

**TITLE 85**  
**BOARD OF UNIVERSITY AND SCHOOL LANDS**

- 85-01 General Administration
- 85-02 Energy Infrastructure and Impact Grants
- 85-03 Unclaimed Property
- 85-04 Surface Land Management
- 85-05 Loan Programs

**ARTICLE 85-01**  
**GENERAL ADMINISTRATION**

- Chapter
- 85-01-01 Definitions and General Provisions

**CHAPTER 85-01-01**  
**DEFINITIONS AND GENERAL PROVISIONS**

- Section
- 85-01-01-01 Definitions
- 85-01-01-02 Investment of fund assets
- 85-01-01-03 Exceptions

**85-01-01-01. Definitions.** The following definitions, in addition to the definitions in North Dakota Century Code chapters 15-05, 15-06, 15-07, 47-30.1, and 57-62, apply to this article:

1. "Board" means the board of university and school lands.
2. "Commissioner" means the commissioner of university and school lands.
3. "Department" means the department of trust lands and the office of the commissioner of university and school lands. The department is the responsibility of the commissioner of university and school lands.
4. "Trust lands" means any property owned by the state of North Dakota and managed by the board of university and school lands.

**History: Effective**  
**General Authority: NDCC 28-32-02**  
**Law Implemented: NDCC 15-01**

**85-01-01-02. Investment of fund assets.**

1. The board invests fund assets in accordance with the prudent investor rule as defined in North Dakota Century Code section 15-03-04.
2. The board shall contract for investment services.

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

Law Implemented: NDCC 15-03-04

85-01-01-03. Exceptions. The board may grant exceptions to this title, after due notice and hearing, when such exceptions will result in a benefit or positive return to the permanent funds managed by the board.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-01-02

**ARTICLE 85-02**  
**ENERGY INFRASTRUCTURE AND IMPACT GRANTS**

<u>Chapter</u>	
<u>85-02-01</u>	<u>Definitions</u>
<u>85-02-02</u>	<u>Grant Processing</u>
<u>85-02-03</u>	<u>Grant Award</u>
<u>85-02-04</u>	<u>Aged Grants</u>

**CHAPTER 85-02-01**  
**DEFINITIONS**

<u>Section</u>	
<u>85-02-01-01</u>	<u>Definitions</u>

**85-02-01-01. Definitions.** The following definitions, in addition to the definitions in North Dakota Century Code chapter 57-62, apply to this article:

1. "Advisory committee" means the committee selected by the board to review grant applications and make recommendations to the board. Committee members shall possess expertise and experience within a particular sector relevant to the grants being awarded.
2. "Aged grant" means a grant that has not been fully expended, is past the expected completion date, and does not have written approval to extend the completion date.
3. "Director" means the director of the energy infrastructure and impact office or director's designee.

**History:** Effective \_\_\_\_\_  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 15-01-02, 57-62-05

**CHAPTER 85-02-02**  
**GRANT PROCESSING**

Section

<u>85-02-02-01</u>	<u>Grant Announcement</u>
<u>85-02-02-02</u>	<u>Applications</u>
<u>85-02-02-03</u>	<u>Signatures</u>
<u>85-02-02-04</u>	<u>Scoring</u>
<u>85-02-02-05</u>	<u>Assignment of Funds</u>
<u>85-02-02-06</u>	<u>Supplement</u>
<u>85-02-02-07</u>	<u>Advisory Committee Recommendations</u>

**85-02-02-01. Grant announcement.** All grant announcements must be posted on the energy impact webpage. Grant announcements may be sent either electronically or by postal mail to:

1. Media contacts;
2. Members of the North Dakota legislature;
3. North Dakota league of cities or association of counties, whichever applies;
4. Other associations representing targeted grant sectors;
5. Board members;
6. All department contacts for the targeted grant sector; and
7. Anyone who requests a copy.

**History:** Effective \_\_\_\_\_

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

**Law Implemented:** NDCC 57-62-05

**85-02-02-02. Applications.**

1. An applicant shall complete and submit a grant application prescribed by the director along with supporting documentation including project cost estimates, vendor quotes, most recent audited financial statements, established budget for the political subdivision, mill levy and taxable valuation used to determine the mill levy, and any other supplemental information requested by the director.
2. A grant application must be received by the energy infrastructure and impact office before the deadline listed in the grant announcement. For good cause shown, a grant application received after the deadline may be considered at the discretion of the advisory committee, board or director.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 57-62-05

**85-02-02-03. Signatures.**

1. For political subdivisions, a grant application must be signed by an appointed or elected government official and the primary fiscal officer assigned the duties of managing grant communications, reports, and reimbursement requests.
2. For an entity exempted from statutory political subdivision requirements, a grant application must be signed by the primary executive and the primary fiscal officer assigned the duties of managing grant communications, reports, and reimbursement requests.
3. An electronic signature is permissible.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 57-62-05, 57-62-06

**85-02-02-04. Scoring.** In reviewing a grant application, the following may be considered:

1. Objective;
2. Project readiness and timeline for completion;
3. Impact of energy activity;
4. Health, welfare, and safety of citizens where the project contributes to sustained economic development or activity;
5. Budget and other available funding;
6. Completeness of the application; and
7. Any other criteria deemed relevant by the advisory committee, board or director.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 57-62-05, 57-62-06

**85-02-02-05. Assignment of funds.** If an advisory committee is appointed, it shall review each application and assign a recommended amount to each grantee, the aggregate not to exceed that authorized by the board.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-01-02, 57-62-05

85-02-02-06. Supplement. If approved in advance by the director, an applicant may supplement its application.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 57-62-05

85-02-02-07. Advisory committee recommendations. The advisory committee, if appointed, shall submit to the director its recommendations for funding, as well as a list of the applications not recommended for funding. The director shall submit the recommendations for the board's consideration and approval. The director may also submit the director's recommendations, if different from the advisory committee, for board consideration and approval.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-01-02, 57-62-05

**CHAPTER 85-02-03**  
**GRANT AWARD**

Section

<u>85-02-03-01</u>	<u>Authority</u>
<u>85-02-03-02</u>	<u>Signatures</u>
<u>85-02-03-03</u>	<u>Acceptance of Grant</u>
<u>85-02-03-04</u>	<u>Vendor Registry</u>
<u>85-02-03-05</u>	<u>Grant Period</u>
<u>85-02-03-06</u>	<u>Progress Report</u>
<u>85-02-03-07</u>	<u>Payment of Grant</u>
<u>85-02-03-08</u>	<u>Grant Extension or Retirement</u>
<u>85-02-03-09</u>	<u>Changes to Scope of Project</u>

**85-02-03-01. Authority.** The board retains final authority to award grant funds.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-01-02

**85-02-03-02. Signatures.** All correspondence, grant extension requests, grant allocation change requests or other presentations must be signed by the following:

1. A political subdivision - an appointed or elected government official.
2. An entity exempted from statutory political subdivision requirements - the primary executive or the primary fiscal officer assigned the duties of managing grant communications, reports, and reimbursement requests.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 57-62-05, 57-62-06

**85-02-03-03. Acceptance of grant.** A grant recipient shall receive written notification of the grant awarded by the board from the director. The grant recipient shall acknowledge and return, within thirty days of the date of the notice, the recipient's acceptance or declination of funds on a form provided by the director. If a recipient fails to acknowledge acceptance of the grant funds within the thirty days, the board may declare the grant award null and void.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-01-02, 57-62-05

**85-02-03-04. Vendor registry.** A grant recipient shall be registered with the office of management and budget as an active participant to receive electronic payment transactions.

History: Effective

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

**Law Implemented: NDCC 57-62-05**

**85-02-03-05. Grant period.** The length of a grant period is three years, unless otherwise adjusted by the board.

**History: Effective**

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

**Law Implemented: NDCC 57-62-05**

**85-02-03-06. Progress report.**

1. Grantee shall submit to the director a biannual progress report, prescribed by the energy infrastructure and impact office. The biannual progress report must be received by the energy infrastructure and impact office by the twentieth day of June and December of every year of the project.
2. The director may conduct onsite project status visits to review and document utilization of the grant. The director shall provide advance notice to the grantee of any project status visits. The grantee shall provide the director with any project documentation upon request by the director; assist with inspection of equipment purchased, completed construction, or review of any other project expenditures; and provide a description of the remaining budget and timeline for the project.
3. If a grantee is delinquent in submitting a progress report or does not comply with the project status visit, the director may delay grant reimbursements.

**History: Effective**

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

**Law Implemented: NDCC 57-62-05**

**85-02-03-07. Payment of grant.**

1. Grant funds are distributed based on documentation of either expenditures for project completion or asset acquisition, as approved by the director. Reimbursement may be authorized in phases or based on the incurrence of expenditures by the grantee. A grantee shall submit a request for reimbursement on forms prescribed by the energy infrastructure and impact office in order to receive reimbursement. A request for reimbursement must include:
  - a. Vendor invoice; and
  - b. Documentation of payment or formal meeting minutes, if authority is required by a governing body, which approves payment of project expenditures.
2. The director shall transmit the reimbursement electronically, if possible.



3. For final payment, the grantee shall submit a request for reimbursement no later than twenty days after the end of the grant period.

**History:** Effective

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

**Law Implemented:** NDCC 57-62-05

**85-02-03-08. Grant extension or retirement.**

1. Extension request. The grantee may submit a written request to the director if a grant project will not be completed by expiration of the grant period. The request must be received by the director no later than seventy-five days prior to expiration of the grant period. The request must detail:
  - a. The necessity for the request and the specific reasons why the project cannot be completed by the end of the grant period;
  - b. The portion of the project completed since the grant was awarded;
  - c. The efforts the grantee has taken to complete the project prior to expiration of the grant period;
  - d. The timeline for completion of the project; and
  - e. Any additional information requested by the director.
2. Grant retirement. The grantee shall submit written notice to the director of a project's completion and any remaining unused funds prior to the expiration of the grant period. If a project is not initiated, a grantee shall submit written notice of project retirement to the director. The board may retire the grant and return the remaining balance to the originating grant fund.

**History:** Effective

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

**Law Implemented:** NDCC 57-62-05

**85-02-03-09. Changes to scope of project.** Funds must be used for the purpose proposed in the grantee's application, unless a grantee makes a written request to the director for authorization to modify the purpose or scope of the project. The grantee must provide supporting documentation detailing the proposed modifications. Authorization for a project modification may be granted, as follows:

1. Modifications that do not change the overall project goals, as originally proposed, may be approved by the director.

2. Modifications that change the overall project goals, as originally proposed, or reallocate the funding to costs not included in the grantee's application may only be approved by the board.

**History:** Effective \_\_\_\_\_

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

**Law Implemented:** NDCC 15-01-02, 57-62-05

**CHAPTER 85-02-04**  
**AGED GRANTS**

Section

85-02-04-01 Aged Grants

85-02-04-02 Grant Deemed Unresponsive

**85-02-04-01. Aged grants.** In the event of an aged grant, the director shall notify the grantee in writing that the board intends to cancel the grant and retire the remaining balance. Within fifteen days of the postmark of the notice, the grantee shall:

1. Submit a written response to the director indicating that the grantee concurs with cancellation of the grant; or
2. Submit a request for a grant extension.

**History:** Effective

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

**Law Implemented:** NDCC 57-62-05

**85-02-04-02. Grant deemed unresponsive.** A grantee that does not respond to the director's notice shall be deemed to concur with the cancellation of the grant. The board may immediately cancel the grant and retire the remaining balance to the originating grant fund. In the event an extension of an aged grant is not granted, the board may immediately cancel the grant and retire the remaining balance to the originating grant fund.

**History:** Effective

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

**Law Implemented:** NDCC 15-01-02, 57-62-05

**ARTICLE 85-03**  
**UNCLAIMED PROPERTY**

<u>Chapter</u>	
<u>85-03-01</u>	<u>Definitions</u>
<u>85-03-02</u>	<u>Reporting Abandoned Property</u>
<u>85-03-03</u>	<u>Claiming Property</u>

**CHAPTER 85-03-01**  
**DEFINITIONS**

<u>Section</u>	
<u>85-03-01-01</u>	<u>Definitions</u>

**85-03-01-01. Definitions.** The following definitions, in addition to the definitions in North Dakota Century Code chapter 47-30.1, apply to this article:

1. "Claim" means the formal filing that initiates the process of returning unclaimed property to the rightful owner.
2. "Claimant" means the individual submitting the claim form for unclaimed property.
3. "Claim form" means the form prescribed by the administrator by which a claim can be initiated.
4. "Due diligence" means the holder's efforts to contact the owner prior to remitting property to the administrator, as required under North Dakota Century Code section 47-30.1-17.
5. "Heir finder" means an individual or business that assists owners in locating unclaimed property for a fee.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 47-30.1-38

**Law Implemented:** NDCC 47-30.1

**CHAPTER 85-03-02**  
**REPORTING ABANDONED PROPERTY**

Section

- 85-03-02-01 Electronic Reporting of Abandoned Property
- 85-03-02-02 Information Contained in Reports
- 85-03-02-03 Due Diligence
- 85-03-02-04 Mineral Proceeds
- 85-03-02-05 Early Reporting

**85-03-02-01. Electronic reporting of abandoned property.** A holder shall report abandoned property electronically to the administrator in the standard National Association of Unclaimed Property Administrators' format.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 47-30.1-38

**Law Implemented:** NDCC 47-30.1-17, 47-30.1-27

**85-03-02-02. Information contained in reports.** In addition to the requirements in North Dakota Century Code section 47-30.1-17, a holder shall submit the following information in the report, if available:

1. Owner social security number;
2. Identifying account or policy number;
3. Owner date of birth;
4. Payee and remitter information for all cashier's checks, money orders, and traveler's checks; and
5. For mineral proceeds, a legal land description, well number, recording information, and any other information to adequately describe the lease.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 47-30.1-38

**Law Implemented:** NDCC 47-30.1-17, 47-30.1-27

**85-03-02-03. Due diligence.** Holder due diligence, including written or electronic communication, must include:

1. A deadline for owner response to holder;
2. Property type;
3. Property value; and
4. Unclaimed property division contact information.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 47-30.1-38

**Law Implemented:** NDCC 47-30.1-17

**85-03-02-04. Mineral proceeds.** A holder shall accumulate mineral proceeds and submit an annual lump sum report to the administrator by November first for the amount due through June thirtieth.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 47-30.1-38

**Law Implemented:** NDCC 47-30.1-16.1, 47-30.1-17, 47-30.1-27

**85-03-02-05. Early reporting.** A holder may report property before it is deemed abandoned if the holder:

1. Has been granted prior written approval by the administrator; and
2. Demonstrates to the satisfaction of the administrator that due diligence has been performed.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 47-30.1-38

**Law Implemented:** NDCC 47-30.1-17, 47-30.1-27

**CHAPTER 85-03-03**  
**CLAIMING PROPERTY**

Section

<u>85-03-03-01</u>	<u>Claims</u>
<u>85-03-03-02</u>	<u>Required Documentation</u>
<u>85-03-03-03</u>	<u>Payment of Claim</u>
<u>85-03-03-04</u>	<u>Heir Finder Requests</u>
<u>85-03-03-05</u>	<u>Claims Submitted by Heir Finders</u>

**85-03-03-01. Claims.** A claim must be submitted on a claim form and signed under penalty of perjury.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 47-30.1-38

**Law Implemented:** NDCC 47-30.1-24, 47-30.1-24.1, 47-30.1-25

**85-03-03-02. Required documentation.** A claimant shall provide adequate documentation to establish ownership of the abandoned property, including photo identification and documentation of social security number.

1. The following additional documentation is required when a claim is submitted on behalf of:
  - a. Deceased individuals: Copy of death certificate and documentation providing legal claim authority.
  - b. Business claims: Federal employer identification number and documentation providing legal claim authority.
  - c. Incapacitated individuals: Copy of documentation providing legal claim authority.
2. If there are multiple owners, all reported owners or the legal representative shall submit a claim form.
3. The administrator may request additional documentation necessary to support a claim.
4. If a claimant chooses to donate the property to the common schools trust fund, required documentation remains the same.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 47-30.1-38

**Law Implemented:** NDCC 47-30.1-24, 47-30.1-24.1, 47-30.1-25

**85-03-03-03. Payment of claim.** Upon approval of a claim, payment will be issued:

1. In the name of the reported owner;

2. In accordance with a court order; or
3. In the name of the rightful owner, as determined by the administrator, based on the records of the holder and other information available to the administrator.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 47-30.1-38

**Law Implemented:** NDCC 47-30.1-24, 47-30.1-25

**85-03-03-04. Heir finder requests.**

1. An electronic list of owners will be provided upon request. The list includes:
  - a. Property held by the Unclaimed Property Division as of the date of the request;
  - b. Owner's name;
  - c. Owner's last known address;
  - d. Holder information;
  - e. Date of last activity; and
  - f. Type of property.
2. A paper copy of the list will be provided upon request for a fee to be set by the administrator.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 47-30.1-38

**Law Implemented:** NDCC 47-30.1-19.1

**85-03-03-05. Claims submitted by heir finders.** An approved claim submitted by an heir finder must be paid in the name of the original owner.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 47-30.1-38

**Law Implemented:** NDCC 47-30.1-24, 47-30.1-35



**ARTICLE 85-04**  
**SURFACE LAND MANAGEMENT**

<u>Chapter</u>	
<u>85-04-01</u>	<u>Definitions</u>
<u>85-04-02</u>	<u>Leasing Trust Lands for Agricultural Use</u>
<u>85-04-03</u>	<u>Construction Aggregate</u>
<u>85-04-04</u>	<u>Permanent Improvements</u>
<u>85-04-05</u>	<u>Encumbrances of Trust Lands</u>
<u>85-04-06</u>	<u>Public Access and Use</u>

**CHAPTER 85-04-01**  
**DEFINITIONS**

<u>Section</u>	
<u>85-04-01-01</u>	<u>Definitions</u>

**85-04-01-01. Definitions.** The following definitions, in addition to the definitions in North Dakota Century Code chapters 15-05, 15-07, and 15-08, apply to this article:

1. "Agricultural use" includes the use of trust lands for the purpose of grazing, cropping, haying, and honey bee pasture or meadow.
2. "Construction aggregate" means gravel, sand, scoria, road material, building stone, colloidal or other clays, and cement materials.
3. "Custodial agreement" means an agreement between the lessee and a third party in which the lessee agrees to take custody of livestock not owned by the lessee for a specified period of time and to provide day to day care for the livestock.
4. "Disturbed" means any alteration of the topsoil resulting from a mining operation.
5. "Encumbrance" means a right other than an ownership interest in real property. The term includes easements, permits, surface damage agreements and any other restrictions, encroachments, licenses, mortgages and liens that relate to trust lands, and specifically excludes leases for agricultural use, construction aggregate, sodium sulfate, chemical substances, metallic ores, uranium ores, and oil, gas, and coal which are administered separately.
6. "Fair market value" means the price set by the commissioner after an analysis of prices paid for similar products or services in the area of the leased premises.
7. "Invasive species" means a species that is non-native to the ecosystem under consideration and whose introduction causes or is likely to cause economic or environmental harm or harm to human health.
8. "Lease" means a contract entered into between the board and a third party for agricultural use or mining of construction aggregate on trust lands.

9. "Leased premises" means the land area subject to a given lease for agricultural use or mining of construction aggregate.
10. "Net construction aggregate interest" means the undivided portions of the total construction aggregate estate on a given tract of land.
11. "Pest" means any insect, rodent, nematode, fungus, weed, any form of terrestrial or aquatic plant or animal life, viruses, bacteria, or other micro-organisms, except viruses, bacteria, or other micro-organisms, whose presence causes or is likely to cause economic or environmental harm or harm to human health.
12. "Vehicle" means every device in, upon, or by which any person or property may be transported or drawn upon a public highway or trail, except devices moved by human power.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 28-32-02, 15-07-20

**Law Implemented:** NDCC 4.1-47-04, 15-04, 15-05, 15-07, 15-08, 15-08.1

**CHAPTER 85-04-02**  
**LEASING TRUST LANDS FOR AGRICULTURAL USE**

<u>Section</u>	
<u>85-04-02-01</u>	<u>Failure to Pay or Nonsufficient Funds at Auction</u>
<u>85-04-02-02</u>	<u>Annual Lease Rental Payment</u>
<u>85-04-02-03</u>	<u>Assignment and Use by a Third Party</u>
<u>85-04-02-04</u>	<u>Sale of Lease for Agricultural Use Prohibited</u>
<u>85-04-02-05</u>	<u>Custodial Agreement</u>
<u>85-04-02-06</u>	<u>Lease Termination</u>
<u>85-04-02-07</u>	<u>Board Review</u>
<u>85-04-02-08</u>	<u>Cost Share on Leased Premises</u>
<u>85-04-02-09</u>	<u>Cost Share Application</u>
<u>85-04-02-10</u>	<u>Cost Share on Cropland</u>
<u>85-04-02-11</u>	<u>Cost Share Payments</u>
<u>85-04-02-12</u>	<u>Biological Control Agents</u>

**85-04-02-01. Failure to pay or nonsufficient funds at auction.**

1. The commissioner will not issue a lease for agricultural use until payment in full is received by the department.
2. A successful bidder who fails to pay for a lease shall be deemed ineligible to bid at subsequent agricultural lease auctions administered by the board for the remainder of the current calendar year plus three additional calendar years.
3. If a lease payment made at auction is, for any reason, not paid by the bank on which it is drawn, the commissioner shall notify the bidder by mail addressed to the bidder's post office address on file with the department that payment by cashier's check or money order is required within ten business days from the date the letter is mailed.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 28-32-02, 15-07-20

**Law Implemented:** NDCC 15-07-20, 54-30-17.1

**85-04-02-02. Annual lease rental payment.**

1. The annual lease rental payment for the second and succeeding years of a lease must be received by the department no later than five p.m. central standard time on the last business day of January of the lease year. If payment is not received, the lease will automatically terminate. The commissioner is not required to provide the lessee with notice of lease termination.
2. If the annual lease rental payment is, for any reason, not paid by the bank on which it is drawn after five p.m. central standard time on the last business day of January of the lease year, the lease will automatically terminate and the commissioner may designate the lessee ineligible to bid at subsequent agricultural lease auctions for the remainder of the current calendar year plus three additional calendar years.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 28-32-02, 15-07-20

**Law Implemented:** NDCC 15-04-01, 15-07-20, 54-30-17.1

**85-04-02-03. Assignment and use by a third party.**

1. A lease, or any part thereof shall not be assigned, nor shall the lessee allow the leased premises or any part thereof to be used in any manner by anyone other than the lessee without the written consent of the commissioner. A grazing permit issued by a grazing association to a member-permittee is authorized.
2. A lessee may request an assignment of a lease from the department. The commissioner shall approve or deny an assignment based on the best interest of the trusts. The following assignments may be approved:
  - a. An assignment without restriction to a close relative including the spouse, father, mother, son, daughter, brother, or sister for the same terms and conditions as the original lease.
  - b. An assignment of less than the full lease term to a third party if the lessee is temporarily out of the livestock business or unable to properly stock the leased premises. Being temporarily out of the livestock business means no longer owning or leasing the livestock and personally providing for their day to day care, with the intent to return to the livestock business within two years or less. The assignment must be for two years or less. The rent payable by the assignee shall be at a rate consistent with the current year's fair market value minimum rent or the current lease price, whichever is greater.
  - c. An assignment to a third party with the lease expiring at the end of the current lease year. The rent payable by the assignee shall be at a rate consistent with the current year's fair market value minimum rent or the current lease price, whichever is greater.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 28-32-02, 15-07-20

**Law Implemented:** NDCC 15-04-01, 15-07-20, 54-30-17.1

**85-04-02-04. Sale of lease for agricultural use prohibited.** A lessee is prohibited from selling a board issued lease for agricultural use and any attempt to do so may result in lease termination in accordance with this chapter.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 28-32-02, 15-07-20

**Law Implemented:** NDCC 15-04-01, 15-07-20, 54-30-17.1

**85-04-02-05. Custodial agreement.** A custodial agreement may be permitted if a lessee does not own livestock or is understocked. The custodial agreement must be in writing and a copy furnished to the department or the arrangement will be treated as third party use. Unless approval is given by the commissioner, a custodial agreement is not permitted for more than three years.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 28-32-02, 15-07-20

**Law Implemented:** NDCC 15-04-01, 15-07-20, 54-30-17.1

**85-04-02-06. Lease termination.**

1. Failure to comply with the lease terms or any rules under this chapter may result in lease termination by the commissioner. Before a lease is terminated, the department must mail a notice of intent to terminate the lease specifying the reason for termination to the lessee at the lessee's post office address on file with the department.
2. A lessee may file with the department a written request for waiver, a request to review the notice of intent to terminate the lease, or request for an administrative hearing concerning the termination, which must include a statement of the specific grounds for the request. A request must be filed with the department within ten business days after the date the notice of intent to terminate the lease is mailed. A request for a waiver or review is deemed filed when personally delivered or when received by the department. The commissioner may waive any breach except those terms required under applicable laws, or the commissioner may allow the lessee time to cure the breach.
3. Not less than ten business days after the notice of intent to terminate the lease is mailed, the commissioner may terminate the lease. Lease termination is effective upon actual delivery of a notice of termination by the department. The notice of termination of the lease must be served personally, by mail requiring a signed receipt, or by overnight courier or delivery service requiring a signed receipt. Failure to accept mail requiring a signed receipt constitutes service. Termination of the lease does not release the lessee from liability for any sum due the board or from any damages due accruing prior to the breach.
4. When a lease is terminated, the former lessee shall be ineligible to bid at a lease auction administered by the department for a minimum of the remainder of the current calendar year plus three additional calendar years.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 28-32-02, 15-07-20

**Law Implemented:** NDCC 15-04-01, 15-07-20, 15-07-21, 54-30-17.1

**85-04-02-07. Board review.** If the commissioner determines that board review of the circumstances of the lease is desirable, the lease may be brought before the board for its consideration.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 28-32-02, 15-07-20

**Law Implemented:** NDCC 15-04-01, 15-07-05

**85-04-02-08. Cost share on leased premises.** The lessee is responsible for noxious and invasive weed and pest control on the leased premises. The department may participate in cost share reimbursement, as follows:

1. Payments for state-listed noxious weed control costs;
2. Payments for county-listed noxious weed control costs; or

3. Payments for other invasive species and pests as allowed by the department.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-04-24

85-04-02-09. Cost share application. A lessee shall submit a request for cost share using the electronic cost share application available on the department's website or a paper application provided on the department's website. A lessee shall provide all information specifically required by the application and any supplemental information requested by the department. The amount of the cost share shall be determined by the department consistent with the department's cost share policy.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-04-24

85-04-02-10. Cost share on cropland. Noxious and invasive weeds on cropland are not eligible for cost share.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-04-24

85-04-02-11. Cost share payments. Cost share payments may be made upon receipt of an invoice for allowable expenses.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-04-24

85-04-02-12. Biological control agents. Use of biological control agents to control noxious weeds is authorized in addition to the chemical control.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-04-24

**CHAPTER 85-04-03**  
**CONSTRUCTION AGGREGATE**

<u>Section</u>	
<u>85-04-03-01</u>	<u>Application</u>
<u>85-04-03-02</u>	<u>Public Notice of Application, Comment Period, Commissioner Review</u>
<u>85-04-03-03</u>	<u>Lease Terms</u>
<u>85-04-03-04</u>	<u>Commissioner Authorization</u>
<u>85-04-03-05</u>	<u>Auctioned Leases</u>
<u>85-04-03-06</u>	<u>Use of Leased Premises</u>
<u>85-04-03-07</u>	<u>Advance Royalties</u>
<u>85-04-03-08</u>	<u>Royalties</u>
<u>85-04-03-09</u>	<u>Testing</u>
<u>85-04-03-10</u>	<u>Mining and Reclamation Plan</u>
<u>85-04-03-11</u>	<u>Bond</u>
<u>85-04-03-12</u>	<u>Theft of Construction Aggregate</u>
<u>85-04-03-13</u>	<u>Records and Inspections</u>
<u>85-04-03-14</u>	<u>Mining Operations</u>
<u>85-04-03-15</u>	<u>Reserved Rights and Termination</u>
<u>85-04-03-16</u>	<u>Surrender by Lessee</u>
<u>85-04-03-17</u>	<u>Conditions on Expiration, Termination or Surrender</u>
<u>85-04-03-18</u>	<u>Surface Owner Consent</u>
<u>85-04-03-19</u>	<u>Surface Lessee Protection</u>
<u>85-04-03-20</u>	<u>Protection of Cultural Resources</u>

**85-04-03-01. Application.** An applicant shall submit a request for a lease, amendment, assignment, or extension using the electronic application available on the department's website or a paper application provided upon request. The application must clearly state whether the request is for a lease, amendment, assignment, or extension. An application submitted on any other form will not be accepted. An application fee may be charged as determined by the board. Each application and lease is limited to a maximum of one hundred sixty contiguous acres (about sixty-five hectares) of like net construction aggregate interest. An application must be made as follows:

1. Lease. An applicant shall provide all information required by the application and any supplemental information requested by the department. An application must designate the type of construction aggregate desired. An application is deemed filed and complete when the department receives an application, the application fee, and any supplemental information requested by the department.
2. Amendment. A lessee may submit a request for an amendment to a lease for a specific purpose. If the request for an amendment is granted, the department will mail the amendment to the applicant for signature.
3. Assignment. A lease may be assigned upon written consent of the commissioner. Assignments will be granted by the commissioner through written notification to both the assignor and assignee. The commissioner may refuse to assign a lease for good cause. The assignor shall remain responsible for compliance of all lease terms and the board's rules until the assignment is approved by the commissioner. Upon approval, the assignee shall be responsible for compliance with all lease terms and the board's rules. If the request for an assignment is granted, the department will mail the assignment to the applicant for signature.

4. Extension. A lessee may submit a request for an extension of a lease for up to an additional five year term to be granted at the discretion of the commissioner. The department may adjust the royalty rate if an additional term is granted. If the request for a lease extension is granted, the department will mail the lease extension to the applicant for signature.

**History:** Effective

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

**85-04-03-02. Public notice of application, comment period, commissioner review.**

1. Within five business days after an application for a new lease or a substantive amendment to an existing lease has been deemed filed and complete, the department shall post a notice of the application along with any supporting documents and instructions for submitting public comments or a request for a hearing on the department's website. Comments must be received by the department no later than five p.m. central standard time on the tenth business day after posting the notice of application in order to be considered as part of the application. All comments must be in writing, and contain the following:
  - a. Name and address of the interested person;
  - b. Lease applicant's name and address;
  - c. Type of project;
  - d. The legal description of the proposed leased premises as shown on the published notice; and
  - e. The interested person's position on the issuance of the lease.
2. Applicant may request a copy of all comments submitted and shall have five business days to respond in writing, unless additional time is requested.
3. A request for hearing must be served on the applicant by mail and filed with the department within the public comment period.
4. If a request for a hearing is made in writing during the comment period, the department must arrange for a hearing to be held before final action on an application is taken and must publish a notice of hearing in the official newspaper for each county where the proposed leased premises is located. The notice must be published at least once, twenty business days prior to the hearing.
5. The commissioner shall review all timely filed comments and the applicant's response to the comments and may schedule a hearing in accordance with the requirements in subsection four.

**History:** Effective

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18



**85-04-03-03. Lease terms.**

1. Lease terms may not exceed five years.
2. When the lessee is a state agency or a political subdivision, the royalty rate shall be fixed for a lease term of one year or less. For a lease term greater than one year, the royalty rate shall be based on fair market value with an annual adjustment based on the current fair market value.
3. When the lessee is a private entity requesting less than five thousand cubic yards of construction aggregate, the term of the lease shall be for one year or less.
4. Leases to any entity other than a state agency or a political subdivision for a term greater than one year must be offered at public auction.
5. When construction aggregate is requested for an emergency, the term of the lease shall not exceed one year.

**History:** Effective

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

**85-04-03-04. Commissioner authorization.**

1. The commissioner is authorized to approve and issue construction aggregate leases on the board's behalf in accordance with these rules.
2. If an application does not comply with the rules, or if the commissioner determines that board review is desirable, the application may be brought before the board for its consideration.

**History:** Effective

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

**85-04-03-05. Auctioned leases.** Notice of an auction must be published in the official newspaper of the county where the proposed leased premises are located and in the Bismarck Tribune. The notice must be published once at least ten days prior to the day of the auction. The notice must contain the legal description of the proposed leased premises, the lease term, and the time and place where the auction will be held. Bidding must be on a royalty per yard basis.

**History:** Effective

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

**85-04-03-06. Use of leased premises.** Lessee may use as much of the leased premises as necessary for prospecting, mining, removal of construction aggregate, and reclamation subject to the other requirements of this chapter.

**History:** Effective

**General Authority:** NDCC 15-05-18

**Law Implemented: NDCC 15-05-18**

**85-04-03-07. Advance royalties.**

1. As consideration for a lease with a term greater than one year, lessee must pay on the date a lease is issued an advance on the yearly royalty, as determined by the commissioner, but not less than one thousand dollars.
  - a. The advance payment is due each year in which the lease is in force and is due prior to the lease anniversary date.
  - b. The advance payment may be credited against construction aggregate mined during the term of the lease. Advance royalty payments for which a credit is not claimed must be forfeited.
  - c. The commissioner may adjust the advance royalty payment amount. Any adjustment takes effect on the anniversary date of the lease following a six month notice to lessee.
2. The commissioner may require an advance royalty deposit for a lease with a term of one year or less. The deposit will be credited against construction aggregate mined during the term of the lease.
3. If payment is not received, the lease will automatically terminate. The commissioner is not required to provide the lessee with notice of lease termination.

**History: Effective**

**General Authority: NDCC 15-05-18**

**Law Implemented: NDCC 15-05-18**

**85-04-03-08. Royalties.** Royalties must be received by the department by five p.m. central standard time on the last business day of January following sale, utilization, stockpiling, or removal from the leased premises of the construction aggregate mined during the preceding year. If payment is not received, the lease automatically terminates. The commissioner is not required to provide the lessee with notice of lease termination. Royalties must be paid in full on any stockpiled construction aggregate remaining on the leased premises ninety days prior to the expiration of the lease.

**History: Effective**

**General Authority: NDCC 15-05-18**

**Law Implemented: NDCC 15-05-18**

**85-04-03-09. Testing.** The department may require a lessee to conduct drilling tests on the leased premises prior to mining. If required, sufficient test holes must be drilled to outline the boundaries, thickness, and depth of the construction aggregate deposit and estimate the quality, quantity, and type of construction aggregate located on the leased premises. Lessee shall furnish the department a map of the leased premises showing the boundaries of the construction aggregate deposit and furnish the department a written report estimating the thickness, depth, quality, quantity, and type of construction aggregate. All test holes must be reclaimed to the satisfaction of the department at the conclusion of testing. Failure to conduct test drilling when required or failure to furnish the required information, results in automatic termination of the lease. The commissioner is not required to provide the lessee with notice of lease termination.

History: Effective

General Authority: NDCC 15-05-18

Law Implemented: NDCC 15-05-18

**85-04-03-10. Mining and reclamation plan.**

1. Prior to issuance of a lease, the department, in consultation with the lessee, will develop a mining and reclamation plan for commissioner approval. Mining may not begin on the leased premises unless the mining and reclamation plan is approved by the commissioner.
2. The intent of the reclamation plan is to reclaim the leased premises to its previous potential use and productivity. The reclamation plan may be modified by the commissioner and the lessee shall comply with any modifications to the plan. In the event the lessee does not comply with the modified reclamation plan, the lease may be terminated.
3. The reclamation plan must indicate the location of the mining operation in relation to the construction aggregate deposit and a plan for the reclamation once the construction aggregate has been removed. The reclamation plan must include the leveling of the disturbed surface at the close of mining operations to as close to its original contour as is reasonably possible taking into consideration the amount of construction aggregate removed, the preservation and re-spreading of topsoil, and the revegetation of the surface with appropriate flora.
4. Special reclamation plans for the propagation of wildlife habitat, the creation of a nature preserve, or other alternate land use may be required by the commissioner, provided the costs of such reclamation do not unreasonably increase the cost of reclamation.

History: Effective

General Authority: NDCC 15-05-18

Law Implemented: NDCC 15-05-18

**85-04-03-11. Bond.**

1. Payment of all royalties and reclamation of any portion of the leased premises that is disturbed by lessee, is the responsibility of lessee. To assure payment of royalties and satisfactory reclamation, lessee must obtain and retain in force a surety bond, in an amount determined by the commissioner.
2. Lessee may, in-lieu of a surety bond, file another form of security subject to commissioner approval.
3. The commissioner shall set the initial surety bond amount at a minimum of five thousand dollars per acre for the initial mine area, with no initial surety bond amount being less than ten thousand dollars.
4. The commissioner may adjust the amount of the surety bond annually, with the adjustment based on the estimated cost to reclaim the remaining disturbed site and the amount of stockpiled construction aggregate. If the commissioner determines that additional surety bond or other security is required, lessee must submit additional security within thirty days after request by the commissioner in the form as required by this section.

5. Lessee may submit a written request for a full or partial release of the surety bond to the commissioner. At the commissioner's discretion, the surety bond may be released in whole or in part.
6. Upon the payment of all outstanding royalties and satisfactory completion of the reclamation, the commissioner shall release the surety bond. The surety bond may be forfeited to pay outstanding royalties or to complete reclamation. The commissioner shall give final approval of the reclamation before the surety bond is released. The forfeiture of the surety bond by the lessee will not release the lessee of the duty and responsibility to reclaim the leased premises.
7. Upon written request, the commissioner may waive the bonding requirement for a political subdivision or other state agency.

History: Effective

General Authority: NDCC 15-05-18

Law Implemented: NDCC 15-05-18

**85-04-03-12. Theft of construction aggregate.** Lessee shall be responsible for the loss or theft of any construction aggregate from the leased premises and such loss or theft does not relieve the lessee from the responsibility to pay royalties for the construction aggregate.

History: Effective

General Authority: NDCC 15-05-18

Law Implemented: NDCC 15-05-18

**85-04-03-13. Records and inspections.** Lessee must keep an accurate record of the quantity, quality, and type of construction aggregate mined. The department may audit, examine and copy any records as may be necessary to assure lessee is complying with all provisions of the lease, board rules, and applicable laws and may examine all samples, logs, assays, or cores. All mining operations and reclamation operations may be inspected by the department.

History: Effective

General Authority: NDCC 15-05-18

Law Implemented: NDCC 15-05-18

**85-04-03-14. Mining operations.** Lessee shall conduct mining operations in a good and workmanlike manner and in accordance with all local, state, and federal laws and a lease may be terminated by lessor for a failure to comply. Lessee shall take reasonable steps to prevent mining operations from unnecessarily causing or increasing soil erosion or drainage and damage to crops, pasture, or trees.

History: Effective

General Authority: NDCC 15-05-18

Law Implemented: NDCC 15-05-18

**85-04-03-15. Reserved rights and termination.**

1. A lease may be terminated by the commissioner for any breach of the lease terms or the board's rules. Termination will not release lessee from liability for royalty owed the board, damages resulting from a breach of a lease term, or to reclaim the leased premises. The

department shall notify lessee of termination of a lease by giving written notice of the breach to lessee at the address specified in the lease.

2. The board reserves the right to use, rent, lease, sell, or encumber the leased premises and reserves all historical, archaeological, and paleontological materials on or beneath the surface of the leased premises. Leases for the production of coal, oil and gas, uranium, potash or other valuable minerals have priority over any lease for the mining of construction aggregate.

History: Effective

General Authority: NDCC 15-05-18

Law Implemented: NDCC 15-05-18

**85-04-03-16. Surrender by lessee.** Lessee may surrender a lease upon payment of all outstanding royalties and other debts owed the board. Surrender of a lease does not release lessee from its responsibility to reclaim the leased premises.

History: Effective

General Authority: NDCC 15-05-18

Law Implemented: NDCC 15-05-18

**85-04-03-17. Conditions on expiration, termination or surrender.** At the expiration, termination, or surrender of a lease and, upon the completion of reclamation, unless otherwise waived, lessee must remove its property from the leased premises within one hundred twenty days from the date of expiration, termination, surrender or the date reclamation is completed. Lessee will be liable to the board for the costs of removal of any property remaining on the leased premises after the deadline for removal. If Lessee does not remove all stockpiled construction aggregate from the leased premises by the lease expiration, termination, or surrender date, it will be considered abandoned and will become the property of the board.

History: Effective

General Authority: NDCC 15-05-18

Law Implemented: NDCC 15-05-18

**85-04-03-18. Surface owner consent.** Where the surface of the leased premises is not managed by the board, lessee shall give the surface owner a written description of the specific locations of any land disturbance contemplated by lessee, accompanied by a map, at least one hundred twenty days prior to the commencement of any mining. Lessee shall provide the department with proof of consent to mine from the surface owner. If there is a change in the nature of the land disturbance contemplated, an updated written description must be furnished the surface owner as soon as possible.

History: Effective

General Authority: NDCC 15-05-18

Law Implemented: NDCC 15-05-18

**85-04-03-19. Surface lessee protection.** Where the surface of the leased premises is managed by the board and is leased to a person other than the construction aggregate lessee, the construction aggregate lessee shall restore all fences that have been damaged, moved, or removed as a result of mining operations and shall further compensate the surface lessee for any damage to or loss of other improvements owned by the surface lessee.

History: Effective

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

**85-04-03-20. Protection of cultural resources.** If any historical, archaeological, paleontological, or other cultural artifacts, vestiges, or remains are found prior to, during, or after any exploration, testing, production, mining, or reclamation operations on the leased premises, the director of the state historical board and the commissioner shall be notified immediately and the site and the materials must be protected by lessee from further disturbance until a professional examination can be made or until some other form of clearance to proceed is authorized by the commissioner. Upon written request, the commissioner may grant an extension of the lease term for delays in operations caused by the requirements of this section. In the event no further disturbance is allowed, the lease may be terminated and lessor will refund to lessee any advance royalties not already credited or forfeited as provided in this chapter. The department and the director of the state historical board shall have authority to inspect the leased premises at all times to determine compliance with this section.

**History:** Effective

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18, 55-02-07

**CHAPTER 85-04-04**  
**PERMANENT IMPROVEMENTS**

Section

<u>85-04-04-01</u>	<u>Permanent and Nonpermanent Improvements</u>
<u>85-04-04-02</u>	<u>Application</u>
<u>85-04-04-03</u>	<u>Rent Credit, Cost Share and Depreciation</u>
<u>85-04-04-04</u>	<u>General Standards for a Permit for a Permanent Improvement</u>
<u>85-04-04-05</u>	<u>Issuance of a Permit for Permanent Improvement</u>

**85-04-04-01. Permanent and nonpermanent improvements.**

1. Permanent improvements may not be placed on, removed from, or applied to trust lands without the written consent of the commissioner. Permanent improvements placed on or implemented on trust lands are the property of the state of North Dakota.
2. A lessee may place nonpermanent improvements on the land without written consent of the commissioner. Upon expiration of the lease, the lessee may remove the nonpermanent improvements within one hundred twenty days after the lease expires. Any nonpermanent improvements not removed within one hundred twenty days shall become the property of the next lessee. The commissioner, upon written application from the lessee before the end of the one hundred twenty day period, may for good cause extend the period of time for removing nonpermanent improvements.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-08-26

**85-04-04-02. Application.** A lessee shall submit a request for a permanent improvement, using the electronic application available on the department's website or a paper application provided upon request. An applicant shall provide all information specifically required by the application and any supplemental information requested by the department.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-08-26

**85-04-04-03. Rent credit, cost share and depreciation.**

1. Rent credits, cost share, and depreciation of project costs may be authorized at the sole discretion of the commissioner.
2. Rent credits or cost share must not exceed the approved maximum project cost as determined by the commissioner or the actual project cost, less reimbursements from non-department sources, whichever is lower.
3. The commissioner may depreciate project costs less reimbursements to the lessee from non-department sources and rent credits or cost share from the department for a period not to exceed ten years.
4. Any unexpired depreciation amount will be available from the department before the lease auction and will be announced at the lease auction. If the former lessee is not the successful bidder at auction, the new lessee will be required to compensate the former lessee for the undepreciated amount and the department will continue to depreciate

through the original depreciation term. The commissioner may cancel any undepreciated cost of constructing a permanent improvement if the lessee fails to offer the minimum bid for the land and the land is not leased at the next auction at which the land is offered, or if the lessee fails to comply with the conditions of the lease.

5. No rent credits, cost share, or depreciation for livestock water developments are allowed on leased premises that receives an up-front livestock water deduction in determining the minimum bid for public auction.

**History:** Effective

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

**Law Implemented:** NDCC 15-08-26, 15-04-24

**85-04-04-04. General standards for a permit for a permanent improvement.** In reviewing an application for a permit for a permanent improvement, the commissioner may consider the following:

1. Financial benefit to the trusts;
2. Availability of alternate site or route;
3. The least environmentally damaging site or route;
4. Physical stability of the landscape;
5. Whether technical assistance was sought in planning the proposed permanent improvement;
6. Potential for mineral development including oil, gas, coal, construction aggregate, sodium sulfate, chemical substances, metallic ore, or uranium ore;
7. Feasibility for reclamation;
8. Maintenance of existing wetlands and water flows;
9. Any cultural, historical, archeological, and paleontological resources;
10. Habitat for federally listed threatened and endangered species;
11. Location of the proposed route or site in relation to section lines, quarter section lines, and corridors;
12. Potential liability to the trusts; and
13. Any other information relevant to the application which would assist in the commissioner's determination.

**History:** Effective

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

**Law Implemented:** NDCC 15-08-26

**85-04-04-05. Issuance of a permit for permanent improvement.** The commissioner has authority to determine whether to issue a permit for a permanent improvement and to determine the maximum project cost, rent credit, cost share, and depreciation amounts. The



commissioner may impose such terms on a permit as the commissioner deems necessary.  
Site preparation or construction may not commence until a permit is issued.

**History:** Effective

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

**Law Implemented:** NDCC 15-08-26

**CHAPTER 85-04-05**  
**ENCUMBRANCES OF TRUST LANDS**

Section

<u>85-04-05-01</u>	<u>Application</u>
<u>85-04-05-02</u>	<u>Surveying and Planning Permit Requirements</u>
<u>85-04-05-03</u>	<u>Public Notice of Application, Comment Period, Commissioner Review</u>
<u>85-04-05-04</u>	<u>General Standards for an Encumbrance</u>
<u>85-04-05-05</u>	<u>Issuance of an Encumbrance</u>
<u>85-04-05-06</u>	<u>Expiration of an Encumbrance</u>
<u>85-04-05-07</u>	<u>Exemptions</u>

**85-04-05-01. Application.** An applicant shall submit a request for an encumbrance, amendment, assignment, extension or renewal using the electronic application form available on the department's website. The application must clearly state whether the request is for an encumbrance, amendment, assignment, extension or renewal. An application submitted on any other form will not be accepted. An application fee may be charged as determined by the board. An application must be made as follows:

1. Encumbrance. An applicant shall provide all information required by the application form and any supplemental information requested by the department. An application is deemed filed and complete when the department receives an application form, the application fee, and any supplemental information requested by the department
2. Amendment. An applicant may request an amendment to an encumbrance for a specific purpose, including a request to change the site location or route of a previously issued encumbrance. If the request for an amendment is granted, the department will mail the amendment to the applicant for signature.
3. Assignment. An encumbrance may not be assigned unless specifically authorized by the terms of the encumbrance or upon written consent of the commissioner. Assignments will be granted by the commissioner through written notification to both the assignor and assignee. The commissioner may refuse to assign an encumbrance for good cause. The assignor shall remain responsible for compliance with all terms of the encumbrance and the board's rules until the assignment is approved by the commissioner. If the commissioner's approval is not required, the assignor shall remain responsible for compliance with all terms of the encumbrance and the board's rules until the department is notified of the assignment. Upon approval or notification, the assignee shall be responsible for compliance with all terms of the encumbrance and the board's rules. If the request for an assignment is granted, the department will mail the assignment to the applicant for signature.
4. Extension or renewal. An applicant may request an extension or renewal of an encumbrance for an additional term. Additional compensation may be requested by the department. If the request for an extension or renewal is granted, the department will notify the applicant.

**History:** Effective

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

**Law Implemented:** NDCC 15-01-02

**85-04-05-02. Surveying and planning permit requirements.**

1. Prior to accessing trust lands to conduct surveys, including metes-and-bounds, centerline, cadastral, ocular reconnaissance cultural resource surveys, and wetland delineations, an applicant must obtain a surveying and planning permit from the department. The applicant must complete an electronic application available on the department's website. An application is deemed filed and complete when the department receives an application form, the application fee, and any supplemental information requested by the department.
2. Upon issuance of the surveying and planning permit to the applicant, access to trust lands under the permit is only permissible if a third-party applicant has filed an application for an encumbrance. The surface tenant shall be notified by the third-party applicant of the required access to trust lands at least two calendar weeks prior to the date of access.

**History:** Effective

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

**Law Implemented:** NDCC 15-01-02

**85-04-05-03. Public notice of application, comment period, commissioner review.**

1. Within five business days after an application for a new encumbrance or a substantive amendment to an existing encumbrance has been deemed filed and complete, the department shall post a notice of the application along with any supporting documents and instructions for submitting public comments or a request for a hearing on the department's website. Comments must be received by the department no later than five o'clock p.m. on the tenth business day after posting the notice of application in order to be considered as part of the application. All comments must be in writing, and contain the following:
  - a. Name and address of the interested person;
  - b. Encumbrance applicant's name and address;
  - c. Type of project;
  - d. The trust land's legal description as shown on the published notice; and
  - e. The interested person's position on the issuance of the encumbrance.
2. Applicant may request a copy of all comments submitted and shall have five business days to respond in writing, unless additional time is requested.
3. A request for hearing must be served on the applicant by mail and filed with the department within the public comment period.
4. If a request for a hearing is made in writing during the comment period, the department must arrange for a hearing to be held before final action on an encumbrance is taken and must publish a notice of hearing in the official newspaper for each county where the project is located. The notice must be published at least once, twenty business days prior to the hearing.
5. The commissioner shall review all timely filed comments and the applicant's response to the comments and may schedule a hearing in accordance with the requirements in subsection four.

**History:** Effective

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

**Law Implemented:** NDCC 15-01-02, 15-02-05

**85-04-05-04. General standards for an encumbrance.** In reviewing an application for an encumbrance, the following may be considered:

1. Financial benefit to the trusts;
2. Availability of alternate encumbrance site or route;
3. The least environmentally damaging site or route regardless of property ownership;
4. Physical stability of the landscape;
5. Other potential future uses for the trust lands, including urban development;
6. Potential mineral and other material development including oil, gas, coal, construction aggregate, sodium sulfate, chemical substances, metallic ore, or uranium ore;
7. Feasibility for reclamation;
8. Maintenance of existing wetlands and water flows;
9. Any cultural, historical, archeological, and paleontological resources;
10. Habitat for federally listed threatened and endangered species;
11. Location of the proposed route or site in relation to section lines, quarter section lines and corridors;
12. Potential liability to the trusts;
13. Applicant's past encumbrances on trust lands;
14. Applicant's financial stability; and
15. Any other information relevant to the application which would assist in the determination.

**History:** Effective

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

**Law Implemented:** NDCC 15-01-02, 15-02-05

**85-04-05-05. Issuance of an encumbrance.**

1. The commissioner is authorized to approve and issue an encumbrance on the board's behalf in accordance with these rules.
2. If an application does not comply with the rules, or if the commissioner determines that board review is desirable, the application may be brought before the board for its consideration.
3. The commissioner may impose such terms as the commissioner deems necessary. Site preparation or construction may not commence until an encumbrance is issued.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-01-02, 15-02-05

**85-04-05-06. Expiration of an encumbrance.** Unless otherwise stated in the encumbrance, the encumbrance expires two years from the date of issuance if the activity or construction is not fully completed. An encumbrance automatically terminates at the end of its term or for failure to complete an activity or construction. The commissioner is not required to provide notice to the holder of expiration. Prior to the expiration of the encumbrance, the holder may apply for an amendment or extension in accordance with this chapter.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-01-02, 15-02-05

**85-04-05-07. Exemptions.** The following applications are exempt from the requirements of this chapter:

1. Agricultural improvements to trust lands;
2. Scientific surveys and research projects;
3. Requests for temporary access to trust lands that do not involve damage or destruction of the vegetation or the surface; and
4. Surveying and planning permits.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-01-02

**CHAPTER 85-04-06**  
**PUBLIC ACCESS AND USE**

Section

<u>85-04-06-01</u>	<u>Vehicular Access</u>
<u>85-04-06-02</u>	<u>Public Access</u>
<u>85-04-06-03</u>	<u>Prohibited Activities</u>
<u>85-04-06-04</u>	<u>Organized Events</u>

**85-04-06-01. Vehicular access.** The use of vehicles on trust lands is prohibited, except:

1. Within 33 feet of section lines;
2. As allowed by the terms of a recreational trail easement issued by the board;
3. As allowed by the terms of a lease, permit, or easement issued by the board;
4. When used for travel on a public road easement issued by the board;
5. When used by government personnel in the performance of official duties; or
6. When hunting under a special permit issued by the director of the North Dakota game and fish department to shoot from a stationary vehicle and with written permission from the lessee and commissioner.

**History:** Effective \_\_\_\_\_

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

**Law Implemented:** NDCC 15-01-02, 20.1-02-05(10)

**85-04-06-02. Public access.**

1. Non-vehicular public access to leased and unleased trust lands is allowed, unless:
  - a. It negatively impacts the value or financial return of the trust lands in violation of the board's fiduciary duty to the applicable trusts as determined by the commissioner;
  - b. Specifically prohibited by the commissioner; or
  - c. Lessee posts the land with signage issued by the department, which:
    - (1) Requires notification to the lessee before entry by the public; or
    - (2) Closes the trust lands to all public access.
2. Lessee shall not lease, sell, or otherwise be compensated for access to, on, across or over leased trust lands.

**History:** Effective

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

**Law Implemented:** NDCC 15-01-02, 15-02-05

**85-04-06-03. Prohibited activities.** The following activities and items are prohibited on trust lands:

1. Target shooting, explosives, and exploding targets;
2. Camping, picnicking, or camp fires;
3. Unattended hunting blinds, tree stands, and screw in steps;
4. Baiting to attract, lure, feed, or habituate wildlife for any purpose. Bait includes grains, screenings, minerals, salt, fruits, vegetables, hay, or any other natural or manufactured feeds. Bait does not include the use of lures, scents, or liquid attractants for hunting;
5. Disturbing or removing artifacts or any cultural, historical, archeological, or paleontological resources found on trust lands without written permission from the Board;
6. Disposing of refuse including garbage, bottles, cans, trees, branches, or other waste materials;
7. Dog training;
8. Guiding and outfitting;
9. Collecting plant parts for sale or other commercial purposes;
10. Trapping, unless written permission is granted by the commissioner;
11. Tree cutting and firewood gathering, unless authorized in writing by the commissioner;  
and
12. Beehives, unless specifically authorized in a lease for agricultural use.

**History:** Effective

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

**Law Implemented:** NDCC 15-01-02, 15-02-05, 15-04-18, 15-04-20, 20.1-03-42, 55-02-07, 55-10-09

**85-04-06-04. Organized events.** Upon written request, the commissioner may allow by written agreement or permit, an organized event involving public access or activity on trust lands if the event:

1. Is an appropriate use of trust lands;
2. Does not damage trust lands;

3. Does not negatively impact the value or financial return of the trust lands in violation of the board's fiduciary duty to the applicable trusts as determined by the commissioner;
4. Protects the state of North Dakota from liability and other claims for damage; and
5. Has been approved by the current lessee, if leased.

**History:** Effective

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

**Law Implemented:** NDCC 15-01-02



**ARTICLE 85-05**  
**LOAN PROGRAMS**

<u>Chapter</u>	
<u>85-05-01</u>	<u>Farm Loan Program</u>
<u>85-05-02</u>	<u>Coal Loan Program</u>

**CHAPTER 85-05-01**  
**FARM LOAN PROGRAM**

<u>Section</u>	
<u>85-05-01-01</u>	<u>Definitions</u>
<u>85-05-01-02</u>	<u>Dedication of Funds to the Loan Pool Account</u>
<u>85-05-01-03</u>	<u>Withdrawal of Funds from the Loan Pool Account</u>
<u>85-05-01-04</u>	<u>Terms</u>
<u>85-05-01-05</u>	<u>Authority of the Bank</u>
<u>85-05-01-06</u>	<u>Investment of Funds</u>
<u>85-05-01-07</u>	<u>Reporting Procedure</u>
<u>85-05-01-08</u>	<u>Crediting of Principal Payments Received</u>
<u>85-05-01-09</u>	<u>Crediting of Interest Payments Received</u>
<u>85-05-01-10</u>	<u>Bank Service Fee</u>
<u>85-05-01-11</u>	<u>Mortgagor</u>
<u>85-05-01-12</u>	<u>Costs and Fees</u>
<u>85-05-01-13</u>	<u>Penalties</u>
<u>85-05-01-14</u>	<u>Renegotiation</u>
<u>85-05-01-15</u>	<u>Foreclosure</u>
<u>85-05-01-16</u>	<u>Deeds in Lieu of Foreclosure</u>
<u>85-05-01-17</u>	<u>Partial Releases</u>
<u>85-05-01-18</u>	<u>Subordinations</u>

**85-05-01-01. Definitions.** The following definitions, in addition to the definitions in North Dakota Century Code chapter 15-03, apply to this chapter:

1. "Bank" shall mean the bank of North Dakota established under the North Dakota Century Code chapter 6-09.
2. "President" shall mean the president of the bank as provided for in North Dakota Century Code chapter 6-09.
3. "Trusts" shall mean the various trust funds under control and supervision of the board.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 15-03-04.2

**Law Implemented:** NDCC 15-03-04.1, 15-03-04.2, 15-03-04.3

**85-05-01-02. Dedication of funds to the loan pool account.** The board may periodically dedicate such funds as it deems advisable to the loan pool account.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 15-03-04.2

Law Implemented: NDCC 15-03-04.1, 15-03-04.2, 15-03-04.3

85-05-01-03. Withdrawal of funds from loan pool account. The commissioner may withdraw from the loan pool account any funds not invested in loans, provided however, the commissioner shall not withdraw funds needed to meet accepted loan applications in process.

History: Effective

General Authority: NDCC 15-03-04.2

Law Implemented: NDCC 15-03-04.1, 15-03-04.2, 15-03-04.3

85-05-01-04. Terms. The terms for loans shall be set and periodically reviewed by the board. The president and the commissioner shall advise the board as to favorable interest rates and terms in order to maximize income. Upon notice in writing to the president, the commissioner can order an immediate suspension of the acceptance of any new loan applications.

History: Effective

General Authority: NDCC 15-03-04.2

Law Implemented: NDCC 15-03-04.1, 15-03-04.2, 15-03-04.3

85-05-01-05. Authority of bank. The bank may invest monies in the loan pool account, as well as any monies that constitute payment of principal on outstanding loans, in new loans as long as the monies are on deposit in the loan pool account. Any loan made in accordance with these rules and payable to the bank may be endorsed to the loan pool account without recourse against the bank. Proper appraisals shall be conducted using the farmer's home administration, federal loan bank, bank appraisers or other competent appraisers.

History: Effective

General Authority: NDCC 15-03-04.2

Law Implemented: NDCC 15-03-04.1, 15-03-04.2, 15-03-04.3

85-05-01-06. Investment of funds. Loans must be processed with efficiency so that all funds dedicated by the board to the loan pool account will be kept fully invested. Any funds in the loan pool account that are not invested in farm loans must draw interest comparable to at least that paid on passbook savings accounts or money market demand accounts, whichever is greater.

History: Effective

General Authority: NDCC 15-03-04.2

Law Implemented: NDCC 15-03-04.1, 15-03-04.2, 15-03-04.3

85-05-01-07. Reporting procedure. The board will receive a monthly account for all funds under the bank's control.

History: Effective

General Authority: NDCC 15-03-04.2

Law Implemented: NDCC 15-03-04.1, 15-03-04.2, 15-03-04.3

85-05-01-08. Crediting of principal payments received. All receipts, payments, and collections of principal made on such loans shall be credited to the loan pool account.

History: Effective

General Authority: NDCC 15-03-04.2

Law Implemented: NDCC 15-03-04.1, 15-03-04.2, 15-03-04.3

85-05-01-09. Crediting of interest payments received. Upon receipt of interest payments on loans, charges and costs may be deducted as prescribed in this chapter, the balance must be credited to the loan pool account, and notice sent to the commissioner.

History: Effective

General Authority: NDCC 15-03-04.2

Law Implemented: NDCC 15-03-04.1, 15-03-04.2, 15-03-04.3

85-05-01-10. Bank service fee. A fee equivalent to one half of one percent of the unpaid principal balance may be charged for each loan. Such fee may only be deducted from interest payments actually received.

History: Effective

General Authority: NDCC 15-03-04.2

Law Implemented: NDCC 15-03-04.1, 15-03-04.2, 15-03-04.3

85-05-01-11. Mortgagor. Mortgagor must be actively engaged in the business of farming or ranching in the state of North Dakota and the loan proceeds must be used for a farm-related purpose. A mortgagor must be a person who is a resident of the state of North Dakota or a legal entity registered in the state of North Dakota and conducting business in the state.

History: Effective

General Authority: NDCC 15-03-04.2

Law Implemented: NDCC 15-03-04.1, 15-03-04.2, 15-03-04.3

85-05-01-12. Costs and fees. All costs associated with the application, including appraisal fees, actual expenses, abstractor's fees, filing fees and other costs, shall be borne by the applicant. Borrowers may be charged origination fees, rate reduction fees or other such fees as determined by the commissioner, the president and the senior vice president of lending of the bank, acting unanimously.

History: Effective

General Authority: NDCC 15-03-04.2

Law Implemented: NDCC 15-03-04.1, 15-03-04.2, 15-03-04.3

85-05-01-13. Penalties. There shall be no prepayment penalty assessed on loans originated by the bank.

History: Effective

General Authority: NDCC 15-03-04.2

Law Implemented: NDCC 15-03-04.1, 15-03-04.2, 15-03-04.3

85-05-01-14. Renegotiation. The terms of a mortgage in the loan pool account may be renegotiated as follows:

1. Only prospective restructuring is allowed;
2. No principal or accrued interest may be forgiven; and

3. Sound banking practices must be followed in all debt restructuring and renegotiations. The borrower may ask for an interest rate concession due to competition in the marketplace if the loan is current. The renegotiated rate must be within the guidelines for new borrowers as determined by the bank.

History: Effective

General Authority: NDCC 15-03-04.2

Law Implemented: NDCC 15-03-04.1, 15-03-04.2, 15-03-04.3

**85-05-01-15. Foreclosure.** All foreclosures shall be handled in accordance with standard banking practices and the bank's procedure for processing delinquent farm loan mortgages. Reasonable costs incurred in connection with a foreclosure that is not redeemed shall be deducted from interest due the board in accordance with this chapter.

History: Effective

General Authority: NDCC 15-03-04.2

Law Implemented: NDCC 15-03-04.1, 15-03-04.2, 15-03-04.3

**85-05-01-16. Deeds in lieu of foreclosure.** A deed in lieu of foreclosure may be accepted if the action is in accordance with: standard banking and lending practices, North Dakota Century Code section 15-03-14, and the bank's procedure in processing deeds in lieu of foreclosure. If it is in the best interests of the loan pool account, costs associated with accepting a deed in lieu of foreclosure may be deducted from interest due the board in accordance with this chapter.

History: Effective

General Authority: NDCC 15-03-04.2

Law Implemented: NDCC 15-03-04.1, 15-03-04.2, 15-03-04.3

**85-05-01-17. Partial releases.** A partial release may be made in accordance with standard banking and lending practices provided the unpaid principal after the release may not constitute a greater percentage of the value of the security remaining than the total principal bore to the total value of the security at the time of the loan. For purposes of this section, value shall mean the appraised value as established at the time of the loan or the current market value of the remaining security, if less than the appraised value at the time of the loan. A request for a partial release must be in writing and approved by the bank and the commissioner.

History: Effective

General Authority: NDCC 15-03-04.2

Law Implemented: NDCC 15-03-04.1, 15-03-04.2, 15-03-04.3

**85-05-01-18. Subordinations.** A mortgage securing a loan made under these rules may be subordinated to an oil and gas lease under the following terms and conditions:

1. Before subordinating a mortgage to an oil and gas lease, all documentation concerning the transaction must be provided, including:
  - a. The mortgage covering the real property subject to the proposed oil and gas lease;
  - b. The proposed oil and gas lease;

- c. The sight draft or other means of payment; and
  - d. Any drilling title opinion or division order title opinion that has been prepared on the real property insofar as the opinion covers the interests of the lessor (mortgagor).
2. A subordination agreement must be executed in consideration of the payment of all income received by a lessor (mortgagor) under an oil and gas lease. The lessor (mortgagor) and lessee under the oil and gas lease shall execute an assignment of all income payable to the lessor (mortgagor) under the oil and gas lease. The subordination agreement must not be executed before the oil and gas lease or the assignment of income is executed.
  3. When the oil and gas lease is being executed simultaneously with the subordination agreement, the mortgage may be subordinated to the oil and gas lease provided an assignment of income is also executed by the lessor (mortgagor). All bonus money must be paid directly to the bank for application as provided in this chapter.
  4. When the oil and gas lease has been previously executed, the mortgage may be subordinated to the oil and gas lease provided the mortgage is current and an assignment of income is executed by the lessor (mortgagor).
  5. When the lessor (mortgagor) is in default and the oil and gas lease has been previously executed, the commissioner and bank may decide whether or not to subordinate to the previously executed lease and shall consider the following factors:
    - a. Whether drilling of a well is imminent on the tract;
    - b. Whether foreclosure proceedings are in process or likely to be commenced in the near future;
    - c. The prior repayment history of the mortgagor (lessor);
    - d. Other outstanding debt of the mortgagor (lessor); and
    - e. Any additional consideration to be paid by the lessee for the execution of the subordination. The additional consideration must be applied to the balance due on the loan.
  6. Proceeds from the lease must be forwarded to the bank. The bank retains that portion of the proceeds of the lease which is required to bring the loan current. Once the loan is current, any excess proceeds must be returned to the mortgagor (lessor).

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 15-03-04.2

**Law Implemented:** NDCC 15-03-04.1, 15-03-04.2, 15-03-04.3

**CHAPTER 85-05-02**  
**COAL LOAN PROGRAM**

Section

85-05-02-01 Applicant  
85-05-02-02 Authority  
85-05-02-03 Interest Rate  
85-05-02-04 Warrant

**85-05-02-01. Applicant.**

1. An applicant is a political subdivision consisting of a coal-impacted county, incorporated city, or school district demonstrating actual or anticipated extraordinary expenditures caused by coal development.
2. An applicant shall submit a request for a coal loan using the electronic application form available on the department's website. An application submitted on any other form will not be accepted. An application fee may be charged as determined by the board.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 57-62-03

**85-05-02-02. Authority.** The energy infrastructure and impact office shall recommend to the board whether to award or disapprove the loan and the terms and conditions of the loan. The board has the final decision to make loans to coal development-impacted applicants. The applicant will receive written notification of either approval or disapproval of the loan request from the department.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 57-62-02, 57-62-03

**85-05-02-03. Interest rate.** An interest rate is set by the board at market rates, not to exceed six percent.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 57-62-03

**85-05-02-04. Warrant.** The energy infrastructure and impact office shall deliver the warrant and a copy of the amortization schedule by registered mail, in duplicate, to the approved loan applicant. The loan applicant must sign and return one set of documents to the energy infrastructure and impact office.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 57-62-03