting the requirements for eligibility for examination as set forth in section ~~55-02-01-07~~, shall be subjected to a critical evaluation by the board to an unassembled test covering education and past experience and shall successfully pass a written or oral examination, or both, which shall include, but need not be limited to, the following subjects:

1. Every applicant for a license as a nursing home administrator, except an individual applying for licensure through endorsement, must be required to pass an oral examination and a written national examination.
2. The board shall use as a basis for the oral examination a written outline of the subject matter which may include:
  - ~~1-~~ a. Applicable standards of environmental health and safety-;
  - ~~2-~~ b. Local health and safety regulations-;
  - ~~3-~~ c. General administration-;
  - ~~4-~~ d. Psychology of patient care-;
  - ~~5-~~ e. Principles of medical care-;
  - ~~6-~~ f. Personal and social care-;
  - ~~7-~~ g. Therapeutic and supportive care and services in long-term care-;
  - ~~8-~~ h. Departmental organization and management-; and
  - ~~9-~~ i. Community interrelationships.
3. The board shall use the test provided by the national association of boards of examiners for nursing home administrators for the written examination.

History: Amended effective February 1, 1993.

General Authority: NDCC 43-34-09

Law Implemented: NDCC 43-34-03

55-02-01-11. Grading examinations. Every candidate for a nursing home administrator's license shall be required to pass the examination for the license with a grade of at least seventy-five percent. The board shall determine a method of grading each section of the examination separately, and shall apply such method uniformly to all candidates taking that examination. If an oral examination is used, totally or as part of the examination process, the board, or the examiners designated for such purpose, shall use as a basis for the oral examination a written prepared outline of subject matter. The board shall designate weighted values to the subject matter for the oral examination.

1. Grading must be pass or fail for the oral examination.
2. The national scale score will be used to determine a passing point for the written examination.

History: Amended effective July 1, 1981; June 1, 1983; February 1, 1993.

General Authority: NDCC 43-34-09

Law Implemented: NDCC 43-34-09

55-02-01-12. Courses of study Continuing education.

1. The board in the use of its discretionary powers will advise prospective applicants as to courses of study offered by associations, professional societies, or organizations for the purpose of qualifying applicants for licensure as nursing home administrators. However the applicant shall not construe this type of assistance as a guarantee for qualifying for a license. Twenty-five hours of continuing education must be obtained each calendar year. A record of continuing education must be submitted with the application for renewal of license.
2. As a minimum, in order to maintain competence in the field of nursing home administration, the board requires all nursing home administrators to attend classes or participate at inservice workshops, seminars, or conferences which may be held in North Dakota for nursing home administrators. The minimum time spent at these classes or inservice workshops, seminars, or conferences shall be twenty-five hours per year. The year shall run from December first through November thirtieth.
3. Classes taken at colleges or universities in North Dakota or outside of North Dakota will meet or count toward meeting the twenty-five hours per year requirement. The board will advise the licensees as to which inservice workshops, seminars, or conferences will be recognized by the board as meeting or counting toward meeting this requirement.

4. The licensee shall maintain a permanent record in hours annually of classes attended and participation at inservice workshops, seminars, or conferences.
  5. The licensee shall submit a copy of the licensee's annual attendance record to the secretary-treasurer of the board by December fifteenth of each year.
  6. The licensee shall attend classes, or participate at inservice workshops, seminars, or conferences at the licensee's own expense.
  7. The board will use its discretionary powers in regard to the relicensure of a person who has failed to earn twenty-five hours per annum and also may prorate hours earned in excess of the twenty-five hours per annum requirement to subsequent years.
2. Continuing education hours must be obtained from providers approved by the board.

History: Amended effective February 1, 1993.  
 General Authority: NDCC 43-34-09  
 Law Implemented: NDCC 43-34-03

55-02-01-13. Program of study in accredited educational institutions. A program of study designed to train and qualify applicants for licensure as nursing home administrators offered by any accredited university or college shall be deemed acceptable and approved for such purpose. Repealed effective February 1, 1993.

General Authority: ~~NDCC 43-34-09~~  
 Law Implemented: ~~NDCC 43-34-09~~

55-02-01-14. Certification of program of study for federal financial participation. As provided under section 1908 of the United States Social Security Act, programs of study will be certified by the board in a manner consistent with the requirements of the federal government in order to qualify for federal financial participation. Repealed effective February 1, 1993.

General Authority: ~~NDCC 43-34-09~~  
 Law Implemented: ~~NDCC 43-34-09~~

55-02-01-15. Licenses.

1. An applicant for a license as a nursing home administrator who has successfully complied with the requirements of North Dakota Century Code chapter 43-34 and this article and has passed the ~~examination~~ examinations provided for by the board

shall be issued a license on a form provided for that purpose by the board, certifying that such applicant has met the requirements of the laws and rules entitling the applicant to serve, act, practice, and otherwise hold oneself out as a duly licensed nursing home administrator.

2. The board may, upon application, issue a provisional license to any individual who:
  - a. Has served as a nursing home administrator during all of the calendar year immediately preceding July 1, 1969, and Meets the requirements for examination set forth in section 55-02-01-07;
  - b. Meets the standards relating to age, good character, citizenship, and sound physical and mental health. Has a bona fide offered position as a nursing home administrator;
  - c. Passes an oral examination; and
  - d. Has never previously held a provisional license in North Dakota.
3. A provisional license shall terminate midnight, June 30, 1971, and shall be canceled and be of no legal force or effect thereafter. However, if prior to the expiration of the provisional license, the provisional nursing home administrator shall have passed a qualifying examination as required by the board, a nursing home administrator license shall be issued to the individual. The provisional license is valid until the results of the next scheduled written examination are received by the board.
4. A provisional license or extension thereof may not be issued to any person after June 30, 1971. Any license issued by the board shall be subscribed by the chairperson and secretary-treasurer of the board.
5. If the board issues a provisional license to any individual under the provisions of subsection 2 there shall be provided by the state during all of the period for which such provisional license remains in effect a program of training and instruction designed to enable all provisional nursing home administrators to attain the educational qualifications necessary to assist such applicant to qualify for licensure as a nursing home administrator July 1, 1970, through midnight June 30, 1971.
6. If the board finds that programs of training and instruction conducted within the state are not sufficient in number or content to enable nursing home administrators to meet requirements established by North Dakota Century Code chapter

~~43-34~~ and this article, it may institute and conduct or arrange with others to conduct one or more such programs, and shall make provision for their accessibility to residents of this state. The board may approve programs conducted within and without this state as sufficient to meet education and training requirements established by North Dakota Century Code chapter ~~43-34~~ and this article. For the purposes of this subsection, the board shall have the authority to receive funds in a manner consistent with the requirements of the federal government in order for the courses to qualify for federal financial participation.

7. An applicant to whom a provisional license has been issued, and the provisional license has not expired, shall surrender the license to the board upon issuance of a permanent license, or the applicant must submit satisfactory affidavit to the board setting forth the reasons why the license is not surrendered.
8. In the event of the death or other unexpected removal of a licensed nursing home administrator from the administrator's position, the owner, the governing body, or other appropriate authority of the nursing home may designate an acting administrator to whom the board may issue an emergency license. This emergency license shall be in force for a period not to exceed ninety days but may be renewed for an additional ninety days by the board upon good cause shown.

History: Amended effective February 1, 1993.

General Authority: NDCC 43-34-09

Law Implemented: NDCC 43-34-04

#### 55-02-01-16. Registration and renewal of licenses.

1. Every person who holds a valid license as a nursing home administrator issued by the board shall immediately upon issuance thereof be deemed registered with the board. The license shall expire on the thirty-first day of December in the year of its issuance, and shall be renewable annually upon payment of the license fee. The board, by November fifteenth of each year, will transmit application for renewal forms to all licensees whose licenses will expire on December thirty-first.
2. Upon making an application for a renewal of license, the licensee shall pay an annual license fee of fifty dollars not to exceed the amount set forth in North Dakota Century Code section 43-34-05.
3. Upon receipt of the application for renewal, documentation of the continuing education hours required in section 55-02-01-12

and the license fee, the board shall issue a renewal license to the nursing home administrator.

4. A nursing home administrator under the provisions of North Dakota Century Code section ~~43-34-14~~ who fails to comply with the provisions of this section, and who continues to practice as a nursing home administrator, will be guilty of a class A misdemeanor.
5. A nursing home administrator who has been duly licensed in this state whose license shall not have been revoked or suspended, and whose license has expired because the administrator shall have temporarily abandoned the practice of nursing home administration, or shall have removed from the state, or for such other reason, may upon complying with the provisions of this section for renewal be reinstated upon filing with the board an affidavit of such facts.
6. The board shall maintain a register of all applications for licensing of nursing home administrators. The board shall maintain a complete file of such pertinent information as may be deemed necessary.
7. Assistance for the purpose of procuring and administering special examinations for reciprocity purposes may be given by the board for a fee of thirty-five dollars for each special examination taken. The individual applicant shall bear the cost for this services.

History: Amended effective February 1, 1993.

General Authority: NDCC 43-34-09, 43-34-10

Law Implemented: NDCC 43-34-09, 43-34-10

55-02-01-17. Refusal, suspension, and revocation of licenses. The board may suspend, revoke, or refuse to issue a license for a nursing home administrator, or may reprimand or otherwise discipline a licensee, or provisional licensee, after due notice and an opportunity to be heard at a formal hearing, upon substantial evidence that the applicant for license:

1. Has violated any of the provisions of the law pertaining to the licensing of nursing home administrators or the rules and regulations of the board pertaining thereto;
2. Has willfully or repeatedly violated any of the provisions of the law, rules, or regulations of the licensing authority having jurisdiction of the operation and licensing of nursing homes;
3. Has practiced fraud, deceit, or misrepresentation in securing or procuring a nursing home administrator license;

4. ~~Is incompetent to engage in the practice of nursing home administration or to act as a nursing home administrator;~~
- 5- Has practiced fraud, deceit, or misrepresentation in the ~~administrator's~~ licensee's capacity as a nursing home administrator;
- 6- 5. Has committed acts of misconduct in the operation of a nursing home under the ~~administrator's~~ licensee's jurisdiction;
- 7- ~~Is a habitual drunkard;~~
- 8- ~~Is addicted or dependent upon the use of morphine, opium, cocaine, or other drugs recognized as resulting in an abnormal effect;~~
- 9- 6. Has practiced without a license;
- +0- 7. Has wrongfully transferred or surrendered possession, either temporarily or permanently, the ~~administrator's~~ licensee's license or certificate to any other person;
- +1- 8. Has been guilty of fraudulent, misleading, or deceptive advertising;
- +2- 9. Has falsely impersonated another licensee of a like or different name;
- +3- 10. Has willfully failed to exercise true regard for the safety, health, and life of the patient resident;
- +4- 11. Has willfully permitted unauthorized disclosure of information relating to a patient resident or the patient's resident's records; or
- +5- 12. Has willfully discriminated in respect to patients residents, employees, or staff on account of race, religion, color, or national origin.

History: Amended effective February 1, 1993.

General Authority: NDCC 43-34-09

Law Implemented: NDCC 43-34-09

#### 55-02-01-18. Complaints and administrative hearing procedures.

1. Any person, public officer, ~~or~~ association, or the board, may register a complaint against any a licensee ~~or holder of a permit~~. The complaint shall be in writing and shall be submitted to the board.
2. The board may hold a preliminary hearing to determine whether a formal administrative hearing on the complaint is necessary.

3. If the board decides that the complaint shall be heard, the proceedings shall be in accordance with North Dakota Century Code section 28-32-05.
4. a. Upon the conclusion of the hearing, the board may revoke the license of the accused, or suspend the license for a fixed period, or reprimand, or take such other disciplinary action, or dismiss the charges.
- b. An order or suspension made by the board may contain such provisions as to reinstatement of the license as the board shall direct.
- c. The board, upon good cause, may direct a rehearing in accordance with North Dakota Century Code section 28-32-14. Any appeal shall be taken in the manner provided in North Dakota Century Code chapter 28-32.

History: Amended effective February 1, 1993.

General Authority: NDCC 28-32-05

Law Implemented: NDCC 43-34-09

55-02-01-20. Reciprocity Endorsement. For reciprocity endorsement purposes, the board will accept a passing grade of either the national board of examiners or a passing grade from the professional examination service in lieu of the written state examination required. However, In addition the applicant for reciprocity will still be required to take a written endorsement must pay an application fee, satisfy the current education requirement, pass an oral examination on North Dakota regulations and the oral interview examination, and hold a currently valid license from the transferring state.

History: Amended effective February 1, 1993.

General Authority: NDCC 43-34-09

Law Implemented: NDCC 43-34-12

55-02-01-21. Restoration and reinstatement of licenses Inactive license status. A license may be restored by the board in its discretion upon submission of evidence satisfactory to the board that the applicant for restoration of license has removed the disability. Upon application for restoration of a license, the board may grant the applicant a formal hearing. A nursing home administrator whose license has not been revoked or suspended may request inactive license status. While in inactive license status, the administrator must submit a renewal application and a license fee annually but the continuing education requirement as set forth in section 55-02-01-12 need not be met. A license will not be issued during the inactive license status period. A nursing home administrator must obtain twenty-five hours of continuing education hours prior to reactivating his or her license. An administrator who chooses inactive license status for a period in excess

of five consecutive years must pass an oral examination prior to reactivating a license.

History: Amended effective February 1, 1993.

General Authority: NDCC ~~48-34-08~~ 43-34-03, 43-34-09

Law Implemented: NDCC 43-34-03, 43-34-09

55-02-01-22. Display of permits or licenses. Every person licensed as a nursing home administrator shall display the license or permit in a conspicuous place in the office or place of business or employment of the licensee. Repealed effective February 1, 1993.

General Authority: NDCC ~~43-34-09~~

Law Implemented: NDCC ~~43-34-09~~

55-02-01-23. Duplicate licenses. Upon receipt of satisfactory evidence that a license or permit has been lost, mutilated, or destroyed, the The board may issue, for a fee, a duplicate license or permit upon written request by the licensee.

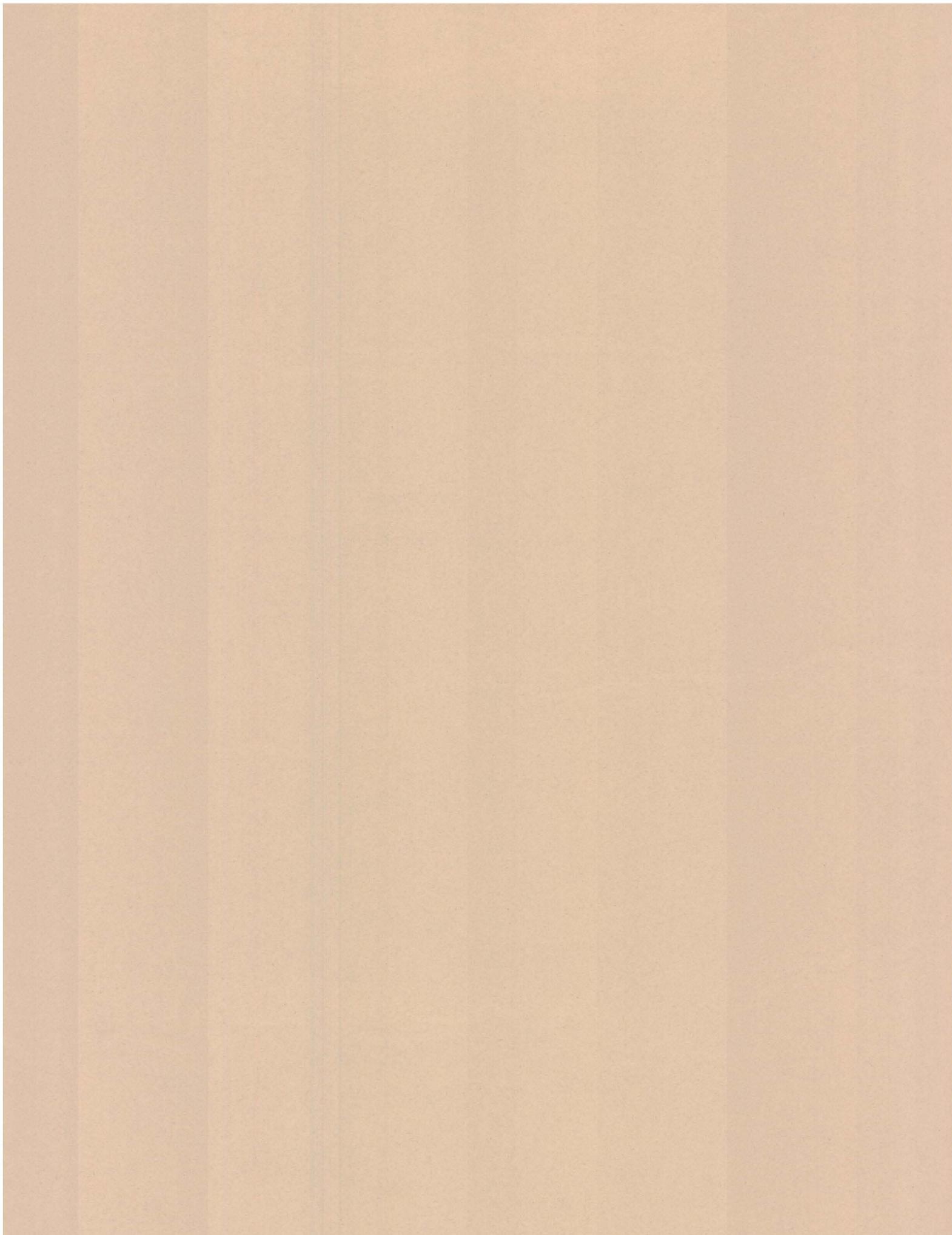
History: Amended effective February 1, 1993.

General Authority: NDCC 43-34-09

Law Implemented: NDCC 43-34-09

TITLE 68

Public School Education, Board of



DECEMBER 1992

STAFF COMMENT: Article 68-02 contains all new material but is not underscored so as to improve readability.

ARTICLE 68-02

RULES OF PROCEDURE

Chapter  
68-02-01 Tuition Appeals - Rules of Procedure

CHAPTER 68-02-01  
TUITION APPEALS - RULES OF PROCEDURE

Section  
68-02-01-01 Notice  
68-02-01-02 Testimony and Documentary Evidence  
68-02-01-03 Findings, Conclusions, and Order

68-02-01-01. Notice. After receipt of a tuition appeal under subsection 1 of North Dakota Century Code section 15-40.2-05, the board will provide notice of the hearing to the parent or guardian who is applying for the payment of tuition and the involved school districts at least fifteen days prior to the time the hearing is to be held. The notice period may be shortened in case of an emergency or when agreed to by the involved parties. The notice will state that the board waives the application of the North Dakota Rules of Evidence to the hearing under subsection 1 of North Dakota Century Code section 28-32-06.

History: Effective December 1, 1992.

General Authority: NDCC 28-32-02(1), 28-32-05(3)(b)

Law Implemented: NDCC 15-40.2-05(1), 28-32-05(3)(b)

68-02-01-02. Testimony and documentary evidence. At the hearing, the board will consider the findings of the three-member county committee, as well as any other relevant testimony and documentary evidence proffered relating to the factors outlined in subsection 1 of North Dakota Century Code section 15-40.2-05. The board waives the application of the North Dakota Rules of Evidence to its hearings on tuition appeals.

History: Effective December 1, 1992.

General Authority: NDCC 28-32-02(1), 28-32-05(3)(b)

Law Implemented: NDCC 15-40.2-05(1), 28-32-05(3)(b), 28-32-06(1)

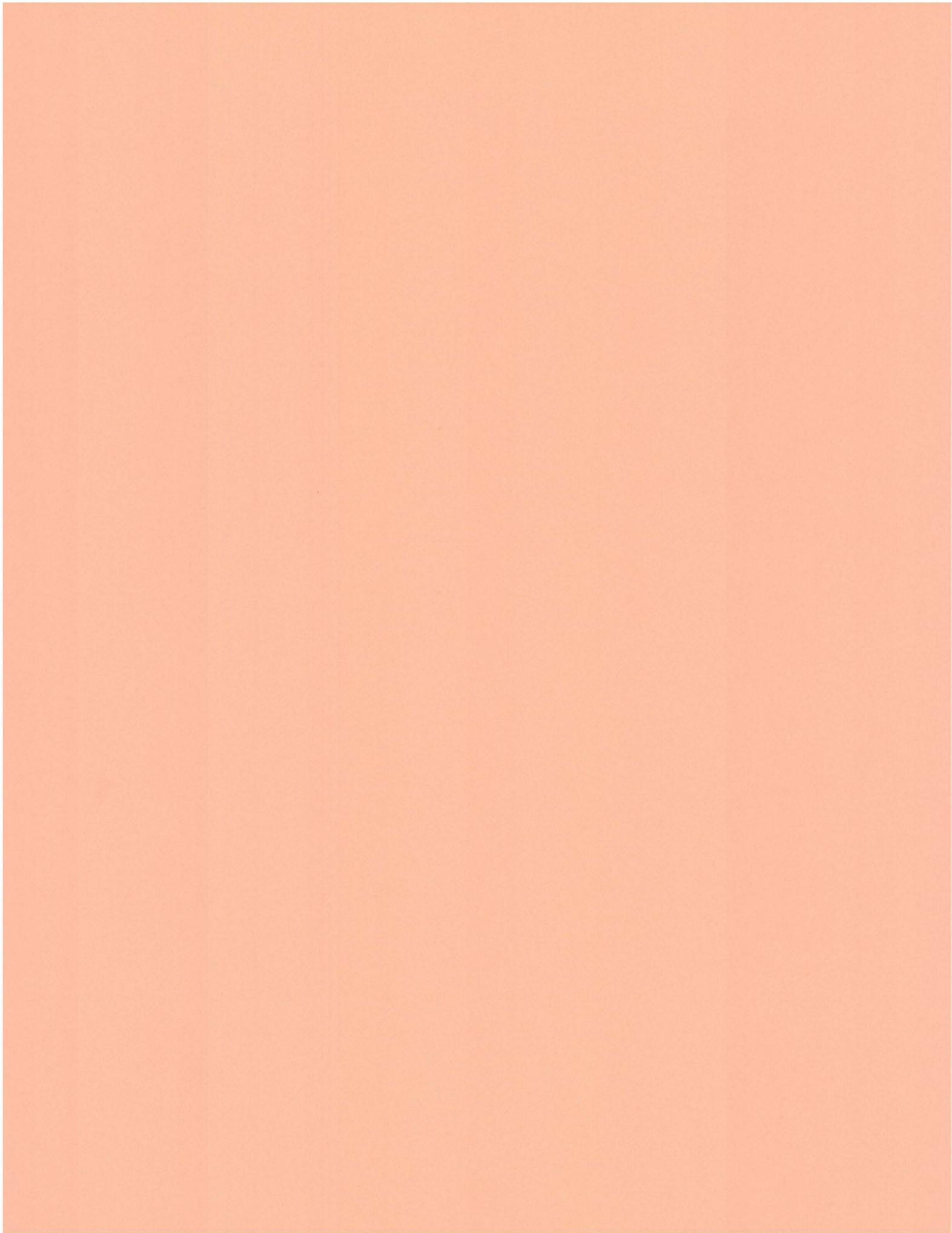
68-02-01-03. Findings, conclusions, and order. Following the board's consideration of the record and the relevant evidence received at the hearing, the board will make findings of fact and conclusions of law with respect to the factors outlined in subsection 1 of North Dakota Century Code section 15-40.2-05, and issue an order regarding the payment of tuition. The order will be mailed by certified mail to all parties.

History: Effective December 1, 1992.

General Authority: NDCC 28-32-02(1), 28-32-05(3)(b)

Law Implemented: NDCC 15-40.2-05(1), 28-32-05(3)(b)

TITLE 69  
Public Service Commission



JANUARY 1993

CHAPTER 69-05.2-01

69-05.2-01-01. Applicability of article. This article applies to any person conducting surface coal mining operations; and to all surface coal mining operations conducted after August 1, 1980, on lands from which the coal had not yet been removed and to any other lands subject to North Dakota Century Code chapter 38-14.1 or this article.

1. This article does not apply to:
  - a. The extraction of coal by a landowner for the landowner's own noncommercial use from land owned or leased by the landowner.
  - b. Coal removal for reclamation operations under North Dakota Century Code chapter 38-14.2.
  - c. Coal extraction as an incidental part of federal, state, or local government-financed highway or other construction, except as provided by chapter 69-05.2-03.
  - d. Coal extraction of two hundred fifty tons [226.80 metric tons] or less under a coal exploration permit issued by the office of the state geologist.
2. The commission may on its own initiative and will, within a reasonable time of a request from any person who intends to conduct surface coal mining operations, make a written determination whether the operation is exempt under this section. The commission will give reasonable notice of the request to interested persons. Prior to the time a determination is made, any person may submit, and the

commission will consider, any relevant written information. A person requesting that an operation be declared exempt has the burden of establishing the exemption. If an exemption is reversed through subsequent administrative or judicial action, any person who, in good faith, has made a complete and accurate request for an exemption and relied upon the determination, may not be cited for violations which occurred prior to the date of the reversal.

3. The commission may terminate its jurisdiction over the reclaimed site of a completed surface coal mining and reclamation operation, or increment of an operation, when it has released fully the related performance bond under the procedures of North Dakota Century Code section 38-14.1-17 and chapter 69-05.2-12.
4. The commission will reassert jurisdiction over a site if the bond release referred to in subsection 3 was based upon fraud, collusion, or misrepresentation of a material fact.

History: Effective August 1, 1980; amended effective May 1, 1990; January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-02, 38-14.1-10, 38-14.1-37

CHAPTER 69-05.2-05

69-05.2-05-08. Permit applications - Permit term.

1. A permit will be issued for a fixed term not to exceed five years except as provided in subsection 3. The permit area shall be no larger than a logical pit sequence and include lands used for activities incidental to coal extraction. Coal removal boundaries cannot go beyond those approved for the permit term without obtaining a revision under section 69-05.2-11-02.
2. Permitted acreage where mining and reclamation operations are not complete shall be successively renewed under section 69-05.2-11-03 until final bond release.
3. A term for a fixed period greater than five years may be approved if:
  - a. The applicant needs a specified longer term and a larger permit area to make the showing necessary to obtain financing for equipment and opening the operation, and this need is verified, in writing, by the applicant's proposed financing source; and
  - b. The application is accurate and complete for the specified longer term.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-12

## CHAPTER 69-05.2-08

### 69-05.2-08-01. Permit applications - Permit area - Environmental resources information.

1. Each application must include a description of the premining environmental resources of the permit and adjacent areas that may be affected by mining.
2. When the permit area contains a logical pit sequence where the coal removal area is larger than that needed for the initial five-year term, the applicant shall identify the size, sequence, and timing of mining individual coal removal subareas.
3. Lands in the application must be described by metes and bounds or standard government land survey descriptions, except that government lots must be described only by metes and bounds.
- ~~4. The application must contain a 1:24,000 planimetric map showing:
  - ~~a. The boundaries of the extended mining plan area.~~
  - ~~b. The area being considered for permit.~~
  - ~~c. The boundaries of previously permitted areas.~~~~

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

### 69-05.2-08-02. Permit applications - Permit area - General map requirements.

1. The application must include a 1:4,800 planimetric mine map, together with as many separate detail maps as necessary, to show:
  - ~~1.~~ a. Land boundaries and names of present surface and subsurface owners of record in the permit area and contiguous lands extending one-fourth mile [402.23 meters] from the permit boundary.
  - ~~2.~~ b. The scale, date, location, company name, legal subdivision boundaries, and legend.
  - ~~3.~~ c. The exact area being considered for permit.

- ~~4.~~ d. The locations and elevations of drill holes used for collecting geologic, ground water, and overburden information.
  - ~~5.~~ e. The location and current use of all buildings on and within one-half mile [804.67 meters] of the permit area.
  - ~~6.~~ f. The location of surface and subsurface manmade features within, passing through, or passing over the permit area, including major electric transmission lines, pipelines, agricultural drainage tile fields, wells, roads, highways, and railroads.
  - ~~7.~~ g. Each public road in or within one hundred feet [30.48 meters] of the permit area.
  - ~~8.~~ h. Each public or private cemetery or ~~Indian~~ native American burial ground in or within one hundred feet [30.48 meters] of the permit area.
  - ~~9.~~ i. Elevations and locations of monitoring stations used to gather environmental resource data for water quality and quantity, fish and wildlife, and air quality.
  - ~~10.~~ j. Location and extent of known underground mines, including openings to the surface within the permit and adjacent areas.
  - ~~11.~~ k. Location and extent of existing or previously surface-mined areas within the permit and adjacent area.
  - ~~12.~~ l. Location and dimensions of existing areas of spoil, coal and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the permit area.
  - ~~13.~~ m. Location, and depth if available, of gas and oil wells within the permit area.
  - ~~14.~~ n. The boundaries of any public park within or adjacent to the permit area.
2. The application must contain a 1:24,000 planimetric map showing:
    - a. The boundaries of the extended mining plan area.
    - b. The area being considered for permit.
    - c. The boundaries of previously permitted areas.
  3. The application must include:

- a. Five-foot [1.52-meter] contour interval topographic maps of the permit area.
- b. An area slope map showing three percent intervals, unless otherwise approved by the commission.

History: Effective August 1, 1980; amended effective May 1, 1990; January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-08-10. Permit applications - Permit area - Soil resources information. The applicant shall submit a soil survey for the permit area consisting of a map and report prepared by a soil classifier as defined in subsection 28 of North Dakota Century Code section 38-14.1-02.

1. The map must be at a 1:4,800 scale and show:
  - a. The location and the vertical and lateral (areal) extent of the suitable plant growth material (topsoil) within the permit area that is considered best for topdressing the area to be reclaimed. Suitable plant growth material considered best for topdressing is based upon an electrical conductivity of less than two millimhos per centimeter ( $EC \times 10^3$ ), a sodium adsorption ratio of less than four (exchangeable sodium percentage of less than five), a free lime percentage (calcium carbonate equivalent) of less than ten on medium to fine textured soils, and an organic matter percentage of one and one-half or more (unless this organic matter percentage is not available within the permit area). The topsoil is normally made up of the dark-colored surface horizon materials. Suitable plant growth material considered best for topdressing is the noncalcareous surface horizon material that is dark colored due to organic staining, has an electrical conductivity of less than two millimhos per centimeter ( $EC \times 10^3$ ), a sodium adsorption ratio of less than four (exchangeable sodium percentage of less than five) and an organic matter percentage of one or more.
  - b. The location and the vertical and lateral (areal) extent of the remaining suitable plant growth material (subsoil) within the permit area, based on electrical conductivity of the saturation extract of less than four millimhos per centimeter ( $EC \times 10^3$ ), and sodium adsorption ratios of less than ten (exchangeable sodium percentage of less than twelve).
  - c. The location of any prime farmlands identified under section 69-05.2-08-09.

2. The report must contain:
  - a. The results of any chemical and physical analyses made to determine the properties of the suitable plant growth material. Textural analyses must be included for all samples taken.
  - b. The description, classification, and interpretation for use of the soils and suitable plant growth material in the permit area.
3. Laboratory analyses must be made by the methods and procedures in United States department of agriculture handbook 60, Diagnosis and Improvement of Saline and Alkali Soils, by the United States salinity laboratory staff, United States government printing office, Washington, D. C., or by other methods and procedures approved in writing by the commission.
4. Prior to a soil classifier beginning work on the required soil survey, a meeting of the soil classifier, the operator, if the operator so desires, and the commission staff will be held for the purpose of discussing proposed techniques, procedures for sampling and analyses, and the area to be surveyed.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-08-12. Permit applications - Permit area - Topographic data. ~~The applicant shall submit:~~

- ~~1. Five foot {1.52 meter} contour interval topographic maps of the permit area.~~
- ~~2. An area slope map showing three percent intervals, unless otherwise approved by the commission. Repealed effective January 1, 1993.~~

History: ~~Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.~~

General Authority: ~~NDCC 38-14.1-03~~

Law Implemented: ~~NDCC 38-14.1-14, 38-14.1-15~~

## CHAPTER 69-05.2-09

69-05.2-09-09. Permit applications - Operation plans - Surface water management - Ponds, impoundments, banks, dams, embankments, and diversions.

1. Each application must include a surface water management plan describing each water management structure intended to meet the requirements of chapter 69-05.2-16. Each plan must:
  - a. Delineate the watershed boundaries within the permit and adjacent areas.
  - b. Identify by watershed and delineate each mining activity along with an estimate of the affected area associated with each disturbance type.
  - c. Identify the locations of ponds or water impoundments, whether temporary or permanent, and include a plan containing:
    - (1) The purpose of the structure.
    - (2) The name and size in acres [hectares] of the watershed affecting the structure.
    - (3) The runoff and peak discharge rates attributable to the storm or storms for which the structure is designed, including supporting calculations. The plan should specify baseflow if appropriate.
    - (4) The estimated sediment yield of the contributing watershed, calculated according to subsection 2 of section 69-05.2-16-09, and sediment storage capacity of the structure.
    - (5) Proposed structure operations and maintenance.
    - (6) Preliminary plan view and cross section of the structure, to an appropriate scale, including anticipated spillway types and relative locations.
    - (7) A certificate and schedule of dates that detailed design plans, as required in subsection 2, will be submitted to the commission, provided that:
      - (a) Detailed design plans for structures scheduled for construction within the first year of the permit term must be submitted with the application.

(b) Detailed design plans for a structure must be approved by the commission prior to construction.

(8) Other preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure.

d. Identify the location of all proposed diversions along with detailed design specifications, including maps, cross sections, and longitudinal profiles which illustrate existing ground surface and proposed grade of all stream channel diversions and other diversions to be constructed within the permit area to achieve compliance with sections 69-05.2-16-06 and 69-05.2-16-07.

e. Include a schedule of the approximate construction dates for each structure and, if appropriate, a timetable and plans to remove each structure.

f. Identify the location of proposed temporary coal processing waste disposal areas, along with design specifications to meet the requirements in section 69-05.2-19-03.

g. Identify the location of proposed coal processing waste dams and embankments along with design specifications to meet the requirements in chapter 69-05.2-20. The plan must include the results of a geotechnical investigation of each proposed coal dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment and the impounded material. The geotechnical investigation must be planned and supervised by an engineer or engineering geologist, as follows:

(1) Determine the number, location, and depth of borings and test pits using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(2) Consider the character of the overburden, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site.

(3) Identify springs, seepage, and ground water flow observed or anticipated during wet periods in the proposed dam or embankment area.

- (4) Consider the possibility of mudflows or other landslides into the dam, embankment, or impounded material.
  - h. Include a statement that the plan has been prepared by, or under the direction of, and certified by a qualified registered professional engineer or qualified registered land surveyor experienced in the design of impoundments. The plans must be certified as meeting the requirements of this article using current, prudent engineering practices and any design requirements established by the commission.
2. The application must contain detailed design plans for each structure identified in subdivision c of subsection 1. These plans must:
- a. Meet all applicable requirements of sections 69-05.2-16-08, 69-05.2-16-09, 69-05.2-16-10, and 69-05.2-16-12.
  - b. Provide, at an appropriate scale, detailed dimensional drawings of the impounding structure including a plan view and cross sections of the length and width of the impounding structure, showing all zones, foundation improvements, drainage provisions, spillways, outlets, instrument locations, and slope protection. The plans must also show the measurement of the minimum vertical distance between the crest of the impounding structure and the reservoir surface at present and under design storm conditions, sediment or slurry level, water level, and other pertinent information.
  - c. Include graphs showing elevation - area - capacity curves to the top of the embankment.
  - d. Describe the spillway features and include stage discharge curves and calculations used in their determination.
  - e. Include the computed minimum safety factor range for the slope stability of each impounding structure which meets or exceeds the criteria of subsection 17 of section 69-05.2-16-09.
  - f. Demonstrate that detention time criteria of section 69-05.2-16-09 can be met, if applicable.
  - g. Describe any geotechnical investigations, design, and construction requirements of the structure including compaction procedures and testing.
  - h. Include additional information as necessary to enable the commission to completely evaluate the structure.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990; May 1, 1992; January 1, 1993.  
General Authority: NDCC 38-14.1-03  
Law Implemented: NDCC 38-14.1-14

69-05.2-09-10. Permit applications - Operation plans - Surface mining near underground mining. The application must ~~describe~~ contain a description of measures needed to comply with section 69-05.2-13-06 if mining activities will occur within five hundred feet [152.04 meters] of an underground mine.

History: Effective August 1, 1980; amended effective May 1, 1990; January 1, 1993.  
General Authority: NDCC 38-14.1-03  
Law Implemented: NDCC 38-14.1-14

69-05.2-09-11. Permit applications - Reclamation plans - General requirements. Each application must contain a reclamation plan for affected lands, showing how the applicant will comply with chapters 69-05.2-13 through 69-05.2-26. The plan must, at a minimum, include:

1. A discussion of how the scheduling of each reclamation phase meets the requirements for contemporaneous reclamation in subsection 14 of North Dakota Century Code section 38-14.1-24 and section 69-05.2-21-01.
2. A detailed reclamation cost estimate and supporting calculations.
3. Postmining topographic and area slope maps drawn to the specifications in subsection 3 of section 69-05.2-08-12 ~~69-05.2-08-12~~ 69-05.2-08-02, and a plan for backfilling, soil stabilization, compacting, and grading. The plan must provide cross sections and volumetric calculations or other information to show the final topography can be achieved.
4. A plan for the removal, reshaping, and final reclamation of each facility identified and discussed in this chapter.
5. A plan for the removal, storage, and redistribution of suitable plant growth material and other suitable strata to meet the requirements of chapter 69-05.2-15. This plan must provide the volumes, by ownership, of topsoil and subsoil available in all areas to be disturbed. These volumes must be determined from the soil survey required by section 69-05.2-08-10.
6. A revegetation plan to meet the requirements of chapter 69-05.2-22. The plan must include:
  - a. A revegetation schedule.

- b. Seed and seedling species and amounts per acre [0.40 hectare].
  - c. Planting and seeding methods.
  - d. Mulching techniques.
  - e. Irrigation, if appropriate, and any pest and disease control measures.
  - f. General management plans until final bond release.
  - g. Methods to determine the success of revegetation required in section 69-05.2-22-07.
  - h. ~~Soil~~ A soil testing plan for evaluating the results of suitable plant growth material handling and reclamation procedures related to revegetation.
7. Measures to ensure that all debris, toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with sections 69-05.2-19-04 and 69-05.2-21-03 and a description of the contingency plans developed to preclude their sustained combustion.
  8. A description, including appropriate cross sections and maps, of measures to manage mine openings, and to plug, case, or manage exploration holes, other boreholes, wells, and other openings within the permit area, under chapter 69-05.2-14.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-09-17. Permit applications - Operation and reclamation plans - Fish and wildlife resources protection and enhancement plan.

1. Each application must include a plan of how, to the extent possible using the best technology currently available, the operator will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during surface coal mining and reclamation operations, and how enhancement of these resources will be achieved where practicable. The plan must:
  - a. Be consistent with the requirements of section 69-05.2-13-08.
  - b. Apply, at a minimum, to species and habitats identified under section 69-05.2-08-15.

- c. Include protective measures that will be used during active mining. The measures may include establishment of buffer zones, selective location and special design of haul roads and powerlines, and monitoring of surface water quality and quantity.
  - d. Include enhancement measures that will be used during the reclamation phase to develop aquatic and terrestrial habitat. The measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and replacement of perches and nest boxes. If the plan does not include enhancement measures, a statement must be given explaining why enhancement is not practicable.
  - e. Include monitoring of selected indicator species to assess surface mining effects on fish and wildlife resources. The applicant shall consult with the commission and state game and fish department before selecting the indicator species.
2. Within ten days of the request, the commission will provide the plan to the United States department of the interior, fish and wildlife service regional or field office for their review.
  - ~~3. The applicant shall report management plan results and data derived from the monitoring plan for the calendar year to the commission by each February fifteenth.~~

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992; January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14, 38-14.1-24

## CHAPTER 69-05.2-11

### 69-05.2-11-01. Review of approved permits.

1. The commission will review each permit at midterm or every five years, whichever is more frequent.
2. After permit review, the commission may require reasonable revision or modification to ensure compliance with North Dakota Century Code chapter 38-14.1 and this article.
3. Copies of the commission's decision will be sent to the permittee.
4. Any required permit revision or modification is subject to review under North Dakota Century Code sections 38-14.1-30 and 38-14.1-35.
5. The commission will review under chapter 69-05.2-32 any permit it has reason to believe was improvidently issued.

**History:** Effective August 1, 1980; amended effective May 1, 1990; January 1, 1993.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-23

### 69-05.2-11-02. Permit revisions.

1. A permit revision is required:
  - a. For changes from mining or reclamation methods approved in the permit.
  - b. For new operations not specified and approved in the existing permit.
  - c. When a new coal removal subarea of the existing permit area is proposed to be disturbed in accordance with the timing and sequence approved in the permit. The revision is considered a significant alteration to the mining and reclamation plan.
  - d. For acreage changes proposed to add or delete lands to or from an existing permit area under subsection 2 or 6.
  - e. When required under section 69-05.2-11-01.
  - f. In order to continue operation after the cancellation or material reduction of the liability insurance policy,

performance bond, or other equivalent guarantee upon which the original permit was issued.

- g. When an extension is requested under subsection 3 of North Dakota Century Code section 38-14.1-12.
2. A permittee may request additional acreage [hectarage] if the commission considers the addition an incidental boundary change to the original permit area. This acreage [hectarage] will have the same term as the original permit.
3. Revision applications must be filed and approved before the date the permittee expects to change operations or initiate operations not previously approved.
4. A revision application must include:
  - a. A narrative describing the proposed revision.
  - b. Appropriate maps and legal descriptions, cross sections, graphs, construction details, procedures, revised reclamation plans, and other data which affirmatively demonstrate compliance with the applicable provisions of North Dakota Century Code sections 38-14.1-14, 38-14.1-16, and 38-14.1-24 and this article.
5. The commission will review and issue a decision on each revision application according to the following:
  - a. The commission will determine on the basis of the existing permit and the environmental resources of the permit area whether the proposed revision is a significant alteration or addition to the approved operations and reclamation plan. If the proposed revision is significant, the commission will notify the permittee in writing. ~~The application~~ A proposed revision found to be significant is subject to the notice, hearing, and procedural requirements of chapter 69-05.2-10 and North Dakota Century Code sections 38-14.1-18, 38-14.1-19, and 38-14.1-20. Insignificant revisions are not subject to these notice, hearing, and procedural requirements.
  - b. The commission will distribute copies of the application and supporting materials to the appropriate members of the advisory committee. Committee members shall forward their evaluation to the commission within twenty days of receipt.
  - c. The commission will issue a decision on each significant application in accordance with the time periods and procedures in section 69-05.2-05-01. The director of the commission's reclamation division will issue a decision on insignificant applications as soon as practicable.

- d. No revision will be approved unless the permittee affirmatively demonstrates and written findings are made that all of the permit approval standards of subsection 6 of section 69-05.2-10-03, section 69-05.2-10-04, and subsection 3 of North Dakota Century Code section 38-14.1-21 are met.
6. A permittee may file an application to withdraw any lands previously approved as a part of a permit area, except lands on which operations have commenced. The permittee shall demonstrate and certify that the proposed acreage [hectarage] to be deleted has not been affected by mining activities. Applications to delete undisturbed acreage [hectarage] are not subject to the public notice, procedural, and approval or denial standards of chapter 69-05.2-10 and North Dakota Century Code chapter 38-14.1.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992; January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-23

## CHAPTER 69-05.2-12

### 69-05.2-12-01. Performance bond - General requirements.

1. Permit applicants shall submit an estimate of bond for the entire permit area or that area specified in subsection 5.
2. The commission ~~shall~~ will review the estimated bond amount, approve or modify the required amount and notify the applicant.
3. Liability on the bond ~~shall~~ must cover all surface coal mining and reclamation operations to be conducted within the legally described area attached to the bond.
4. The applicant may file either the entire bond for the permit term or an incremental bond schedule and bond required for the first scheduled increment. Increments must be of sufficient size and configuration to provide for efficient reclamation operations should reclamation by the regulatory authority become necessary under section 69-05.2-12-18.
5. When the permittee elects to increment the amount of the bond, the permittee shall:
  - a. Furnish a legal description of each incremental area.
  - b. Furnish a schedule when each increment will require bond.
  - c. Furnish with the application the estimated costs for the commission to complete the reclamation plan for the initial increment.
  - d. Provide the estimated cost to complete the reclamation plan for the next increment at least ninety days prior to the expected starting date of mining.
6. The permittee will be notified of the commission's bond determination within thirty days of receipt of the permittee's reclamation cost estimate for the next bond increment.
7. The permittee shall not disturb ~~any areas within~~ the bond area prior to commission approval of the entire bond or incremental bond covering the area to be affected.
8. Once surface coal mining operations have begun within the bond area, adequate bond coverage must be in effect at all times. Except as provided by subsection 3 of section 69-05.2-12-03, operating without a bond is a violation of a permit condition.

9. The indemnity agreement for a collateral bond or self-bond must be executed according to the following:
  - a. If a corporation or rural electric cooperative:
    - (1) By two officers authorized to sign the agreement by a resolution of the board of directors, a copy of which must be provided; and
    - (2) To the extent the history or assets of a parent organization are relied upon to make the required showings for a collateral bond or self-bond, by every parent organization at any tier.
  - b. If a partnership, each general partner and each parent organization or principal investor. "Principal investor" or "parent organization" means anyone with a ten percent or more beneficial ownership interest, directly or indirectly, in the applicant.
  - c. If married, the permit applicant's spouse, if directly involved as part of the business on a regular basis or as an officer of the organization.
10. The name of each person who signs the indemnity agreement must be typed or printed beneath the signature. The agreement is binding jointly and severally on all who execute it.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988; May 1, 1992; January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

69-05.2-12-05.1. Performance bond - Self-bond of permit applicant.

1. The commission may accept a self-bond if the following conditions are met:
  - a. The applicant designates an agent for service of process in the state.
  - b. The applicant has been in continuous operation as a business entity the five years preceding the application. The commission may allow a joint venture with less than five years of continuous operation if each member has been in continuous operation for the five years preceding the application.
  - c. The applicant submits financial information in sufficient detail to show one of the following:

- (1) The applicant has a current Moody's investors service or Standard and Poor's rating for its most recent bond issuance of "A" or higher.
- (2) The applicant has a tangible net worth of at least ten million dollars, a ratio of total liabilities to net worth of 2.5 or less, and a ratio of current assets to current liabilities of 1.2 or greater.
- (3) The applicant's fixed assets in the United States total at least twenty million dollars and the applicant has a ratio of total liabilities to net worth of 2.5 or less, and a ratio of current assets to current liabilities of 1.2 or greater.

d. The applicant submits:

- (1) Financial statements for the last complete fiscal year audited by an independent certified public accountant, and a report containing the accountant's audit opinion or review opinion of the financial statements with no adverse opinion; and
- (2) Financial statements for completed quarters in the current fiscal year and additional information requested by the commission.

e. "Tangible net worth" means net worth less intangibles.

2. The commission may accept a written guarantee for an applicant's self-bond from any third-party guarantor, whenever the applicant meets the provisions of subdivisions a, b, and d of subsection 1 and the guarantor meets the provisions of subdivisions a, b, c, and d of subsection 1. The commission may require the applicant to submit information pertaining to the provisions of subdivision c of subsection 1 in order to determine the financial capabilities of the applicant. The written guarantee must provide that:

- a. If the applicant fails to complete the reclamation plan, the guarantor shall do so or the guarantor shall be liable under the indemnity agreement to provide to the commission funds, up to the bond amount, sufficient to complete the reclamation plan.
- b. The guarantee ~~shall~~ must remain in force unless the guarantor sends notice of cancellation by certified mail to the applicant and to the commission at least ninety days in advance of the cancellation date, and the commission accepts the cancellation.
- c. The cancellation may be accepted by the commission if the applicant obtains suitable replacement bond before the

cancellation or if the covered lands have not been disturbed.

3. The total amount of the outstanding and proposed self-bonds for surface coal mining and reclamation operations may not exceed twenty-five percent of the applicant's or third-party guarantor's tangible net worth in the United States.
4. If the commission accepts a self-bond, an indemnity agreement executed by the applicant and any third-party guarantor must be submitted subject to the following:
  - a. The indemnity agreement is executed according to subsections 9 and 10 of section 69-05.2-12-01.
  - b. An affidavit is submitted certifying that such an agreement is valid under all applicable federal and state laws.
  - c. The guarantor provides a copy of the corporate authorization demonstrating that it may guarantee the self-bond and execute the indemnity agreement.
  - d. In the event of forfeiture, the applicant or third-party guarantor will complete the approved reclamation plan for the land in default or pay to the commission an amount necessary to complete the approved reclamation plan, not to exceed the bond amount.
5. Self-bonded permittees and third-party guarantors shall submit an update of the information required under subdivisions c and d of subsection 1 within ninety days after the close of their fiscal years.
6. If the financial conditions of the permittee or the third-party guarantor change so that the criteria of this section are not satisfied, the permittee shall notify the commission immediately and post an alternate bond in the same amount as the self-bond. If substitution is not made within thirty days, the commission may suspend the permit. If substitution is not made within ninety days, the commission shall suspend the permit and the operator shall cease surface mining activities and comply with section 69-05.2-13-11.

History: Effective May 1, 1988; amended effective January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

69-05.2-12-06. Performance bond - Replacement of bonds.

1. The commission may allow permittees to replace one form of bond with another, if the liability is transferred to the replacement bonds.
2. Bonds ~~shall~~ must remain in effect until the commission has approved replacement bonds.
3. Bond replacement is not a release of bond.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988; January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

69-05.2-12-07. Performance bond - Determination of bond amount.

1. The amount of bond required is the estimated cost for the commission to perform the reclamation, restoration, and abatement work required.
2. The amount of bond required for each bonded area ~~shall~~ will:
  - a. Be determined by the commission;
  - b. Depend upon the requirements of the approved permit and reclamation plan;
  - c. Reflect the probable difficulty of reclamation considering topography, geology, hydrology, and revegetation potential; and
  - d. Consider the estimated cost submitted by the permit applicant.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988; January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

69-05.2-12-08. Performance bond - Adjustment of amount.

1. The commission ~~shall~~ will review each bond consistent with section 69-05.2-11-01 or more frequently and notify the permittee of any proposed bond adjustment.
2. The commission ~~shall~~ will reevaluate bonds with the standards in section 69-05.2-12-07.
3. If the commission determines a bond adjustment is required, the permittee is entitled to an informal conference on the

adjustment under chapter 69-05.2-10 and North Dakota Century Code section 38-14.1-19.

4. A permittee may request reduction of the required bond amount upon submission of evidence showing the permittee's operations or other circumstances will reduce the maximum estimated cost for the commission to complete reclamation. Bond reductions which involve undisturbed land or revision of the cost estimate of reclamation are not bond releases. A request for reduction in bond for reclamation work performed on disturbed areas is a request for bond release.

History: Effective August 1, 1980; amended effective May 1, 1988; January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

69-05.2-12-11. Release of performance bond - Criteria for bond release.

1. The commission ~~shall~~ will not release any bond liability if the release would reduce the total remaining liability to less than that necessary for the commission to complete the required reclamation.
2. Release of bond for any combination of release stages identified in subsection 7 of North Dakota Century Code section 38-14.1-17 requires compliance with the reclamation standards established for each individual bond release stage.

History: Effective August 1, 1980; amended effective May 1, 1988; January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-17

69-05.2-12-12. Release of performance bond - Bond release application.

1. The permittee may request the commission release all or part of a bond for lands disturbed after July 1, 1975, as follows:
  - a. For lands disturbed between July 1, 1975, and June 30, 1979, the application ~~shall~~ must comply with subsection 1 of North Dakota Century Code section 38-14.1-17 and subsections 3 and 4 of this section. The criteria for release of all or part of the bond ~~shall~~ will be according to the reclamation requirements in effect at the time of the disturbance.

- b. For lands disturbed after June 30, 1979, the application ~~shall~~ must comply with the requirements of this section and section 69-05.2-12-11.
2. The permittee may file bond release applications only at times and seasons that allow the commission to properly evaluate the completed reclamation operations.
  3. Within thirty days after filing a request for bond release, the permittee shall submit proof of the publication required by North Dakota Century Code section 38-14.1-17. The advertisement published must include the permittee's name.
  4. Lands for which the permittee requests bond release ~~shall~~ must be legally described and delineated on maps of the permit area.
  5. When the permittee requests a partial release of bond after regrading under subdivision a of subsection 7 of North Dakota Century Code section 38-14.1-17, the application ~~shall~~ must, unless waived by the commission, include surface profiles or topographic maps in accordance with section 69-05.2-21-06.
  6. When the permittee requests a partial release of bond after respreading suitable plant growth material under subdivision b of subsection 7 of North Dakota Century Code section 38-14.1-17, the application ~~shall~~ must include the thickness of the respread first lift and second lift suitable plant growth materials.
  7. When the permittee requests a partial release of bond after vegetation has been established under subdivision c of subsection 7 of North Dakota Century Code section 38-14.1-17, the application ~~shall~~ must include:
    - a. The data collected, analyses conducted, and a narrative demonstrating vegetation establishment as required by subsection 3 of section 69-05.2-22-07.
    - b. Documentation that the lands to which the release would be applicable are not contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by section 69-05.2-16-04.
    - c. A discussion of how the provisions of a plan approved by the commission for the sound future management of any permanent impoundment by the permittee or landowner have been implemented.
  8. When the permittee requests final bond release under subdivision d of subsection 7 of North Dakota Century Code section 38-14.1-17, the application ~~shall~~ must include:

- a. The data collected, analyses conducted, and a narrative detailing compliance with subsection 4 of section 69-05.2-22-07.
  - b. The history of initial and subsequent seedings and fertilization (including mixtures and rates), appropriate soil tests, supplemental irrigation, or other management practices employed.
  - c. Documentation showing the reestablishment of essential hydrologic functions of alluvial valley floors.
9. When the permittee requests release of bond for any combination of release stages detailed in subsection 7 of North Dakota Century Code section 38-14.1-17, the application ~~shall~~ must contain all the information required at each bond release stage.
  10. Requests for a reduction in bond amount for reclamation work performed according to subsection 4 of section 69-05.2-12-08 must include a detailed description of the work performed and a new reclamation cost estimate.
  11. The commission may request any additional information necessary to evaluate the bond release application.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988; May 1, 1992; January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-17

69-05.2-12-14. Release of performance bond - Commission inspection - Time of release.

1. The surface owner, agent, or lessee will be notified by the commission of the bond release inspection and may participate in the inspection. If requested by a person with an interest in the bond release, the commission may arrange with the permittee access to the permit area for that person to gather relevant information within the time specified by subsection 3 of North Dakota Century Code section 38-14.1-17.
2. The commission ~~shall~~ will not release bond until the time to request a formal hearing has expired, or the commission has issued a final decision after a formal hearing.

History: Effective August 1, 1980; amended effective May 1, 1988; January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-17

69-05.2-12-16. Forfeiture of performance bond - Procedures. If forfeiture of the bond is required by section 69-05.2-12-18, the commission ~~shall~~ will:

1. Send notice by certified mail to the permittee and any surety of the commission's final decision to require forfeiture of the bond, the reasons for forfeiture, and the amount to be forfeited.
2. Advise the permittee and any surety of the permittee's right to request judicial review under North Dakota Century Code section 38-14.1-35.
3. Proceed to collect on the bond.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988; January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16, 38-14.1-30, 38-14.1-33, 38-14.1-35

CHAPTER 69-05.2-13

69-05.2-13-06. Performance standards - General requirements - Avoidance of underground mine areas. ~~No surface~~ Surface coal mining activities ~~shall~~ may not be conducted closer than five hundred feet [152.40 meters] of an underground mine, unless the activities result in improved resource recovery, abatement of water pollution, or elimination of hazards to public health and safety.

History: Effective August 1, 1980; amended effective May 1, 1990; January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-13-08. Performance standards - General requirements - Protection of fish, wildlife, and related environmental values.

1. The permittee shall affirmatively demonstrate how protection and enhancement of fish and wildlife resources will be achieved where practicable on the basis of information gathered and management plans developed under sections 69-05.2-08-15 and 69-05.2-09-17. The applicant shall report management plan results and data derived from the monitoring plan for the calendar year to the commission by each February fifteenth.
2. No surface mining activity may be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the secretary of the United States department of the interior or which is likely to result in the destruction or adverse modification of designated critical habitats of those species in violation of the Endangered Species Act of 1973, as amended [16 U.S.C. 1531 et seq.]. The permittee shall promptly report to the commission the presence in the permit area of any state-listed or federally listed endangered or threatened species of which the permittee becomes aware. Upon notification, the commission will consult the United States fish and wildlife service, the state game and fish department, and the operator, and then decide whether, and under what conditions, the operator may proceed.
3. The permittee shall promptly report to the commission the presence in the permit area of any bald or golden eagle, or bald or golden eagle nest or eggs, of which the permittee becomes aware. Upon notification, the commission will perform the consultation and decision process specified in subsection 2.
4. The permittee shall ensure that the design and construction of electric powerlines and other transmission facilities used for

or incidental to activities on the permit area follow the guidelines in Environmental Criteria for Electric Transmission Systems (United States department of the interior, United States department of agriculture (1970)), or in alternative guidance manuals approved by the commission. Design and construction of distribution lines must follow REA bulletin 61-10, Powerline Contacts by Eagles and Other Large Birds, or in alternative guidance manuals approved by the commission.

5. The permittee shall, to the extent possible using the best technology currently available:
  - a. Locate and operate haul and access roads, sedimentation ponds, diversions, stockpiles, and other structures to avoid or minimize impacts to important fish and wildlife species and their habitats and to other species protected by state or federal law.
  - b. Create no new barrier in known and important wildlife migration routes.
  - c. Fence, cover, or use other appropriate methods to exclude wildlife from ponds containing hazardous concentrations of toxic-forming materials.
  - d. Reclaim, enhance where practicable, or avoid disturbance to habitats of unusually high value for fish and wildlife.
  - e. Reclaim, enhance where practicable, or maintain natural riparian vegetation on the banks of streams, lakes, and other wetland areas.
  - f. Afford protection to aquatic communities by avoiding stream channels as required in section 69-05.2-16-20 or reclaiming stream channels as required in section 69-05.2-16-07.
  - g. Not use pesticides in the area during surface mining and reclamation activities, unless specified in the operation and reclamation plan or approved by the commission on a case-by-case basis.
  - h. To the extent possible prevent, control, and suppress range, forest, and coal fires not approved by the commission as part of a management plan.
  - i. If fish and wildlife habitat is to be a primary or secondary postmining land use, the operator shall in addition to the requirements of chapter 69-05.2-22:
    - (1) Select plant species to be used on reclaimed areas, based on the following criteria:

- (a) Their proven nutritional value for fish and wildlife.
  - (b) Their uses as cover for fish and wildlife.
  - (c) Their ability to support and enhance fish and wildlife habitat after bond release.
- (2) Distribute plant groupings to maximize benefits to fish and wildlife. Plants should be grouped and distributed in a manner which optimizes edge effect, cover, and other benefits for fish and wildlife.
- j. Where cropland is to be the postmining land use and where appropriate for wildlife and surface owner crop management practices, intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals. Wetlands must be preserved when feasible or recreated consistent with the reclamation plan and the postmining land use.
- k. Where the primary land use is to be residential, public service, or industrial, intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for birds and small animals, unless the greenbelts are inconsistent with the approved postmining land use.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992; January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

CHAPTER 69-05.2-14

69-05.2-14-02. Performance standards - Casing and sealing of drilled holes - Temporary. Each drill hole or borehole identified in the approved permit application to be used to monitor ground water conditions shall be temporarily sealed before use and protected during use by barricades, or fences, or other protective devices approved by the commission. These devices ~~shall~~ must be periodically inspected and maintained in good operating condition by the permittee or operator.

History: Effective August 1, 1980; amended effective January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

## CHAPTER 69-05.2-15

### 69-05.2-15-02. Performance standards - Suitable plant growth material - Removal.

1. Timing. Suitable plant growth material must be removed after vegetative cover that would interfere with its use is cleared from the areas to be disturbed. To prevent suitable plant growth materials from becoming contaminated by other materials, all suitable plant growth materials to be saved must be separately removed and segregated as required by subsection 2 prior to any further surface disturbance.
2. Materials to be removed and saved.
  - a. The suitable plant growth materials, commonly referred to as topsoil (first lift suitable plant growth material) and subsoil (second lift suitable plant growth material) as identified by the soil survey required by section 69-05.2-08-10 must be removed and segregated in two separate operations, unless otherwise approved by the commission. ~~The removal and segregation of subsoil from an area must not begin until the topsoil removal operation for that area has been completed and approved by the commission.~~ The topsoil removal operation for an area must be completed and approved by the commission before subsoil removal begins or before any other disturbances occur in that area. If use of other suitable strata is approved as a supplement to suitable plant growth material, all such materials to be saved must be removed and segregated. Further disturbances which significantly alter an area must not begin until the subsoil ~~or~~ and other suitable strata removal operations for that area have been completed and approved by the commission.
  - b. (1) All topsoil must be removed from all areas to be disturbed, except in situations as provided by subsection 4.  
  
(2) Sufficient subsoil must be removed from all areas to be disturbed to satisfy the redistribution requirements of subsection 4 of section 69-05.2-15-04.
3. Materials to be removed in shallow suitable plant growth material situations. If the thickness of suitable plant growth materials averages less than six inches [15.24 centimeters], the commission may specify other suitable strata to be removed and treated as suitable plant growth material.

4. Suitable plant growth material removal will not be required for minor disturbances which occur at the site of small structures, such as power poles, signs, or fence lines.
5. Suitable plant growth material supplements and substitutes.
  - a. Topsoil supplements. Selected subsoil or other suitable strata may be used as a supplement to topsoil if the permittee or operator demonstrates that the resulting soil medium is equal to or more suitable for sustaining vegetation than the available topsoil. This demonstration must include the vertical and areal extent of supplemental materials and determinations of pH, electrical conductivity, sodium adsorption ratio, percent coarse fragments, percent organic matter, texture, and other chemical or physical analyses as required by the commission. The operator may be required by the commission to include the results of any field trials or greenhouse tests to demonstrate the feasibility of using a mixture of such materials. The permittee or operator shall also demonstrate that the resulting medium is the best available soil medium in the permit area to support revegetation.
  - b. Subsoil supplements. The permittee or operator may be required to use other suitable strata to supplement subsoil materials if the commission determines additional suitable materials for spreading over affected areas are necessary to meet the redistribution requirements of subdivision a of subsection 4 of section 69-05.2-15-04, provided other suitable strata are available. Samples of the strata to be saved must be taken at sufficient locations to determine the areal extent of the suitable strata. The sampling locations must be approved by the commission. Chemical and physical analyses of the samples taken must include pH, electrical conductivity, sodium adsorption ratio, and textural analysis as required by the commission.
  - c. Subsoil substitutes. Selected overburden materials may be substituted for subsoil if the operator demonstrates to the commission that the resulting soil medium is equal to or more suitable than the available subsoil for sustaining vegetation. Overburden sampling and chemical and physical analyses must be provided by the operator as required by the commission.
  - d. Supplemental and substitute materials must be removed, segregated, and redistributed according to the applicable requirements for suitable plant growth material in this chapter.

History: Effective August 1, 1980; amended effective June 1, 1983;  
January 1, 1987; May 1, 1990; January 1, 1993.  
General Authority: NDCC 38-14.1-03  
Law Implemented: NDCC 38-14.1-24

CHAPTER 69-05.2-16

69-05.2-16-04. Performance standards - Hydrologic balance - Water quality standards and effluent limitations.

1. The operator shall comply with the following water quality standards and effluent limitations:
  - a. All surface drainage from the disturbed area, including disturbed areas that have been graded, seeded, or planted, must be passed through a sedimentation pond, a series of sedimentation ponds, or other treatment facility before leaving the permit area.
  - b. Sedimentation ponds and other treatment facilities must be maintained until removal is authorized by the commission and the disturbed area has been stabilized and revegetated. The structure may not be removed sooner than two years after the last augmented seeding unless the last augmented seeding is a supplemental seeding into an established vegetation stand that is effectively controlling erosion.
  - c. The commission may grant exemptions from these requirements only when:
    - (1) The disturbed drainage area within the total disturbed area is small; and
    - (2) The permittee or operator demonstrates that sedimentation ponds and treatment facilities are not necessary for drainage from the disturbed drainage areas to meet the effluent limitations referenced in subdivision g and the applicable state water quality standards for downstream receiving waters.
  - d. For the purposes of this chapter only, "disturbed area" shall not include areas in which only diversion ditches, sedimentation ponds, or roads are installed in accordance with this article and the upstream area is not otherwise disturbed by the operator.
  - e. Sedimentation ponds must be constructed according to the plans in the approved permit before beginning surface mining activities in the drainage area to be affected.
  - f. Mixed drainage from disturbed and undisturbed land must meet effluent limitations before it leaves the permit area.

- g. Discharges of water from areas disturbed by surface mining activities must comply with all applicable state laws and rules and with the state department of health and consolidated laboratories effluent limitations ~~in~~ authorized by North Dakota Century Code chapter 61-28.
2. Adequate facilities must be installed, operated, and maintained to treat any water discharged from the disturbed area so that it complies with all state laws and rules and the effluent limitations of this section.

History: Effective August 1, 1980; amended effective September 1, 1984; January 1, 1987; May 1, 1990; January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-16-06. Performance standards - Hydrologic balance - Diversion of overland flow. Overland flow, including flow through litter, shallow ground water flow from undisturbed areas, and flow in ephemeral streams, may be diverted from disturbed areas by temporary or permanent diversions, if required or approved by the commission. The following requirements must be met for diversions and collection drains used to transport water into treatment facilities and for diversions of overland and shallow ground water flow and ephemeral streams:

1. Temporary diversions must be constructed to pass safely the peak runoff from a ten-year, twenty-four-hour precipitation event, or a larger event as specified by the commission. A two-year recurrence interval may be used for designing collection drains used to transport water into treatment facilities if:
  - a. The diversion will be used for less than one year; or
  - b. The commission determines that the design integrity of the water management plan is maintained during a ten-year, twenty-four-hour design storm.
2. Permanent diversions must be constructed to pass safely the peak runoff from a ten-year, twenty-four-hour precipitation event; however, where necessary to protect fills and property and to avoid danger to public health and safety, permanent diversions must be constructed to pass safely the peak runoff from a one-hundred year, twenty-four-hour precipitation event, or a larger event as specified by the commission. Permanent diversions must be constructed with gently sloping banks stabilized by vegetation. Asphalt, concrete, or other similar linings ~~must~~ may be used only when approved by the commission to prevent seepage or to provide stability.
3. Diversions must be designed, constructed, and maintained to prevent additional contributions of suspended solids to

streamflow and to runoff outside the permit area to the extent possible using the best technology currently available. Appropriate sediment control measures for these diversions may include maintenance of appropriate gradients, channel lining, revegetation, roughness structures, and detention basins.

4. No diversion shall be located to increase the potential for landslides. No diversion shall be constructed on existing landslides, unless approved by the commission.
5. When no longer needed, each temporary diversion must be removed and the affected land reclaimed. The operator shall reestablish ephemeral stream channels to a longitudinal profile and cross section that approximate premining channel characteristics.
6. Diversion design must incorporate the following:
  - a. Design channel lining using standard engineering practices to pass safely the design velocities.
  - b. Freeboard must be no less than three-tenths of a foot [9.14 centimeters]. Design freeboard may be increased where the area protected is a critical area as determined by the commission.
  - c. Protection for transition of flows and for critical areas such as swales and curves.
  - d. Install energy dissipators when necessary at discharge points, where diversions intersect with natural streams and exit velocity of the diversion ditch flow is greater than that of the receiving stream.
  - e. Dispose of excess excavated material not necessary for diversion channel geometry or channel regrading according to chapter 69-05.2-18.
  - f. Handle suitable plant growth material in compliance with chapter 69-05.2-15.
7. Diversions may not be constructed or operated to divert water into underground mines or an abandoned surface mine without commission approval under section 69-05.2-16-18.

History: Effective August 1, 1980; amended effective May 1, 1990; January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-16-12. Performance standards - Hydrologic balance - Permanent and temporary impoundments.

1. In addition to the standards for permanent impoundments in subsection 7 of North Dakota Century Code section 38-14.1-24, the design, construction, and maintenance of structures in which water is impounded by a dam must utilize the best technology currently available and meet the requirements of subsections 9 through 21 of section 69-05.2-16-09 and the North Dakota Dam Design Handbook.
2. Temporary impoundments in which the water is impounded by a dam must meet the requirements of subsections 9 through 22 of section 69-05.2-16-09.
3. Excavations that will impound water during or after the mining operation must have stable perimeter slopes not steeper than 1v:2h. Slopes must be designed to be stable, even if flatter side slopes are required. Where surface runoff enters the impoundment area, the side slope must be protected against erosion.
4. All dams and embankments must be routinely maintained during mining operations. Vegetative growth ~~shall~~ must be cut where necessary to facilitate inspection and repairs. Ditches and spillways must be cleaned. Any combustible material present on the surface, other than material such as mulch or dry vegetation used for surface stability, must be removed and all other appropriate maintenance procedures followed.
5. If any examination or inspection discloses a potential hazard, the operator shall promptly inform the commission of the findings and the emergency procedures for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the commission must be notified immediately. The commission will then notify the appropriate agencies that other emergency procedures are required to protect the public.

History: Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992; January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

## CHAPTER 69-05.2-22

### 69-05.2-22-07. Performance standards - Revegetation - Standards for success.

1. Success of revegetation must be measured by using statistically valid techniques approved by the commission. Comparison of ground cover and productivity may be made on the basis of reference areas, through the use of standards in technical guides published by the United States department of agriculture, or through the use of other approved standards. If reference areas are used, the management of the reference area during the responsibility period required in subsection 2 must be comparable to that required for the approved postmining land use of the permit area. If standards are used, they must be approved by the commission and the office of surface mining reclamation and enforcement. Approved standards are contained in the commission's Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments.
2. The period of responsibility under the performance bond requirements of section 69-05.2-12-09 will begin following augmented seeding, planting, fertilization, irrigation, or other work, except for cropland and prime farmland where the period of responsibility begins at the date of initial planting of the crop being grown or a precropland mixture of grasses and legumes, and must continue for not less than ten years.
3. Vegetation establishment, for the purpose of the third stage bond release provided for in subdivision c of subsection 7 of North Dakota Century Code section 38-14.1-17, will be determined for each postmining land use according to the following procedures:
  - a. For native grassland, tame pastureland, and fish and wildlife habitat where the vegetation type is grassland, ground cover on the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence. All species used in determining ground cover must be perennial species not detrimental to the approved postmining land use.
  - b. For cropland, vegetation will be considered established after the successful seeding of the crop being grown or a precropland mixture of grasses and legumes.
  - c. For prime farmland, productivity on the permit area must be equal to or greater than that of the approved reference

area or standard with ninety percent statistical confidence.

- d. For woodland, shelterbelts, and fish and wildlife habitat where the vegetation type is woodland, the number of trees and shrubs must be equal to or greater than the approved standard. Understory growth must be controlled. Erosion must be adequately controlled by mulch or site characteristics.
  - e. For fish and wildlife habitat where the vegetation type is wetland, the basin must exhibit the capacity to hold water and support wetland vegetation. Ground cover of the contiguous areas must be adequate to control erosion.
4. The success of revegetation on the permit area at the time of final bond release must be determined for each postmining land use according to the following:
- a. For native grassland, the following must be achieved for the last two consecutive years of the responsibility period:
    - (1) Ground cover and productivity of the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence; and
    - (2) Diversity, seasonality, and permanence of the vegetation of the permit area must be equivalent to that of the approved standard.
  - b. For tame pastureland, ground cover and productivity of the permit area must be equal to or greater than that of the approved standard with ninety percent statistical confidence for the last two consecutive growing seasons of the responsibility period.
  - c. For cropland, crop production from the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence for the last two consecutive growing seasons of the responsibility period.
  - d. For prime farmlands, crop production from the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence for the last three consecutive growing seasons of the responsibility period.
  - e. For woodlands and fish and wildlife habitat where the vegetation type is woodland, the following must be

achieved during the last two consecutive years of the responsibility period:

- (1) The number of woody plants established on the permit area must be equal to or greater than the number of live woody plants of the same life form of the approved standard with ninety percent statistical confidence. Trees, shrubs, half-shrubs, root crowns, or root sprouts used in determining success of stocking must meet the following criteria:
    - (a) Be healthy;
    - (b) Be in place for at least two growing seasons; and
    - (c) At least eighty percent of those counted must have been in place at least six years.
  - (2) The ground cover must be equal to or greater than ninety percent of the ground cover of the approved standard with ninety percent statistical confidence and must be adequate to control erosion; and
  - (3) Species diversity, seasonal variety, and regenerative capacity of the vegetation on the permit area must be evaluated on the basis of species stocked and expected survival and reproduction rates.
- f. For shelterbelts, the following must be achieved during the last two consecutive years of the responsibility period:
- (1) Trees, shrubs, half-shrubs, root crowns, or root sprouts used in determining success of stocking must meet the following criteria:
    - (a) Be healthy;
    - (b) Be in place for at least two growing seasons; and
    - (c) At least eighty percent of those counted must have been in place at least six years.
  - (2) Shelterbelt density and vigor must be equal to or greater than that of the approved standard; and
  - (3) Erosion must be adequately controlled.
- g. For fish and wildlife habitat, where the vegetation type is wetland, vegetation zones and dominant species must be equal to those of the approved standard the last two

consecutive years of the responsibility period. In addition, wetland permanence and water quality must meet approved standards.

- h. For fish and wildlife habitat, where the vegetation type is grassland, the following must be achieved during the last two consecutive years of the responsibility period:
    - (1) Ground cover must be equal to or greater than that of the approved standard with ninety percent statistical confidence and must be adequate to control erosion.
    - (2) Species diversity, seasonal variety, and regenerative capacity of the vegetation must meet the approved standard.
  - i. For previously mined areas that were not reclaimed to the requirements of this chapter, any reclamation requirements in effect when the areas were mined must be met. In addition, the ground cover of living plants may not be less than can be supported by the best available plant growth material in the reaffected area, nor less than the ground cover existing before redisturbance. Adequate measures must be in place to control erosion as approved by the commission.
  - j. For areas to be developed for recreation, water areas, residential, or industrial and commercial uses within two years after the completion of grading or soil replacement, the ground cover of living plants on these areas may not be less than required to control erosion.
5. Throughout the liability period the permittee shall:
- a. Maintain any necessary fences and use proper management practices; and
  - b. Conduct periodic measurements of vegetation, soils, and water prescribed or approved by the commission.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992; January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

CHAPTER 69-05.2-25

69-05.2-25-03. Performance standards - Alluvial valley floors - Monitoring.

1. An environmental monitoring system must be installed, maintained, and operated by the permittee on all alluvial valley floors during operations and continued until all bonds are released. The monitoring system must provide sufficient information to allow the commission to determine that:
  - a. The agricultural utility and production of the alluvial valley floor not within the affected area ~~is~~ are being preserved.
  - b. The potential agricultural utility and production on the alluvial valley floor within the affected area ~~has~~ have been reestablished.
  - c. The important characteristics supporting the essential hydrologic functions of an alluvial valley floor in the affected area have been reestablished.
  - d. The important characteristics supporting the essential hydrologic functions of an alluvial valley floor in areas not affected are preserved during and after mining.
2. Monitoring must be performed at frequencies adequate to indicate long-term trends that could affect agricultural use of the alluvial valley floors.
3. Monitoring must be performed during operations to identify characteristics of the alluvial valley floor not identified in the permit application and to evaluate the importance of all characteristics.
4. All monitoring data and analyses must be submitted to the commission according to the timetable approved in the permit application. Hydrologic monitoring and reporting must comply with sections 69-05.2-16-05 and 69-05.2-16-14.

History: Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992; January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24, 38-14.1-42

69-05.2-25-04. Performance standards - Alluvial valley floors - Protection of farming and water supplies.

1. If environmental monitoring shows that a mining operation is responsible for interrupting, discontinuing, or precluding farming on alluvial valley floors, or is causing material damage to water that supplies alluvial valley floors, the operation must cease until remedial measures are taken by the operator. The remedial measures must be approved by the commission prior to the resumption of mining.
2. If environmental monitoring shows that the mining operation is causing material damage to water that supplies alluvial valley floors, the operation must cease until remedial measures are taken by the operator or permittee. ~~Commission approval of the remedial measures is required before mining may be resumed.~~
- ~~3.~~ Paragraphs 1 and 2 of subdivision e of subsection 3 of North Dakota Century Code section 38-14.1-21 do not apply to lands identified in a reclamation plan approved by the commission prior to July 1, 1979, for any operation that, in the year preceding July 1, 1979:
  - a. Produced coal in commercial quantities and was located within or adjacent to an alluvial valley floor; or
  - b. Obtained specific permit approval to conduct operations within an alluvial valley floor.

History: Effective August 1, 1980; amended effective May 1, 1990; January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21, 38-14.1-24, 38-14.1-28

STAFF COMMENT: Chapter 69-05.2-32 contains all new material but is not underscored so as to improve readability.

CHAPTER 69-05.2-32  
IMPROVIDENTLY ISSUED PERMITS

Section

69-05.2-32-01	Improviently Issued Permits - Review Procedures
69-05.2-32-02	Improviently Issued Permits - Remedial Measures
69-05.2-32-03	Improviently Issued Permits - Recission Procedures

69-05.2-32-01. Improviently issued permits - Review procedures. The commission will review any permit it has reason to believe was improviently issued according to the criteria in this section. The permit was improviently issued if:

1. Under the violations review criteria of the regulatory program at the time the permit was issued:
  - a. The commission should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or:
  - b. The permit was issued on the presumption that a notice of violation was being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order was subsequently issued;
2. The penalty, violation, or fee:
  - a. Remains unabated or delinquent; and
  - b. Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and
3. Where the permittee was linked to the violation, penalty, or fee through ownership or control, under the violations review criteria of the regulatory program at the time the permit was issued an ownership or control link between the permittee and the person responsible for the violation, penalty, or fee still exists, or where the link was severed the permittee continues to be responsible for the violation, penalty, or fee.

History: Effective January 1, 1993.  
General Authority: NDCC 38-14.1-03  
Law Implemented: NDCC 38-14.1-21

69-05.2-32-02. Improvidently issued permits - Remedial measures. In the event of an improvidently issued permit, the commission will employ one or more of the following:

1. Implement, with the cooperation of the permittee or person responsible, and the responsible agency, a plan for abating the violation or a schedule for paying the penalty or fee.
2. Impose a permit condition requiring that in a reasonable period of time the permittee or other person responsible abate the violation or pay the penalty or fee.
3. Suspend the permit until the violation is abated or the penalty or fee is paid.
4. Rescind the permit according to section 69-05.2-32-03.

History: Effective January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21

69-05.2-32-03. Improvidently issued permits - Recission procedures. The commission will serve on the permittee a notice of proposed suspension and recission which includes the reasons for finding that the permit was improvidently issued. The notice will also state that:

1. The permit will automatically be suspended after a specified period of time not to exceed ninety days, and will be rescinded after an additional period of time not to exceed ninety days, unless within those periods the permittee submits proof and the commission finds that:
  - a. The commission finding under section 69-05.2-32-01 was erroneous;
  - b. The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee to the satisfaction of the responsible agency;
  - c. The violation, penalty, or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or
  - d. Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty, or fee.

2. After permit suspension or rescission, the permittee shall cease all surface coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other necessary environmental protection measures.
3. The permittee may file an appeal for administrative review of the notice under North Dakota Century Code section 38-14.1-30.

History: Effective January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21

## CHAPTER 69-09-05

69-09-05-02. Discontinuance of telephone service. telecommunications services. A utility may not discontinue telecommunications services, except as provided in this section.

1. A utility may disconnect service if the customer is delinquent in payment for services rendered. A local exchange telephone company may disconnect local exchange telephone service if the customer is delinquent in toll service provided by the local exchange company. A local exchange telephone company may also disconnect local exchange service if the toll service is delinquent and cannot be disconnected by the toll provider independently of local exchange service or the local exchange company is the billing agent for the toll service provider. However, no discontinue the essential services it provides:
  - a. If the customer is delinquent in payment for essential services, then essential services may be discontinued even though discontinuing the services results in the discontinuance of all telecommunication services.
  - b. If the customer is delinquent in payment for long-distance services rendered by a local exchange company or another company and billed by the local exchange company, but is not delinquent in payment for essential services rendered by the local exchange company, the local exchange company may discontinue the customer's local exchange services only at central offices lacking the technical ability to discontinue long distance services while continuing to provide local exchange services.
2. A utility may discontinue nonessential services:
  - a. If the customer is delinquent in payment for nonessential services.
  - b. If the customer is delinquent in payment for long-distance telecommunications services rendered by another company and billed by the local exchange company, then the local exchange company may deny the customer all forms of access to the network of the telecommunications company to which the customer is delinquent in payment. However, if, due to technical limitations, a local exchange company must also deny the customer all forms of access to the long-distance networks of all telecommunications companies, including its own, in order to deny the customer access to the network of the company to which the customer is delinquent, the local exchange company may do so.

3. A utility may discontinue service to a customer for failure to comply with regulations of the utility on file with the commission pertaining to installation and use of equipment, or for use of equipment which interferes with or adversely affects the service to other customers, provided the customer has first been notified and afforded reasonable opportunity to change or disconnect such equipment.
4. A utility may not discontinue service to a customer for failure of the customer to pay for merchandise purchased from the utility, to pay for a different class of service furnished by the utility, to pay for service rendered to a previous occupant of the premises, or to pay the bill of another customer as guarantor thereof.
5. A utility may not discontinue service to a customer for failure to pay for such service until the utility shall first have given gives the customer notice of its intention to discontinue such service on account of delinquency. The notice must:
  - a. Be sent by first-class mail addressed to the billing name and address of the affected account.
  - b. Show the amount of the delinquency.
  - c. Advise the customer of the customer's rights and remedies, including ~~but not limited to~~ the customer's right to work out a satisfactory deferred installment agreement for delinquent accounts.
  - d. Inform the customer that service will be discontinued if the delinquent account is not paid within ten calendar days from the date of mailing or personal delivery of the notice, or if a satisfactory installment agreement is not made with the utility for payment of the delinquent bill. The utility may discontinue service without further notice if the customer fails to pay the delinquent account by the due date.

**If the customer elects to enter into a**

6. a. A deferred installment agreement for essential services may not be combined with a deferred installment agreement for any other services.
- b. A utility may not discontinue essential services if the utility and the customer make a mutually agreed upon deferred installment agreement for delinquent accounts; service may not be terminated; however, the for essential services. A utility may discontinue service essential services without further notice if the customer fails to pay the delinquent account on or before the date specified

in the notice, or in accordance with the deferred installment agreement.

- c. A utility may not discontinue nonessential services if the utility and the customer make a mutually agreed upon deferred installment agreement for nonessential services. A utility may discontinue nonessential services without further notice if the customer fails to pay the delinquent account in accordance with the deferred installment agreement.
7. The customer ~~shall have the privilege of paying~~ may pay the delinquent account at any time prior to the actual ~~disconnection~~ discontinuance of service.
- ~~2-~~ 8. Whenever service has been ~~disconnected~~ discontinued for nonpayment of a bill, ~~before reconnection is made~~ service must be resumed if the customer ~~shall~~ pay:
- a. Pays the reconnection fee for resuming service established in the utility's rate schedules; make
- b. Makes a deposit pursuant to under section 69-09-05-03 (if all or a part of the previous deposit was used in settlement of the delinquent bill required by the company); and make
- c. Makes a satisfactory settlement for the delinquent bill and for the service rendered to the date the service was disconnected discontinued.

Interexchange carriers are not required to resume long-distance service if local service is not connected.

- ~~3-~~ 9. If the customer disputes the amount of a bill for service, the customer may, to prevent ~~disconnection~~ discontinuance for nonpayment, pay the disputed bill under protest to the utility. Alternatively, the customer may request a formal hearing pursuant to section 69-02-02-02 in which case the utility may not ~~disconnect~~ discontinue service for nonpayment of the disputed bill until a final decision has been issued by the commission. The utility shall immediately give the commission notice of the dispute and the commission may investigate the dispute. The utility shall refund to the customer any part of such payment made under protest found by the commission to be excessive.
- ~~4-~~ A utility may not ~~disconnect service to a customer for failure of the customer: to pay for merchandise purchased from the utility; to pay for a different class of service furnished by the utility; to pay for service rendered to a previous occupant of the premises; or to pay the bill of another customer as guarantor thereof.~~

5. A utility may discontinue service to a customer for failure to comply with regulations of the utility on file with the commission pertaining to installation and use of equipment, or for use of equipment which interferes with or adversely affects the service to other customers, provided the customer has first been notified and afforded reasonable opportunity to change or disconnect such equipment.

10. The commission may order the discontinuance of services where a reseller, operator services provider, or customer owned pay telephone provider violates commission rules. The commission will provide ten days notice of a deficiency or violation and provide an opportunity for the noncomplying reseller, operator services provider, or customer owned pay telephone operator to respond or correct the deficiency. A reseller, operator services provider, or customer owned pay telephone provider disputing the alleged violation or discontinuance, may request a formal hearing under section 69-02-02-02, in which case the discontinuance will be stayed until final decision by the commission.

History: Effective April 1, 1985; amended effective January 1, 1993.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-05-02.1. Determination of delinquency. For the purpose of discontinuing or resuming telecommunications service:

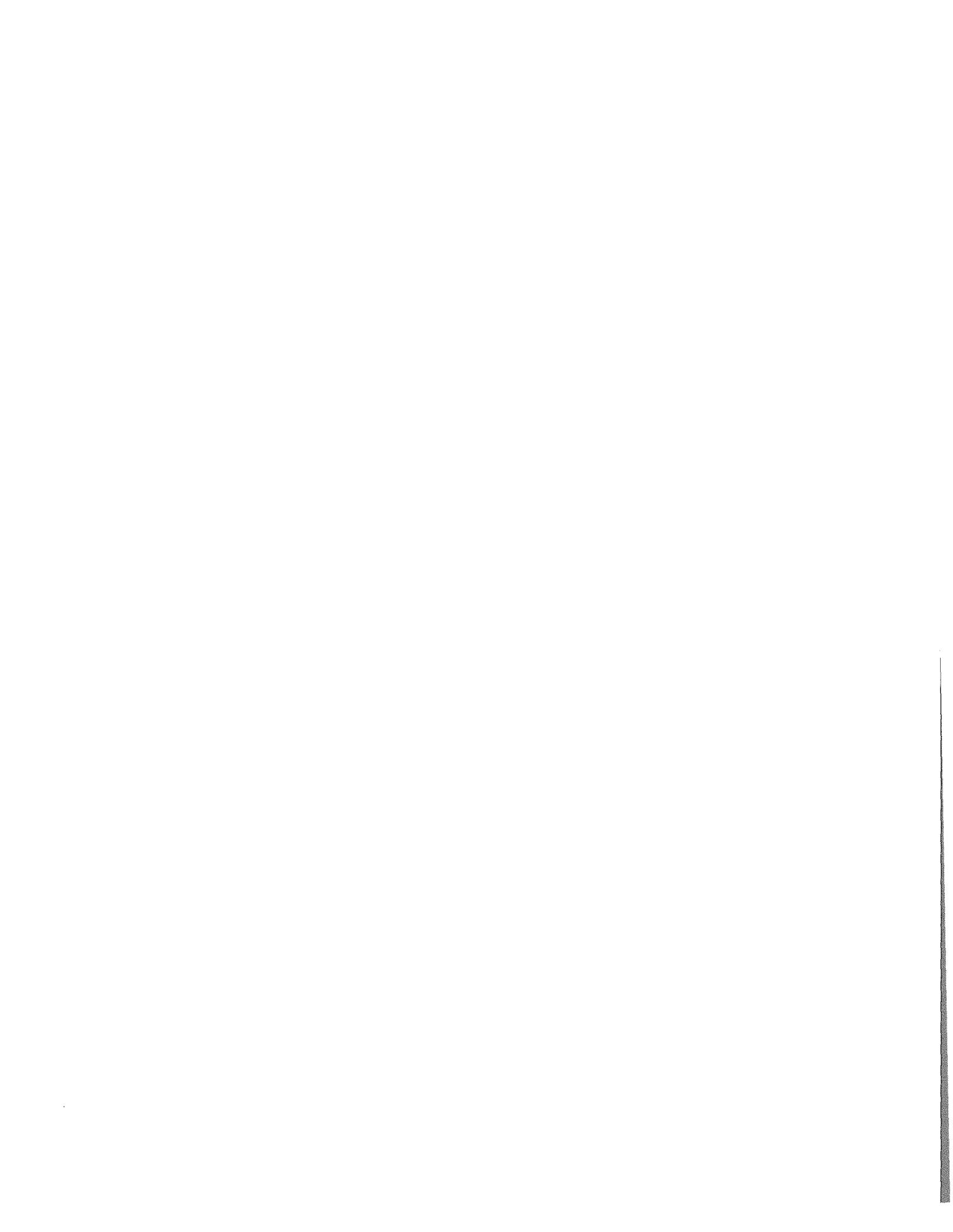
1. If a customer's partial payment on outstanding charges for telecommunications services excluding payments on a deferred installment agreement is less than the outstanding charges for essential services and federal access charges, the customer is delinquent in payment for essential services.

2. If a customer's partial payment on outstanding charges for telecommunications services excluding payments on a deferred installment agreement is equal to or greater than the outstanding charges for essential services and federal access charges, the customer is not delinquent in payment for essential services.

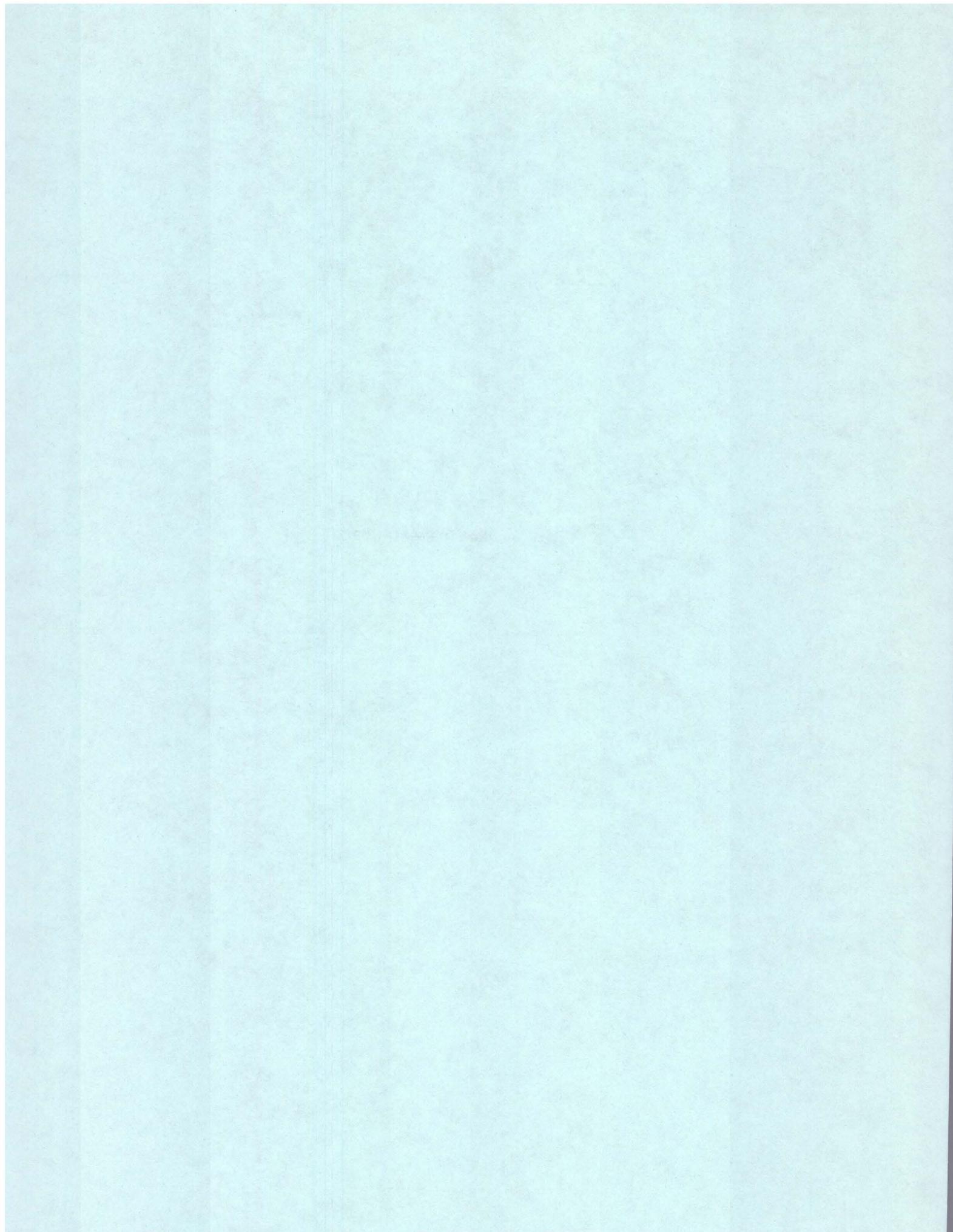
History: Effective January 1, 1993.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11



TITLE 71  
Retirement Board



JUNE 1993

CHAPTER 71-02-01

71-02-01-01. Definitions. As used in North Dakota Century Code chapter 54-52 and this article:

1. "Accumulated contributions" means the total of all of the following:
  - a. The employee account fund balance accumulated under the prior plan as of June 30, 1977.
  - b. The vested portion of the employee's "vesting fund" accumulated under the prior plan as of June 30, 1977.
  - c. The member's mandatory contributions made after July 1, 1977.
  - d. The interest on the sums determined under subdivisions a, b, and c, compounded annually at the rate of five percent from July 1, 1977, to June 30, 1981, six percent from July 1, 1981, through June 30, 1986, and one-half of one percent less than the actuarial interest assumption from July 1, 1986, to the member's termination of employment or retirement.
  - e. The sum of any employee purchase or repurchase payments.
2. "Actuarial equivalent" means a benefit calculated to be of equal value to the benefit otherwise payable when computed on the basis of assumptions and methods adopted for this purpose by the board.

3. "Alternative retirement system" means the teachers' fund for retirement, the highway patrolmen's retirement system, and the teachers' insurance and annuity association of America.
4. "Beneficiary" means any person in receipt of a benefit provided by this plan or any person designated by a participating member to receive benefits.
5. "Bonus" means cash compensation for services performed in addition to base salary excluding commission and shift differentials. Bonus does not include lump sum payments of sick leave provided under North Dakota Century Code section 54-06-14 or lump sum payments of annual leave or vacation pay.
6. "Claim" means the right to receive a monthly retirement allowance, the receiving of a retirement allowance, or the receiving of a disability benefit.
- ~~6.~~ 7. "Continuously employed" means any period of employment uninterrupted by voluntary or involuntary termination or discharge. A member who has taken a leave of absence approved by the member's employer, not to exceed a year unless approved by the executive director, and returns to employment shall be regarded as continuously employed for the period.
- ~~7.~~ 8. "Contribution" means the payment into the fund of nine and twelve-hundredths percent of the salary of a member.
- ~~8.~~ 9. "Interruption of employment" is when an individual is inducted (enlists or is ordered or called to active duty into the armed forces of the United States) and leaves an employment position with a state agency or political subdivision, other than a temporary position. The individual must have left employment to enter active duty and must make application for reemployment within ninety days of discharge under honorable conditions.
- ~~9.~~ 10. "Leave of absence" means the period of time up to one year for which an individual may be absent from covered employment without being terminated. At the executive director's discretion, the leave of absence may be extended not to exceed two years.
- ~~10.~~ 11. "Office" means the administrative office of the public employees retirement system.
- ~~11.~~ 12. "Participating employer" means an employer who contributes to the North Dakota public employees retirement system.
- ~~12.~~ 13. "Pay status" means a member is receiving a retirement allowance from the fund.

- ~~+3-~~ 14. "Permanent and total disability" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve months.
- ~~+4-~~ 15. "Plan administrator" means the executive director of the North Dakota public employees retirement system or such other person or committee as may be appointed by the board of the North Dakota public employees retirement system from time to time.
- ~~+5-~~ 16. "Plan year" means the twelve consecutive months commencing July first of the calendar year and ending June thirtieth of the subsequent calendar year.
- ~~+6-~~ 17. "Prior plan" means the state employees' retirement system which existed from July 1, 1966, to June 30, 1977.
- ~~+7-~~ 18. "Retiree" means an individual receiving a monthly allowance pursuant to chapter 54-52.
- ~~+8-~~ 19. "Service credit" means increments of time to be used in the calculation of retirement benefits. Service credit may be earned as stated in section 71-02-03-01 or may be purchased or repurchased according to section 71-02-03-02.1.
- ~~+9-~~ 20. "Substantial gainful activity" is to be based upon the totality of the circumstances including: consideration of an individual's training, education, experience, their potential for earning at least seventy percent of their predisability earnings; and other items deemed significant on a case-by-case basis. Eligibility is based on an individual's employability and not actual employment status.
- ~~20-~~ 21. "Termination of employment" means a severance of employment by not being on the payroll of a covered employer for a minimum of one month. Approved leave of absence does not constitute termination of employment.

History: Amended effective September 1, 1982; November 1, 1990; September 1, 1991; January 1, 1992; September 1, 1992; June 1, 1993.  
General Authority: NDCC 54-52-04  
Law Implemented: NDCC 54-52

CHAPTER 71-02-06

71-02-06-04. Contributions paid in a month other than month earned.

1. Participating employers shall report bonuses paid when remitting the contribution associated with the bonus.
2. Bonuses paid by a participating employer will be prorated equally as actual compensation paid over the term of the intended bonus period.
3. Upon receiving notice, contributions received in a month other than the month earned will be assigned to the appropriate month.

History: Effective June 1, 1993.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-05, 54-52-06

71-02-06-05. Basis for calculating contributions - Salary reduction - Salary deferral arrangements.

1. Amounts deducted from a member's salary at the member's option to a qualified section 125 cafeteria plan, 401(k) plan, 403(b) or 457 plan are part of wages or salary when calculating retirement contributions.
2. Employee contributions paid by the employer under IRC 414(h) pursuant to a salary reduction agreement do not reduce wages or salary when calculating retirement contributions.
3. Amounts contributed to a qualified section 125 cafeteria plan, 401(k), 403(b), or 457 plan by the employer are not part of wages or salary when calculating retirement contributions.

History: Effective June 1, 1993.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-05, 54-52-06

TITLE 75  
Department of Human Services



March 1993

CHAPTER 75-04-05

**AGENCY SYNOPSIS:** Chapter 75-04-05: Reimbursement for providers of services to developmentally disabled persons.

The Department of Human Services is responsible for setting rates for services provided to developmentally disabled clients of the department. In order to accomplish that responsibility, the department has adopted North Dakota Administrative Code Chapter 75-04-05. Subsection 42 of section 75-04-05-13 identifies, as nonallowable costs, certain payments made to members of governing boards of providers, members of governing boards of related organizations, or families of spouses of members of these boards.

The proposed amendments would limit the application of this rule to relatives of the second degree of kinship, rather than relatives of the third degree of kinship. The amendments would also clarify the existing exception with respect to payments for reasonable and actual expenses incurred in the conduct of the provider's business.

Except with respect to the change from relatives of the third degree of kinship to relatives of the second degree of kinship, the amendments and clarifications are, in all respects, consistent with long-established departmental interpretations of subsection 42.

75-04-05-13. Nonallowable costs. Nonallowable costs include, but are not necessarily limited to:

1. Advertising to the general public exclusive of procurement of personnel and yellow page advertising limited to the information furnished in the white page listing.
2. Amortization of noncompetitive agreements.

3. Bad debt expense.
4. Barber and beautician services.
5. Basic research.
6. Capital improvements by the provider to the buildings of a lessor.
7. Compensation of officers, directors, or stockholders other than reasonable and actual expenses related to client services.
8. Concession and vending machine costs.
9. Contributions or charitable donations.
10. Corporate costs, such as organization costs, reorganization costs, and other costs not related to client services.
11. The cost of direct-care staff in residential settings, incurred before October 1, 1988, for eight hours each night, except where the provider has demonstrated, to the satisfaction of the department, that:
  - a. The clients served have been determined incapable of taking action for self-preservation; provided, that the records of the facility demonstrate planning, and plan execution, which is intended to develop, in each resident who has the capacity for such development, the capacity of taking action for self-preservation;
  - b. The clients require the supervision of a medical practitioner without which a serious threat to health may occur;
  - c. The clients of a residence have contracted an infectious or contagious disease resulting in quarantine;
  - d. A resident manifests maladaptive behavior representing a threat to the health or safety of himself or another resident; provided, that the records of the facility demonstrate planning, and plan execution, which is intended to limit such behavior in each resident who manifests it;
  - e. There has occurred a calamity, natural disaster, or emergency of such gravity that continuous supervision is required to maintain the health and safety of the residents;
  - f. A single building is of sixteen or more licensed beds; or

- g. Staff are awakened by the residents and are compensated for those specified time periods, subject to the applicable requirements of the department of labor 29 CFR section 785, et seq.
12. Costs for which payment is available from another primary third party payor or for which the department determines that payment may lawfully be demanded from any source.
  13. Costs of functions performed by clients in a residential setting which are typical of functions of any person living in their own home, such as keeping the home sanitary, performing ordinary chores, lawnmowing, laundry, cooking, and dishwashing. These activities shall be an integral element of an individual program plan consistent with the client's level of function.
  14. Costs of participation in civic, charitable, or fraternal organizations.
  15. Costs, including, by way of illustration and not by way of limitation, legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies, attributed to the negotiation or settlement of the sale or purchase of any capital assets, whether by sale or merger, when the cost of the asset has been previously reported and included in the rate paid to any hospital or facility.
  16. Costs which are incurred by the provider's subcontractors, or by the lessor of property which the provider leases, and which becomes an element in the subcontractor's or lessor's charge to the provider, if such costs would have not been allowable under this section had they been incurred by a provider directly furnishing the subcontracted services, or owning the leased property.
  17. Costs, exceeding the amounts budgeted as "salaries and fringes", "board expenses", "property expenses", "production expenses", or "other costs", unless the written prior approval of the department has been received.
  18. Depreciation on assets acquired with federal or state grants.
  19. Education costs incurred for the provision of services to clients who are, could be, or could have been, included in a student census. Education costs do not include costs incurred for a client, defined as an "exceptional child" by subsection 1 of North Dakota Century Code section 15-59-01, who is no longer enrolled in a school district pursuant to an interdepartmental plan of transition.
  20. Education or training costs, for provider staff, which exceed the provider's approved budget costs.

21. Employee benefits not offered to all full-time employees.
22. Entertainment costs.
23. Equipment costs for any equipment, whether owned or leased, not exclusively used by the facility except to the extent that the facility demonstrates to the satisfaction of the department that any particular use of the equipment was related to client services. Equipment used for client services, other than developmental disabilities contract services, will be allocated by time studies, mileage, client census, percentage of total operational costs, or otherwise as determined appropriate by the department.
24. Expense or liabilities established through or under threat of litigation against the state of North Dakota or any of its agencies; provided, that reasonable insurance expense shall not be limited by this subsection.
25. Federal and other governmental income taxes.
26. Fringe benefits exclusive of Federal Insurance Contributions Act, unemployment insurance, medical insurance, workers compensation, retirement, and other benefits which have received written prior approval of the department.
27. Fundraising costs, including salaries, advertising, promotional, or publicity costs incurred for such a purpose.
28. Funeral and cemetery expenses.
29. Goodwill.
30. Home office costs when unallowable if incurred by facilities in a chain organization.
31. Housekeeping staff or service costs.
32. In-state travel not directly related to industry conferences, state or federally sponsored activities, or client services.
33. Interest cost related to money borrowed for funding depreciation.
34. Items or services, such as telephone, television, and radio, which are located in a client's room and which are furnished solely for the convenience of the clients.
35. Key man insurance.
36. Laboratory salaries and supplies.

37. Matriculation fees and fees associated with the granting of college credit.
38. Meals and food service in day service programs.
39. Membership fees or dues for professional organizations exceeding five hundred dollars in any fiscal year or where the facility has not demonstrated an effort to maximize the professional development of its staff.
40. Miscellaneous expenses not related to client services.
41. Out-of-state travel expense which is not directly related to client services or which has not received written prior approval by the department.
42. **Payments**
  - a. Except as provided in subdivisions b and c, payments to members of the governing board of the provider, the governing board of a related organization, or families of members of those governing boards, including spouses and relatives within the third degree of kinship, except persons in the following relationship to those members or to spouses of those members: parent, stepparent, child, stepchild, grandparent, step-grandparent, grandchild, step-grandchild, brother, sister, half brother, half sister, stepbrother, and stepsister.
  - a. b. Payments made to a member of the governing board of the provider to reimburse that member for reasonable and actual allowable expenses incurred by that member in the conduct of the provider's business may be allowed.
  - b. c. Payments for a service or product unavailable from another source at a lower cost may be allowed except that this subdivision shall may not be construed to permit the employment of any person subject to this limitation described in subdivision a.
43. Penalties, fines, and related interest and bank charges other than regular service charges.
44. Personal purchases.
45. Pharmacy salaries.
46. Physician and dentist salaries.
47. Production costs.
48. Religious salaries, space, and supplies.

49. Room and board costs in residential services other than an intermediate care facility for the developmentally disabled, except when such costs are incurred on behalf of persons who have been found not to be disabled by the social security administration, but who are certified by the department as indigent and appropriately placed. Allowable room and board cost shall not exceed the room and board rate established pursuant to subsections 2 and 3 of section 75-04-05-09. Services offering room and board temporarily, to access medical care, vocational evaluation, respite care, or similar time limited purposes are or may be exempt from the effect of this provision.
50. Salary costs of employees determined by the department to be inadequately trained to assume assigned responsibilities, but where an election has been made to not participate in appropriate training approved by the department.
51. Salary costs of employees who fail to meet the functional competency standards established or approved by the department.
52. Travel of clients visiting relatives or acquaintances in or out of state.
53. Travel expenses in excess of state allowances.
54. Undocumented expenditures.
55. Value of donated goods or services.
56. Vehicle and aircraft costs not directly related to provider business or client services.
57. X-ray salaries and supplies.

History: Effective July 1, 1984; amended effective June 1, 1985; January 1, 1989; August 1, 1992.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01, 25-16-10, 50-24.1-01

TITLE 89  
Water Commission



JANUARY 1993

CHAPTER 89-11-01

89-11-01-04. Funding - Priority - Eligible items.

1. The state water commission shall provide funds for the program to the extent funding is available. Priority will be based on earliest date of application.
2. Cost-share assistance may only be used for water supply projects which will provide a long-term immediate solution to a drought-related water supply shortage.
3. All wells drilled with funds provided pursuant to this program must be drilled by a North Dakota certified water well contractor.
4. The applicant may receive up to fifty percent of the eligible costs of the project, but no more than ~~three~~ two thousand ~~five~~ hundred dollars.

History: Effective July 1, 1992; amended effective January 1, 1993.

General Authority: NDCC 28-32-02, 61-03-13, 61-34-03

Law Implemented: NDCC 61-34-02

89-11-01-05. Noneligible items. The following projects are not eligible for funding from the drought disaster livestock water supply project assistance program.

1. A rehabilitation of an existing well.
2. A water supply project on federal or state land.

3. A dry hole drilled in an attempt to construct a water well or to locate a water source.
4. A water supply project started or completed prior to July 1, 1991.
5. Water supply project started after December 31, ~~1991~~ 1992, without prior approval of the state engineer.
6. The construction of stock dams or dugouts dependent upon runoff.
7. Projects that require repair as a result of failure to provide maintenance to an existing water source.
8. Readily removable project features of water supply projects including electric pumps, stock watering tanks, or electrical hookups, or easements.

History: Effective July 1, 1992; amended effective January 1, 1993.

General Authority: NDCC 28-32-02, 61-03-13, 61-34-03

Law Implemented: NDCC 61-34-02